

ORDINANCE NO. 4-17

AN ORDINANCE OF THE TOWN OF DINOSAUR, COLORADO, IMPOSING AN EXCISE TAX OF FIVE PERCENT (5%) UPON THE SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA.

WHEREAS, subsection (2)(a) of Section 29-2-114, C.R.S. provides that in addition to any sales tax imposed pursuant to Section 29-2-102, C.R.S. and Articles 26 and 28.8 of Title 39, C.R.S., and in addition to the State excise tax imposed pursuant to Article 28.8 of Title 39, C.R.S., a statutory municipality in Colorado is authorized 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; and

WHEREAS, said municipal excise tax is imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility; and

WHEREAS, a municipal excise tax imposed by a statutory municipality may not exceed five percent (5%) of the average market rate, as determined by the Colorado Department of Revenue pursuant to Section 39-28.8-101(1), C.R.S. of the unprocessed retail marijuana; and

WHEREAS, any municipal excise tax cannot be collected, administered or enforced by the Colorado Department of Revenue, but instead must be collected, administered, and enforced by the municipality imposing the tax; and

WHEREAS, no municipal excise tax shall be levied pursuant to the provisions of subsection (2)(a) of Section 29-2-114, C.R.S. until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with the provisions of Article 10 of Title 31, C.R.S.; and

WHEREAS, the Dinosaur Town Council submitted a ballot issue to the vote of the registered electors of the Town of Dinosaur at the coordinated election held on November 8, 2016 concerning the imposition of a municipal excise tax of five percent (5%) on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility and such tax was approved by the registered electors voting thereon.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DINOSAUR, COLORADO:

Section 1. The Town Council of the Town of Dinosaur, Colorado intends that a municipal excise tax be imposed on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to a retail marijuana store or retail marijuana products manufacturer within the Town. The purpose of this tax is to increase the revenue base for the Town of Dinosaur to fund the enforcement of regulations on the retail marijuana industry, other costs related to enforcement of marijuana laws, education and public health programs associated with marijuana consumption, and other Town expenses. All revenues from the tax shall be deposited in the Town's general fund. The excise tax levied by this Ordinance was approved by a majority vote of registered Dinosaur electors voting at the November 8, 2016 coordinated election.

Section 2. Definitions. As used in this Ordinance, "average market rate" means the amount determined by the State of Colorado pursuant to Section 39-28.8-101(1), C.R.S. as the average price of unprocessed retail marijuana that is sold or transferred from a retail marijuana cultivation facility to a retail marijuana store or retail marijuana products manufacturer. All other terms in this Ordinance shall have the same meaning as set forth in the Town's Retail Marijuana Licensing Ordinance.

Section 3. Imposition and Rate of Tax. There is hereby levied an excise tax of five percent (5%) upon the average market rate of unprocessed retail marijuana that is sold or transferred from a retail marijuana cultivation facility located in the Town of Dinosaur to a retail marijuana store or retail marijuana products manufacturer.



Section 4. Vendor Liable for Tax. Each retail marijuana cultivation facility within the Town of Dinosaur shall collect the tax imposed by this Ordinance upon every sale or transfer of unprocessed retail marijuana from the cultivation facility. The person charged with the duty to collect taxes also has the burden of proving that any transaction is not subject to the tax imposed by this Ordinance.

Section 5. Taxes Collected are Held in Trust. All sums of money paid by any person or facility to a cultivation facility as excise taxes pursuant to this Ordinance are public monies that are the property of the Town of Dinosaur. The person required to collect and remit municipal retail marijuana excise taxes shall hold such monies in trust for the sole use and benefit of the Town of Dinosaur until paying them to the Town's Treasurer.

Section 6. Licensing and Reporting Procedures.

- (a) Every person with the duty to collect the excise tax imposed by this Ordinance shall obtain an excise tax license from the Town Clerk and shall report such taxes collected on forms prescribed by the Town Clerk and remit such taxes to the Town on or before the tenth (10<sup>th</sup>) day of the month for the preceding month or months under the report. An excise tax license shall be valid so long as:
- (1) The business remains in continuous operation, and
  - (2) The license is not cancelled by the licensee or revoked by the Town, and
  - (3) The business holds a valid retail marijuana license pursuant to the Town's Retail Marijuana Licensing Ordinance.

The excise tax license may be cancelled or revoked by the Town as provided in this Ordinance.

- (b) Whenever a business entity that is required to be licensed under this Ordinance is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new excise tax license.
- (c) Every person engaged in the retail marijuana cultivation business in the Town of Dinosaur shall keep books and records according to the standards of the Town Clerk and this Ordinance and subject to the Town Treasurer's right to audit as set forth in this Ordinance.

Section 7. Collection of Tax.

- (a) If the accounting methods regularly employed by the Vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Town Clerk may, upon request of the Vendor, accept returns at such intervals as will, in the Town Clerk's opinion, better suit the convenience of the Vendor and will not jeopardize the collection of the tax; provided, however, the Town Clerk may by rule permit a Vendor whose monthly tax obligation is less than one hundred dollars (\$100.00) to make returns and pay taxes at intervals not greater than three (3) months.
- (b) It shall be the duty of every Vendor to maintain, keep and preserve suitable records of all sales made 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.

Section 8. Audit of Records.

- (a) For the purpose of ascertaining the correct amount of the excise tax due and owing to the Town, 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. Any such subpoena may be enforced by the Dinosaur Municipal Court.
- (c) Any person claiming an exemption under the provisions of this Ordinance is subject to audit in the same manner as any other person engaged in the sale or transfer of unprocessed retail marijuana in the Town.

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 upon the sale or transfer of unprocessed retail marijuana, she shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Clerk determines the amount paid is less than the amount due under this Ordinance, the difference together with the interest shall be paid by the retail marijuana cultivation facility 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 9. Tax Information Confidential.

- (a) All specific information gained under the provisions of this Ordinance which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer 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 or excises taxes 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 taxpayer or its duly authorized representative a copy of such confidential information relating to such taxpayer, 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.

Section 10. 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 said excise tax on the sale or transfer of unprocessed retail marijuana and in particular and without limiting the general language of this Ordinance, to provide for:



- (a) A form of report on the sale or transfer of unprocessed retail marijuana to be supplied to all Vendors;
- (b) The records which retail marijuana cultivation facilities are to keep concerning the tax imposed by this Ordinance.

Section 11. 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 deemed guilty of a municipal offense, punishable by a fine of up to \$300.00 and 90 days imprisonment or by both such fine and imprisonment. Each day, or portion thereof, that any violation of this Ordinance continues shall constitute a separate offense.
- (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 retail marijuana cultivation facility and become due in the event the tax is not remitted by the tenth (10th) 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 retail marijuana cultivation facility 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 retail marijuana cultivation facility 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 retail marijuana cultivation facility 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 in writing, 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 12. 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 taxpayer within the Town and may be foreclosed by seizing under



distrain 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 taxpayer 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 Moffat 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 13. 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, the reasonable value of any salaried attorney's time, including legal assistant's time, or the reasonable attorney's 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 taxpayer 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 Moffat 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 Town Clerk, to commence an 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 Moffat County Treasurer for collection in the same manner as delinquent ad valorem taxes pursuant to Section 31-20-105, C.R.S.

Section 14. Status of Unpaid Tax in Bankruptcy and Receivership. Whenever the business or property of a taxpayer 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 taxpayer 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 15. 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 Dinosaur 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 Dinosaur 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.

Section 16. 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.

Section 17. Statute of Limitation.

- (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 18. Exemption from Revenue Limitation. In accordance with the approval of the registered electors voting at the November 8, 2016 coordinated election, the revenues derived from the tax imposed by this Chapter shall be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Ordinance X, Section 20, of the Colorado Constitution.

Section 19. Severability. The Sections, sentences, clauses and provisions of this Ordinance are intended to be severable; if any such Section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not effect the remaining portions of this Ordinance.

Section 20. Effective Date of Tax. The tax imposed by this Ordinance shall become effective upon the effective date of this Ordinance.

INTRODUCED, READ, PASSED, ADOPTED, AND ORDERED PUBLISHED at a regular meeting of the Town Council of the Town of Dinosaur, Colorado, held on July 11, 2017.

TOWN OF DINOSAUR, COLORADO,

By: Richard Blakley  
Richard Blakley, Mayor

ATTEST:

Tamara Long  
Tamara Long, Town Clerk

Publication Date:

July 20, 2017

AN ORDINANCE OF THE TOWN OF DINOSAUR, COLORADO, IMPOSING AN EXCISE TAX OF FIVE PERCENT (5%) UPON THE SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA.

Trustee Heinrich introduced, read and moved the adoption of the ordinance titled,

and upon adoption that it be published pursuant to law and recorded in the Book of Ordinances.

Trustee Karren seconded the motion. On roll call, the following

Trustees voted "Aye":

Darcie Roque, Toby Cortez, David Heinrich, Richard A. Blakley, Charles Winkler

Janice Karren, Debra Bird.

Trustees voted "Nay":

None.