ORDINANCE NO. 2016-002

AN ORDINANCE AMENDING ORDINANCE 2013-001, WHICH IMPOSED A TEMPORARY MORATORIUM ON DESIGNATED MARIJUANA STORES

WHEREAS, Ordinance no. 2013-001, as approved on February 11, 2013, imposed a temporary moratorium on the submission, acceptance, processing and approval of any application for a Crestone Town permit or license related to the operation of marijuana cultivation facilities, marijuana produce manufacturing facilities, marijuana testing facilities or retail marijuana stores; and

WHEREAS, the Crestone Town Board of Trustees submitted a referred measure to the town electorate of whether the establishment and operation of retail marijuana stores shall be permitted in the town of Crestone together with a retail marijuana store tax at the rate of five percent (5%) on the price paid for the purchase of retail marijuana and marijuana infused products, and

WHEREAS, the town electorate, at the regular town election held on April 5, 2016, approved the retail sale of marijuana and the 5% tax upon said sales;

NOW THEREFORE, be it ordained by the Board of Trustees of the Town of Crestone:

1. Section 2 (Imposition of a Temporary Moratorium on application for permits and licenses related to marijuana stores) of Ordinance 2013-001, is hereby amended by deletion of the words “or retail marijuana stores”. Retail marijuana stores, as the same are defined in the State of Colorado Retail Marijuana Code of Regulations (Sec.103 Definitions) are hereby allowed. All other marijuana “stores” continue to be disallowed previously authorized by Town Ordinance.
2. In accordance with the vote and as approved by the town electorate of a five percent sales tax on the price paid for the purchase of retail marijuana, marijuana accessories and marijuana infused products, the town board hereby levies a five percent (5%) sales tax upon the price paid for the purchase of retail marijuana, marijuana accessories and marijuana infused products within the town of Crestone.
3. The revenue derived from such tax shall be used for the additional costs incurred for adequate enforcement and administration of retail marijuana regulations and other general purposes of the town.

4. 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. "Person" means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust or any group or combination acting as a unit but shall not include the United States of America, the state of Colorado or any political subdivision thereof.
B. "Marijuana Accessories" has the same meaning as defined in Section 16 (2)(g) of Article XVII of the Colorado Constitution.
C. "Retail Marijuana" means "marijuana " or marihuana" as defined in Section 16 (2)(f) of Article XVII of the Colorado Constitution that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment that is grown and sold for a purpose authorized by Article XVIII, Section 16 of the Colorado Constitution.
D. "Retail Marijuana Establishment" or "Retail Marijuana Business" means a Retail Marijuana Store, a Retail Marijuana Cultivation Facility, a Retail Marijuana Products Manufacturer, or a retail marijuana testing facility.
E. "Retail Marijuana Products" means "marijuana products" as defined in Section 16 (2)(k) of Article XVIII of the Colorado Constitution that are produced at a Retail Marijuana Products Manufacturer.
F. "Retail Marijuana Products Manufacturer" has the same meaning as "marijuana product manufacturing facility" as defined in Section 16 (2)(N) of Article XVIII of the Colorado Constitution.
G. "Retail Marijuana Store" has the same meaning as defined in Section 16(2)(N) of Article XVIII of the Colorado Constitution and R103 of the Colorado Retail Marijuana Code of Regulations. .
H. "Sale" means the furnishing for consideration by any person of retail marijuana, retail marijuana products or marijuana accessories to another person within the town.
I. "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 sales tax on the sale and purchase of retail marijuana, retail marijuana products or marijuana accessories under this ordinance.
J. "Taxpayer" means the vendor obligated to pay the tax under the terms of this ordinance.
K. "Vendor" means a person furnishing retail marijuana, retail marijuana products and marijuana accessories to a person for consideration within the town.

5. Collection of Tax.

   A. Every vendor providing retail marijuana, retail marijuana Products or Marijuana Accessories taxable under this ordinance shall remit such tax on or before the fifth (5th) day of each month on account of retail marijuana, retail marijuana products or marijuana accessories 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. If the accounting methods regularly employed by the vendor from 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 ($100.00) to make returns and pay taxes at intervals not greater than three (3) Months.

D. 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 for 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, the town Finance Director or their designees

6. Audit of Records.

   A. For the purpose of ascertaining the correct amount of the sales tax for retail marijuana, retail marijuana products and marijuana accessories transactions due from any person engaged in such retail marijuana business in the town 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 any 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 and/or produce any such books, accounts and records for examination. Any such subpoena shall be enforced by the Crestone Municipal Court.
   C. Any exempt 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 of retail marijuana, retail marijuana products and marijuana accessories in the town.

7. 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 sales tax on the sale of retail marijuana, retail marijuana products, or marijuana accessories he/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 Chapter, the difference, together with the interest shall be paid by the retail marijuana establishment within ten (10) days after receiving written notice and demand from the Town Clerk. The Town Clerk may extend that time for good cause.

8. 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 and shall be required to provide only such information as is directly involved in any 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 his 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 Ordinance 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.

9. 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 sales tax on the provision of retail marijuana, retail marijuana products or marijuana accessories and in particular and without limiting the general language of this ordinance to provide for:

A. A form of report on the provision of retail marijuana, retail marijuana products and marijuana accessories which shall be supplies to all vendors; and
B. The records which retail marijuana stores providing retail marijuana, retail marijuana products and marijuana accessories are to keep concerning the tax imposed by this ordinance.

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 Chapter. Any person convicted of a violation of this Ordinance shall be deemed guilty of a municipal offense. 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 establishment and become due in the even the tax is not remitted by the fifth 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 establishment required to file a return. If any part of the deficiency is due to fraud with other 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 business 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 business 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 petitions 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.

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 taxpayer 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 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 Saguache 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 legal newspaper circulated 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.

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 form 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 reasonable attorney's fees, including legal assistant's fees, charged by the Town's contract attorney, plus interest in any county or district court of the country 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 Saguache County Sheriff, as the case may be, and in any such proceedings no bond shall be required of the Town clerk, nor shall any town peace officer or sheriff require of the town clerk any 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. The Town Attorney may, when requested by the Town clerk, 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 on which the taxable transaction occurred to the county treasurer for collection in the same manner as delinquent and valorem taxes pursuant to Section 31-20-105, C.R.S.

13. 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 sheriff, receiver, assignee or other office 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.

14. 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 Crestone 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 proceedings, 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 pursuant to this Ordinance shall be served in the same manner as a subpoena issued out of a court of record.

B. The Crestone 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 officer, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

15. 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.

16. Limitation on Actions.

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 a 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 three (3) year period. In case of false of 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.

B. 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.

17. Retail Marijuana Business license Fee. Each Retail Marijuana Store, as said terms are defined in §12-43.4-103, C.R.S., as contained in the Colorado Retail Marijuana Code, shall pay an annual license fee to the Town of Crestone, in the amount of three thousand dollars($3000.00). Such fee shall be paid on or before the initial issuance of a license or permit from the Crestone Town Clerk to operate a Retail Marijuana Store and such fee shall thereafter be paid annually on or before the 31st day of January of each year while such license or permit is in effect.

18. The Town hereby limits the number of retail marijuana stores which may be operated only in the Town of Crestone commercial zoned district, to not more than three.

~~19.~~ Such retail marijuana stores shall not be located within five hundred linear feet from any school~~.~~

20. The Town of Crestone Board of Trustees is empowered to enact, by Resolution, sales and regulations, which shall be appended to this ordinance as Exhibit A, relating to the operation of retail marijuana stores within the town of Crestone. A current copy of said Rules and Regulations shall be maintained for further inspection by the Town Clerk.

21. Penalty: Any person who violates the provisions of this ordinance or the Rules and Regulations promulgated thereunder, shall be subject to a fine of up to $2,650 and incarceration for a period up to one (1) year or both such fine and imprisonment. Each day of continued violation shall be considerate a separate offense.

22. 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 affect the remaining portions of this Ordinance.

23. Effective date. The Tax imposed by this Ordinance shall become effective upon the 1st day of July, 2016

THE BOARD OF TRUSTEES FINDS THAT THIS ORDINANCE IS NECESSARY TO THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY, DUE TO NUMEROUS REQUESTS AND INQUIRIES FROM THE PUBLIC FOLLOWING THE APRIL 5, 2016 ELECTION FOR PROCEDURES AND REGULATIONS REGARDING THE INSTALLATION OF RETAIL MARIJUANA STORES IN THE TOWN OF CRESTONE AND THE CURRENT ABSENCE OF SUCH REGULATIONS, AND SHALL TAKE EFFECT AND BE ENFORCED FROM AND AFTER PASSAGE OF THE SAME

Kairina Danforth, Mayor

Attest:

Allyson Ransom
Town Clerk

Approved as to Form:

Eugene L. Farish, Town Attorney

CERTIFICATION

I hereby certify that the within Ordinance was first introduced on the 11th day of June, and read in full and adopted at a regular meeting of the Crestone Board of Trustees on the 8th day of August, 2016, and that said Ordinance was published by title in the Crestone Eagle on the 18th day of August, 2016. and the Saguache Crescent

Allyson Ransom
Town Clerk