

**TOWN OF SEDGWICK  
ORDINANCE 04-2020**

**AN EMERGENCY ORDINANCE ENACTING WITHIN THE TOWN AN  
OCCUPATION TAX ON RETAIL MARIJUANA PRODUCTS MANUFACTURING  
FACILITIES, AND PROVIDING FOR THE SUBMISSION OF THE QUESTION OF  
SUCH TAX TO A VOTE OF THE REGISTERED ELECTORS AT THE REGULAR  
ELECTION TO BE HELD APRIL 7, 2020**

**WHEREAS**, the Town of Sedgwick, Colorado (the “Town “) is a statutory town existing under and by virtue of laws of the State of Colorado; and

**WHEREAS**, the Board of Trustees finds and determines that the establishment and operation of retail marijuana products manufacturing facilities results in the increased use of Town streets and rights-of-way, increased demands upon municipal services and utilities and has a substantial affect upon the health, safety and welfare of the citizens of the Town and upon the expenditures budgeted by the Town which is a matter of local concern; and

**WHEREAS**, C.R.S. §31-15-501(1)(c) authorizes the Town to tax any lawful occupation within its borders; and

**WHEREAS**, in the case of Town of Eagle v. Scheibe, 10 P.3d 648 (Colo. 2000), the Colorado Supreme Court held that an occupation tax may be imposed to compensate a municipality for the use of its services and facilities, and specifically upheld the validity of an occupation tax which is levied at a fixed rate; and

**WHEREAS**, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer’s Bill of Rights (“TABOR”), requires voter approval for any new tax, tax rate increase, or tax policy change directly causing a net revenue gain; and

**WHEREAS**, the Town will hold a regular election on April 7, 2020; and

**WHEREAS**, April 7, 2020, is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the Town pursuant to TABOR; and

**WHEREAS**, the Board of Trustees is of the opinion that it should refer to the voters at the April 7, 2020 election a TABOR ballot issue concerning the imposition of an occupation tax on retail marijuana products manufacturing facilities to begin July 1, 2020.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF  
THE TOWN OF SEDGWICK, COLORADO:**

**Section 1.** A regular municipal election will be held in the Town of Sedgwick on Tuesday, April 7, 2020, between the hours of 7:00 a.m. and 7:00 p.m. (the “Election”).

**Section 2.** Pursuant to the applicable provisions of the laws of the State of Colorado,

the Board of Trustees hereby submits to the registered electors of the Town at the Election the ballot question specified in Section 3 of this ordinance.

**Section 3.** The following ballot question, certified in substantially the form set forth below, is hereby referred to the registered electors of the Town and shall appear on the ballot of the Election:

SHALL TOWN OF SEDGWICK TAXES BE INCREASED BY \$100,000 (FIRST FULL FISCAL YEAR INCREASE) AND ANNUALLY THEREAFTER IN SUCH AMOUNTS AS ARE RECEIVED EACH YEAR FROM THE LEVY OF AN OCCUPATION TAX ON WHOLESALE TRANSACTIONS BY RETAIL MARIJUANA PRODUCTS MANUFACTURING FACILITIES AT THE RATE OF \$5.00 PER TRANSACTION THAT IS LESS THAN \$100; \$10.00 PER TRANSACTION THAT IS \$100 OR MORE BUT LESS THAN \$500; AND \$25.00 PER TRANSACTION THAT IS \$500 OR MORE, TO COMMENCE JULY 1, 2020, AND WITH ALL REVENUES DERIVED FROM SUCH TAX TO BE COLLECTED, RETAINED AND SPENT FOR ANY LAWFUL MUNICIPAL PURPOSE; AND SHALL THE TOWN BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH OCCUPATION TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

**Section 4.** If a majority of the registered electors voting at the Election vote “yes” in response to the ballot question specified in Section 3 of this Ordinance, the issue shall be deemed to have passed and the following provisions are hereby adopted:

### **RETAIL MARIJUANA PRODUCTS MANUFACTURERS OCCUPATION TAX**

#### **Sec. 1. Purpose.**

The Board of Trustees hereby finds, determines and declares:

A. For the purposes of this Ordinance, retail marijuana products manufacturing facilities selling retail marijuana products and retail marijuana within the Town of Sedgwick (the “Town”) are exercising a taxable privilege. The purpose of this Ordinance is to impose a tax which will be paid by every retail marijuana products manufacturing facility selling retail marijuana products and marijuana, which tax will provide revenues for the Town.

B. The provision of retail marijuana products and retail marijuana by retail marijuana products manufacturing facilities to retail marijuana stores and other manufacturing facilities results in the increased use of Town streets and rights-of-way, increased demands upon municipal

services and utilities and has a substantial affect upon the health, safety and welfare of the citizens of the Town and upon the expenditures budgeted by the Town which is a matter of local concern.

C. The classification of retail marijuana products manufacturing facilities as separate businesses and occupations is reasonable, proper, uniform and nondiscriminatory; and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory, and necessary.

## **Sec. 2. Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this Ordinance shall have the following meanings:

A. "Marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

B. "Retail Marijuana" means marijuana that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana business.

C. "Retail Marijuana Products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

D. "Retail Marijuana Products Manufacturing Facility" means an entity licensed to purchase retail marijuana; manufacture, prepare, and package retail marijuana products and sell retail marijuana products and retail marijuana to retail marijuana stores and to other retail marijuana product manufacturing facilities, but not to consumers.

E. "Tax" means the tax payable by the vendor or the aggregate amount of taxes due from vendor during the period for which the vendor is required to pay the occupation tax on the provision of retail marijuana products or retail marijuana under this Ordinance.

F. "Vendor" means a retail marijuana products manufacturing facility furnishing retail marijuana or retail marijuana products to retail marijuana stores

or other retail marijuana products manufacturing facilities.

G. "Wholesale Transaction" means the furnishing of retail marijuana products or retail marijuana for consideration by retail marijuana products manufacturing facilities to retail marijuana stores and other retail marijuana products manufacturing facilities for resale and does not include sales to consumers not for resale, which are deemed retail sales.

### **Sec. 3. Levy of Tax.**

There is hereby levied by the Town an occupation tax on all wholesale transactions by a retail marijuana product manufacturing facility in the following amounts:

- a. \$5.00 per wholesale transaction that is less than \$100.00;
- b. \$10.00 per wholesale transaction that is \$100.00 or more but less than \$500.00; and
- c. \$25.00 per wholesale transaction that is \$500.00 or more.

### **Sec. 4. Collection of Tax.**

A. Every vendor providing retail marijuana or retail marijuana products taxable under this Ordinance shall remit such tax on or before the twentieth (20th) day of each month on account of wholesale transactions in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe.

B. The burden of proving that any transaction is exempt from the tax shall be upon the vendor.

C. It shall be the duty of every vendor to maintain, keep and preserve suitable records of all wholesale transactions by the vendor and such other books or accounts as may be required by the Town Clerk in order to determine the amount of the tax of which the vendor is liable under this Ordinance. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Town Clerk or designee.

D. The tax to be paid by a vendor shall not be stated and charged separately from the wholesale transaction price on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued, provided, a vendor may indicate the wholesale transaction price "includes \$ \_\_\_\_\_ Town of Sedgwick Retail Marijuana Products Manufacturers Occupation Tax."

## **Sec. 5. Audit of Records.**

A. For the purpose of ascertaining the correct amount of the occupation tax due from any vendor under this Ordinance, the Town Clerk or an authorized agent, may conduct an audit by examining any relevant books, accounts and records of such vendor.

B. All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Clerk or an authorized agent. If any vendor refuses to voluntarily furnish any of the foregoing information when requested, the Town Clerk may issue a subpoena to require that the vendor or its representative attend a hearing or produce any such books, accounts and records for examination.

C. Any person claiming an exemption under the provisions of this Ordinance is subject to audit in the same manner as any other vendor.

## **Sec. 6. Tax Overpayments and Deficiencies.**

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Clerk determines that within three (3) years of the due date, a vendor overpaid the occupation tax under this Ordinance, he or she shall process a refund or allow a credit against a future remittance from the same vendor. If at any time the Town Clerk determines the amount paid is less than the amount due under this Ordinance, the difference together with interest at the rate of one and one-half percent (1.5%) assessed from the date such amount was first due, shall be paid by the vendor within ten (10) days after receiving written notice and demand from the Town Clerk. The Town Clerk may extend that time for good cause.

## **Sec. 7. Tax Information Confidential.**

A. All specific information gained under the provisions of this Ordinance which is used to determine the tax due from a vendor, whether furnished by the vendor or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Ordinance, no Town officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Ordinance or by law, shall be guilty of a violation hereof.

B. The Town Clerk may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.

C. Nothing contained in this Section shall be construed to prohibit the delivery to a vendor or its duly authorized representative a copy of such confidential information relating to such vendor, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the Town.

### **Sec. 8. Forms and Regulations.**

The Town Clerk is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the occupation tax under this Ordinance and in particular and without limiting the general language of this Ordinance, to provide for:

A. A form of report to be supplied to all vendors;

B. The records which vendors are to keep concerning the tax imposed by this Ordinance.

### **Sec. 9. Enforcement and Penalties.**

A. It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Ordinance, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Ordinance. Any person convicted of a violation of this Ordinance shall be punished by a fine of not more than \$2,650 (as adjusted for inflation from time to time pursuant to C.R.S. § 13-10-113) or imprisonment not to exceed 364 days, or both such fine and imprisonment. Each day a violation exists shall be considered a separate punishable violation.

B. A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this Ordinance, or such other date as prescribed by the Town Clerk, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive, for good cause shown, any penalty assessed.

C. If any part of a deficiency is due to negligence or intentional

disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest, from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency together with interest and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town Clerk.

D. If any vendor fails to make a return and pay the tax imposed by this Ordinance, the Town may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The Town shall mail notice of such estimate, by certified mail, to the vendor at its address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the vendor to the Town Clerk ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten (10) day period such delinquent vendor may petition the Town Clerk for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Town Clerk the documents, facts and figures showing the correct amount of such taxes due and owing.

E. Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the vendor under penalty of perjury. Thereupon, the Town Clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Ordinance. Such assessment shall be considered the final order of the Town Clerk, and may be reviewed by a Court of competent jurisdiction under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the vendor gives written notice to the Town Clerk of such intention within ten (10) days after receipt of the final order of assessment.

#### **Sec. 10. Tax Lien.**

A. The tax imposed by this Ordinance, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be, and until paid, remain a first and prior lien superior to all other liens on all of the tangible personal property of a vendor within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Clerk whenever the vendor is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any Town peace officer, the Sedgwick County Sheriff or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Clerk at public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against

property upon judgment of a court of record, and the remedies of garnishment shall apply.

B. The tax imposed by this Ordinance shall be, and remain, a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

**Sec. 11. Recovery of Unpaid Tax.**

A. The Town Clerk may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the vendor.

B. In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town Clerk may recover at law the amount of such taxes, penalties, costs, reasonable attorney fees, including legal assistant's fees, charged, plus interest, in any county or district court of the county wherein the vendor resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.

C. The return of the vendor or the assessment made by the Town Clerk shall be prima facie proof of the amount due.

D. Such actions may be actions in attachment, and writs of attachment may be issued to the Sedgwick County Sheriff, as the case may be, and in any such proceeding no bond shall be required of the Town Clerk, nor shall any Town peace officer or sheriff require of the Town Clerk an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town Clerk may prosecute appeals in such cases without the necessity of providing a bond therefor.

E. It shall be the duty of the Town Attorney, when requested by the Board of Trustees, to commence action for the recovery of taxes due under this Ordinance and this remedy shall be in addition to all other existing remedies, or remedies provided in this Ordinance.

F. The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent ad valorem taxes pursuant to Section 31-20-105, C.R.S.

**Sec. 12. Status of Unpaid Tax in Bankruptcy and Receivership.**

Whenever the business or property of a vendor subject to this Ordinance shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest



imposed by this Ordinance and for which the vendor is in any way liable under the terms of this Ordinance shall be a prior and preferred lien against all the property of the vendor, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Ordinance under process or order of any court, without first ascertaining from the Town Clerk the amount of any taxes due and payable under this Ordinance, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

### **Sec. 13. Hearings, Subpoenas and Witness Fees.**

A. Hearings before the Town Clerk pursuant to provisions in this Ordinance shall be held in a manner that provides due process of law. Any subpoena issued pursuant to this Ordinance may be enforced by the Sedgwick Municipal Judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town Clerk, such fees shall be paid in the same manner as other expenses under the terms of this Ordinance, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Town Clerk may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Town Clerk, at her discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

B. The Sedgwick Municipal Judge, upon the application of the Town Clerk, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Clerk or any duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

### **Sec. 14. Depositions.**

The Town Clerk or any party in an investigation or hearing before the Town Clerk may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

### **Sec. 15. Statute of Limitations.**

A. Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Ordinance shall not be assessed, nor shall notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable, nor shall any lien continue after such period, except for taxes assessed before the expiration of such three (3) year period when the notice of lien with respect to which has been filed prior to the expiration of such period.

B. In case of a false or fraudulent return with intent to evade taxation, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be commenced at any time.

C. Before the expiration of such period of limitation, the vendor and the Town Clerk may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

#### **Sec. 16. Right to Amend Ordinance.**

The Board of Trustees shall have the right to amend or repeal the provisions of this Ordinance, including all provisions regarding collection, administration, use and enforcement of the retail marijuana products manufacturers occupation tax, except that the amount of the tax and events subject to the tax as approved by the voters on April 7, 2020 shall not be increased, expanded or broadened without additional voter approval.

**Section 6.** The provisions of this Ordinance shall take effect, following passage and approval thereof as provided in Section 4, on July 1, 2020.

**Section 7.** If any section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

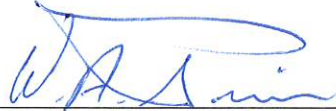

**Section 8.** All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**Section 9.** The Board of Trustees herewith finds, determines, and declares that this Ordinance is necessary to the immediate preservation of public property, health, welfare, peace, or safety because there is an urgent need for the revenues from the tax proposed by this ordinance, the Board of Trustees desires to submit the foregoing TABOR ballot issues to the registered electors of the Town at the regular municipal election on April 7, 2020, and there are several immediate deadlines related to the conduct of said election that must be met. Therefore, pursuant to C.R.S. § 31-16-105, the Board of Trustees herewith further finds, determines and

declares that it is necessary for this Ordinance to take effect immediately upon adoption.

**INTRODUCED, READ, PASSED AND ADOPTED AND ORDERED PUBLISHED  
BY TITLE ONLY** this 11<sup>th</sup> day of February, 2020.

TOWN OF SEDGWICK, COLORADO

  
\_\_\_\_\_  
Wayne Price, Mayor 

ATTEST:

  
\_\_\_\_\_  
Heather Moore, Town Clerk

