

TOWN OF MOFFAT, COLORADO

Ordinance NO. 2024-02

AN ORDINANCE OF TOWN OF MOFFAT, COLORADO REPEALING AND REPLACING ORDINANCE 2019-16; AMENDING ORDINANCE 2023-01; REDUCING THE MARIJUANA EXCISE TAX RATE; IMPLEMENTING EXCISE TAX REPORTING PROCEDURES; PROVIDING PENALTIES; PROVIDING FOR REPEAL, SAVINGS, AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Moffat, Colorado passed Ballot Issue 2C - The Creation of a 5% Marijuana Excise Tax in the November 6th, 2018 General Election as allowed by C.R.S. § 29-2-114; and

WHEREAS, the Board of Trustees implemented the voter approved excise tax with a tiered system from 2% up to 5% in Ordinance 2018-12 and then expanded the procedures and penalties in Ordinance 2019-16, and the Board of Trustees now desires to reduce the excise tax rate and to clarify procedures and penalties; and

WHEREAS, the excise tax rate will be reduced to 2% on all sales or transfers of unprocessed retail marijuana; and

WHEREAS, the Town of Moffat shall expend the excise taxes received for public safety and capital improvements.

NOW THEREFORE, be it hereby ordained by the Board of Trustees of the Town of Moffat, Colorado:

Ordinance 2019-16 is hereby repealed and replaced with the following.

Section A: Definitions

1.) "Affiliated marijuana business licensees" means marijuana business licensees that are owned or controlled by the same or related interests, where "related interests" includes individuals who are related by blood or marriage or entities that are directly or indirectly controlled by an entity or individual or related individuals.

2.) "Average market rate" means the average price, as determined by the department on a quarterly basis, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities or retail marijuana stores, less taxes paid on the sales or transfers. An "average market rate" may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred. The "average market rate" must include one or more rates that cover unprocessed marijuana that is allocated to extractions, and the initial rates for these product types must be lower than the rate for unprocessed marijuana that is allocated for direct sale to consumers.

3.) "Contract price" means the invoice price charged by a retail marijuana cultivation facility to each licensed purchaser for each sale or transfer of unprocessed retail marijuana, exclusive of any tax that is included in the written invoice price, and exclusive of any discount or other reduction. In the case of multiple invoices reflecting multiple prices for the same transaction, "contract price" is the highest such price.

4.) "Medical Marijuana Cultivation Facility" means an entity that cultivates medical marijuana for sale and distribution to licensed medical marijuana stores, medical marijuana products manufacturer licensees, or other medical marijuana cultivation facilities.

5.) "Retail marijuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds of the plant, 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 marijuana concentrate.

6.) "Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package retail marijuana and sell retail marijuana to retail marijuana stores, to retail marijuana product manufacturing facilities, and to other retail marijuana cultivation facilities, but not to consumers, and includes accelerator cultivators.

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

8.) "Retail marijuana product manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare, and package retail marijuana products; and sell retail marijuana and retail marijuana products to other retail marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers and includes accelerator manufacturers.

9.) "Retail marijuana store" means an entity licensed by the department to purchase retail marijuana from retail marijuana cultivation facilities and retail marijuana and retail marijuana products from retail marijuana product manufacturing facilities and to sell retail marijuana and retail marijuana products to consumers.

10.) "Sale" means any exchange or barter, in any manner or by any means whatsoever, for consideration.

11.) "Transfer" means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration, any regulated marijuana from one licensee to another licensee. A transfer includes the movement of regulated marijuana from one licensed premises to another, even if both premises are contiguous, and even if both premises are owned by a single entity or individual or group of individuals.

12.) "Unprocessed retail marijuana" means marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to a retail marijuana product manufacturing facility, to a retail marijuana store, or to another retail marijuana cultivation facility even though it may have gone through some processing, and even though it may be subject to further processing by another licensee.

Section B: Excise Tax Rate

1.) That the Town of Moffat shall be authorized to collect and spend such revenues as a voter approved revenue change notwithstanding any revenue or expenditure limitations contained in Article X, Section 20 of the Colorado Constitution.

2.) There is levied and collected an excise tax of 2% on all retail marijuana cultivation transfers or sales from regulated marijuana businesses from or within the Town of Moffat.

- a. 2% of the average market rate if the sale or transfer is between affiliated marijuana business licensees
- b. 2% of the contract price if the sale or transfer is between unaffiliated marijuana business licensees.

3.) The 2% excise tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

4.) The excise tax shall be levied and owed regardless of where delivery of the product occurs if the cultivation facility selling or transferring the product is in the Town of Moffat.

Section C: Procedures

1.) Excise Tax Reporting and payment of any excise tax due to the Town of Moffat shall be completed no later than the 20th of each month for sales made in the preceding month.

- a. If the 20th of the month lands on a Saturday, Sunday or holiday on which the Town Hall is closed, reporting and payment will need to be completed by the next available business day.

2.) Excise Tax Reporting to the Town of Moffat shall be completed every month regardless of whether or not the regulated marijuana business owes the Town of Moffat excise taxes, whether or not sales or transfers occurred during the previous month, and whether or not the business is in full operation.

3.) Excise Tax Reporting Filing shall be completed on the FIGGRO platform which can be accessed at cloudapps.figgro.com.

- a. Payments can be made by mail, in person delivery to the Town Clerk, or online when such an option is available.

4.) A copy of the regulated marijuana business's Colorado Department of Revenue Excise Tax Reporting documentation or a wholesale transfer report from METRC for the filing month must be uploaded and submitted with the Town of Moffat Excise Tax Report Filing, or the filing will be considered incomplete.

5.) If the "Contract Price" section of the Excise Tax Report Filing is complete, the regulated marijuana business must provide a copy of the contract dated prior to the date of the sale.

6.) If an individual or entity has more than one business within the Town of Moffat, an Excise Tax Reporting Filing will need to be completed for each regulated marijuana business licensed in the Town of Moffat.

7.) Regulated marijuana business owners must certify on their Excise Tax Reporting Filing that the information reported on the Excise Tax Reporting Filing is true and correct, that they agree to promptly submit an amended return if any errors are discovered, and that they agree to reimburse the Town of Moffat for all costs and attorney's fees in recovering any under reported amounts and otherwise enforcing this Ordinance.

8.) Payment of excises taxes to the Town of Moffat shall be paid in full by the 10th of the month following the month of the Excise Tax Reporting Filing or a \$150.00 late fee will be applied.

9.) Failure to file a monthly Excise Tax Report, regardless of whether taxes are due, will result in a \$150.00 late fee.

Section D: Penalty for Violation

1.) For each month the payment and/or Excise Tax Reporting Filing is late, a one-time \$150.00 late penalty fee shall be applied to the regulated marijuana business.

2.) If the payment and/or Excise Tax Reporting Filing is late, an email will be sent to the business stating that the business is late on their deadline.

3.) All Excise Tax Reporting Filings must be complete by midnight on the 20th of each month for sales made in the previous month, unless the 20th falls on a Saturday, Sunday or Holiday, in which case the filing must be complete by the end of the next business day at midnight.

- a. Payments for filings made by the dates described in this section must be received by the Town of Moffat by the 10th of the following month or the payments will be considered late, and a one-time \$150.00 fee will be applied for each month a monthly payment is late.

4.) The Town may impose a penalty for a check remitted to the Town for payment of tax, but that is returned to the Town unpaid due to insufficient funds, a closed account, or a stop payment order.

5.) Additionally, the town shall deny any request for a regulated marijuana business license renewal if the company is not up to date on all Excise Tax Reporting Filings and payments, including late penalty fees.

6.) Failure to pay may cause the Town to charge the regulated marijuana business licensee with the following:

- a. Fraud with intent to evade tax
- b. Negligence or intentional disregard of rules and regulations, without intent to defraud.
- c. Making retail sales without a valid license.

Section E. Repeal and Savings

1.) Any and all existing Ordinances or parts of Ordinances of the Town of Moffat inconsistent with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any Ordinance hereby repealed prior to the taking effect of this Ordinance.

- a. Ordinance 2019-16 is hereby repealed and replaced with this Ordinance in its entirety.
- b. Ordinance 2023-01, as amended by 2023-02 and 2023-03, remains in full force and effect except as to Section 18, which is hereby superseded by this Ordinance.

2.) All other Ordinances or parts of Ordinances of the Town of Moffat not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section F. Severability

If any section, subsection, sentence, clause or phrase of this Ordinance adopted herein is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town of Moffat hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

Section G. Effective Date

This Ordinance shall become effective from and after its passage and approval and thirty (30) days after publication as may be required by law. The Clerk is directed to make said publication.

INTRODUCED AND APPROVED this 18th day of June 2024.

SIGNED this 18th day of June 2024.



Jon Lopez, Mayor


ATTEST:



Matt Litrenta, Town Clerk

CERTIFICATION

I hereby certify that the above Ordinance was introduced, read, and approved at the regular meeting of the Board of Trustees of the Town of Moffat, Colorado on June 18th 2024 and published in the Saguache Crescent on July 9th 2024 becoming effective 30 days from the date of said publication.



Matt Litrenta, Town Clerk