

**TOWN OF SEDGWICK
ORDINANCE #01-2016**

AN EMERGENCY ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK SUBMITTING TO THE REGISTERED ELECTORS AT THE REGULAR MUNICIPAL ELECTION TO BE HELD APRIL 5, 2016 A BALLOT ISSUE CONCERNING THE IMPOSITION OF A MUNICIPAL EXCISE TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY AND, CONTINGENT UPON ELECTOR APPROVAL, ENACTING AN ORDINANCE TO PROVIDE FOR THE SAME

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, C.R.S. § 29-2-114 authorizes the Town to "levy, collect and enforce a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility," which tax is in addition other taxes, including the excise tax imposed by the State; and

WHEREAS, the Board of Trustees hereby determines that both the Town's interest and the public interest and necessity require that the Town impose an excise tax on the average market rate of unprocessed retail marijuana that is sold or transferred by a retail marijuana cultivation facility; 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 Board of Trustees desires to refer to the registered electors of the Town the TABOR ballot issue set forth herein authorizing the imposition of a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility; and

WHEREAS, TABOR requires that the Town submit ballot issues, as defined in TABOR, to the Town's registered electors on specified election days before action can be taken on such ballot issues; and

WHEREAS, the Town will hold a regular municipal election on April 5, 2016 and such date is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the Town; and

WHEREAS, the Board of Trustees finds it is in the best interest of the Town and its citizens to submit to the registered electors of the Town the TABOR ballot issue herein set forth.

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

Section I. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Board of Trustees.

Section II. The Board of Trustees hereby adopts the following provisions, which provisions may be referred to as the “Retail Marijuana Cultivation Facility Excise Tax Ordinance of the Town of Sedgwick:”

RETAIL MARIJUANA CULTIVATION FACILITY EXCISE TAX

- Section 1. Definitions**
- Section 2. Imposition and Rate of Tax**
- Section 3. Vendor Liability for Collecting the Tax**
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- Section 15. Statute of Limitations**
- Section 16. Right to Amend Ordinance**

Section 1. 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. “Average market rate” means the amount determined by the Colorado Department of Revenue pursuant to C.R.S. § 39-28.8-101(1), as may be amended from time to time, as the average price of unprocessed retail marijuana that is sold or transferred from a retail marijuana cultivation facility to a retail marijuana products manufacturer or retail marijuana store.

B. “Marijuana” shall have the same meaning as in Article XVIII, Section 16(2)(f) of the Colorado Constitution.

C. “Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization; except that person does not include any governmental organization.

D. "Retail Marijuana" shall have the same meaning as in C.R.S. § 12-43.4-103(15), as may be amended from time to time.

E. "Retail Marijuana Cultivation Facility" shall have the same meaning as in C.R.S. § 12-43.4-103(16), as may be amended from time to time.

F. "Vendor" means a retail marijuana cultivation facility, duly licensed by the state and the Town at a location within the Town.

Section 2. Imposition and Rate of Tax

On and after July 1, 2016, there is levied and shall be paid and collected an excise tax in the amount of two percent (2%) on the average market rate of unprocessed retail marijuana that is sold by or transferred from a Vendor.

Section 3. Vendor Liability for Collecting the Tax

A. Each Vendor shall pay the tax imposed by Section 2 above on every sale or transfer of retail marijuana from the Vendor.

B. The burden of proving that any transaction is not subject to the tax imposed by this Ordinance is upon the person upon whom the duty to collect the tax is imposed.

C. All sums of money paid as the excise tax imposed by this Ordinance are public monies that are the property of the Town. The person required to collect and remit the excise tax shall hold such monies in trust for the sole use and benefit of the Town until paying them to the Town.

Section 4. Collection and Reporting

Every Vendor with a duty to collect the excise tax shall collect the tax on behalf of the Town and shall act as a trustee therefor. The tax shall be collected from purchasers and remitted to the Town Clerk on or before the twentieth day of the month succeeding the month in which the tax has been paid and collected. Every Vendor shall make a monthly report which shall be submitted at the same time the collected tax is remitted. A return must be filed even if no sales or transfers were made or if no tax is due for the period. Returns with a "zero" tax must be filed to avoid non-filer notices and penalty assessments. Such reports shall be upon such forms as may be provided by the Town Clerk.

Section 5. Duty of Vendors to Keep Records

Vendors shall maintain adequate records at the Vendor's place of business within the Town and such records shall be open to inspection by the Town Clerk during reasonable business hours. All such records shall be maintained by

Vendors for a period of not less than three (3) years.

Section 6. Administration

Administrative duties under this Article shall be the responsibility of the Town Clerk.

Section 7. Use of Revenues

Revenues from the excise tax shall be deposited in the general fund and shall be available to pay for the general expenses of government. Excise tax revenues may be appropriated and expended upon authorization by the Board of Trustees for uses determined reasonable and necessary by the Board of Trustees.

Section 8. Audit of Records

A. For the purpose of ascertaining the correct amount of the excise 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 person.

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 taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Clerk may issue a subpoena to require that the taxpayer 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.

Section 9. 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 excise 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.

Section 10. 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 one year, 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 taxpayer 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 taxpayer 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 taxpayer 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 taxpayer gives written notice to the Town Clerk of such intention within ten (10) days after receipt of the final order of assessment.

Section 11. 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.

Section 12. 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 taxpayer.

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 Taxpayer 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.

Section 13. 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 taxpayer, 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.

Section 14. Hearings, Subpoenas, Witness Fees and Depositions

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 Court 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 Court, 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.

C. 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.

Section 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 taxpayer 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.

Section 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 excise tax, except that the amount of the tax and events subject to the tax as approved by the voters on April 5, 2016 shall not be increased, expanded or broadened without additional voter approval.

Section III. The provisions of this Ordinance shall not take effect unless and until a majority of the registered voters voting at the regular municipal election on April 5, 2016 vote "yes" in response to the following ballot title:

SHALL TOWN OF SEDGWICK TAXES BE INCREASED BY \$500,000 (FIRST FULL FISCAL YEAR INCREASE) AND ANNUALLY THEREAFTER IN SUCH AMOUNTS AS ARE RECEIVED EACH YEAR THROUGH THE IMPOSITION OF AN EXCISE TAX IN THE AMOUNT OF TWO PERCENT (2%) ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY AT THE AVERAGE MARKET RATE AT THE POINT OF SALE OR TRANSFER FROM THE CULTIVATION FACILITY, COMMENCING ON JULY 1, 2016, WHICH IF APPROVED, SHALL REPLACE THE OCCUPATION TAX LEVIED ON SALES OR TRANSFERS OF RETAIL MARIJUANA BY RETAIL MARIJUANA CULTIVATION FACILITIES, 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?

YES
NO

Section IV. The provisions of this Ordinance shall take effect, following passage and approval thereof as provided in Section III, on July 1, 2016.

Section V. 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 VI. 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 VII. 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 1, 2016, 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, VOTED ON, ADOPTED AND APPROVED BY AFFIRMATIVE VOTE OF AT LEAST THREE-FOURTHS OF THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK, SEDGWICK COUNTY, COLORADO AT A REGULAR MEETING HELD THIS 8th DAY OF February, 2016, AND IS HEREBY ORDERED PUBLISHED BY "TITLE ONLY" IN COMPLIANCE WITH ORDINANCE #01-2006.

TOWN OF SEDGWICK, COLORADO



Mayor

ATTEST:



Rhonda K. Jones, Town Clerk