

## ORDINANCE NO. 668

**AN ORDINANCE OF THE TOWN OF HAYDEN, COLORADO SUBMITTING TO THE REGISTERED ELECTORS VOTING IN THE COORDINATED SPECIAL ELECTION TO BE HELD NOVEMBER 3, 2015, A BALLOT ISSUE CONCERNING THE IMPOSITION OF AN EXCISE TAX OF 7.5 PERCENT IN 2016 AND UP TO 15 PERCENT THEREAFTER ON THE WHOLESALE OF MARIJUANA AND, CONTINGENT UPON ELECTOR APPROVAL, AMENDING THE HAYDEN MUNICIPAL CODE TO PROVIDE FOR THE SAME.**

### RECITALS

1. The Town of Hayden, Colorado (“Town”) is a municipal corporation duly organized and existing under the laws of the State of Colorado.
2. The members of the Town Council (“Council”) have been duly elected and qualified.
3. Pursuant to Article XX, Section 6 of the Colorado Constitution, the Town has adopted the 2009 Town of Hayden Home Rule Charter and has the full right of self-government in both local and municipal matters, including the authority to impose local excise taxes, with voter approval.
4. Article X, Section 20, of the Colorado Constitution (“TABOR”) authorizes the Town to submit ballot issues proposing new taxes to its eligible electors at an election to be held on the first Tuesday of November of odd-numbered years, which next occurs on November 3, 2015.
5. The Council hereby determines that both the Town’s interest and the public interest and necessity require that the Town impose an excise tax at the rate of seven and one-half percent (7.5%) in 2016 and up to fifteen percent (15%) thereafter on the average market rate of unprocessed marijuana that is sold or transferred from a marijuana cultivation facility.
6. The Council has determined and hereby determines and declares that the interest of the Town and the public interest and necessity require that the Town be allowed to collect, retain and spend all revenues generated from such excise tax, if such tax is approved, regardless of the provisions and restrictions set forth in Article X, Section 20 of the Colorado Constitution.
7. It is appropriate for voters to approve collection, retention and expenditure of the full amount collected from the tax proposed by the ballot issue described below.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Hayden, Colorado:

Section 1. Excise Tax Imposed. Subject to voter approval as provided in Section 4 of this Ordinance, there is hereby imposed an excise tax of seven and one-half percent (7.5%) in 2016 and up to fifteen percent (15%) thereafter on the average market rate of unprocessed marijuana that is sold or transferred from a marijuana cultivation facility. For purposes of this Ordinance, the term “marijuana” has the same meaning set forth under Section 5.22.020 of the Hayden Municipal Code (“Code”) and expressly includes

both medical marijuana and retail marijuana, as those terms are defined and addressed by state law, including but not limited to the Colorado Medical Marijuana Code, Article 43.3, Title 12, C.R.S., and the Colorado Retail Marijuana Code, Article 43.4, Title 12, C.R.S. For purposes of this Ordinance, the term “marijuana cultivation facility” shall have the same meaning as set forth under Section 5.22.020 of the Code.

Section 2. Use of Revenues. The revenues derived from the excise tax shall be used for uses determined reasonable and necessary by the Town Council with consideration annually that a portion of these revenues be spent on substance abuse education and prevention.

Section 3. Duration. The excise tax shall commence for collection purposes beginning January 1, 2016 and continue until repealed by ordinance.

Section 4. Election. Before the tax provided in this Ordinance shall become effective, it shall be submitted to and receive the approval of a majority of the eligible electors of the Town voting thereon at the coordinated election to be held on Tuesday, November 3, 2015.

(a) Conduct of Election. The election shall be held and conducted in accordance with Section 29-2-102, C.R.S., and in accordance with Article X, Section 20 of the Colorado Constitution. The Town Council hereby approves and authorizes the Town Manager and Town Clerk to execute and enter into such agreements or amendments to agreements, on behalf of the Town, with Routt County, Colorado, regarding the conduct of the election. The Town Council hereby designates the Town Clerk as the Designated Election Official for the conduct of the election on behalf of the Town, with the authority and direction to proceed with any action necessary or appropriate to effectuate the provisions of this Ordinance and all constitutional and statutory provisions governing the conduct of this election.

(b) Ballot Title. The ballot title for the excise tax shall be in substantially the following form:

SHALL THE TOWN OF HAYDEN’S TAXES BE INCREASED BY ONE HUNDRED FORTY THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$143,500) IN FISCAL YEAR 2016 (FIRST FULL FISCAL YEAR DOLLAR INCREASE) AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER THROUGH THE IMPOSITION OF AN EXCISE TAX IN THE AMOUNT OF SEVEN AND ONE-HALF PERCENT (7.5%) IN 2016 AND UP TO FIFTEEN PERCENT (15%) THEREAFTER ON THE SALE OR TRANSFER OF MARIJUANA (BOTH MEDICAL AND RETAIL) BY A MARIJUANA CULTIVATION FACILITY AT THE AVERAGE MARKET RATE AT THE POINT OF SALE OR TRANSFER FROM THE CULTIVATION FACILITY, COMMENCING ON JANUARY 1, 2016;

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAX AT SUCH RATE AND ANY EARNINGS THEREON BE COLLECTED, RETAINED, AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTION, RETENTION, OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE TOWN OF HAYDEN UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES

NO

Section 5. Codification. In the event a majority of Town electors voting on the ballot issue referred by Section 4 of this Ordinance vote in favor of the issue, as determined and certified by the election results, the Hayden Municipal Code shall be amended as of January 1, 2016, to implement the approved tax through the adoption of the provisions of **Exhibit A**, attached hereto and incorporated herein by this reference. It is the express intent of the Council that, in the event a majority of Town electors voting on the ballot issue established and referred by this Ordinance vote against the issue, the Code amendment set forth in **Exhibit A** shall not take effect and shall be null and void.

Section 6. Authorization. The officers of the Town are authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance.

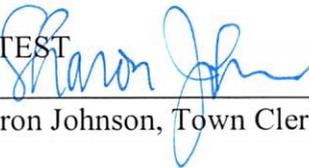
Section 7. Severability. If any portion of this Ordinance, the ballot title or Exhibit A is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 8. Effective Date. This Ordinance shall become effective and be in force immediately upon final passage at second reading, and the tax provided for herein shall be effective January 1, 2016, contingent upon approval by the eligible electors at the November 3, 2015 election.

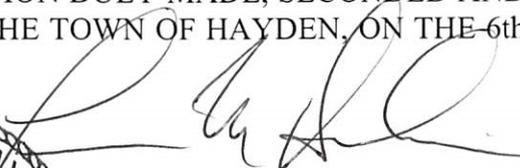
Section 9. Public hearing. A public hearing on this Ordinance shall be held on the 3rd day of September, 2015, at 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Ave, Hayden, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 6th DAY OF AUGUST, 2015.

ATTEST

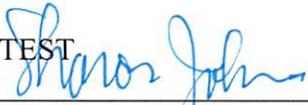
  
Sharon Johnson, Town Clerk



  
James M. Haskins, Mayor

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 3<sup>rd</sup> DAY OF SEPTEMBER, 2015.

ATTEST

  
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Sharon Johnson, Town Clerk

  
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James M. Haskins, Mayor

## **EXHIBIT A**

### **TITLE 3 - REVENUE AND FINANCE**

#### **CHAPTER 3.16**

#### **EXCISE TAX**

##### **Sec. 3.16.010 Title and Intent.**

This Chapter shall be known and referred to as the Town of Hayden Excise Tax. The legislative intent of the Town Council is that an excise tax be imposed on the first sale or transfer of marijuana by a marijuana cultivation facility, as that term is defined by Section 5.22.020 of this Code, within the Town. The purpose of this tax is to increase the revenue base for the Town for uses determined reasonable and necessary by the Town Council. Revenues from the tax shall be deposited in the general fund and shall be available to pay for the general expenses of government.

##### **Sec. 3.16.020 Definitions.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(A) "Average market rate" means the amount determined by the State of Colorado pursuant to § 39-28.8-101(1) C.R.S. or such alternate amount as may be determined by the Town Manager as the average price of unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities to other retail marijuana establishments, and the average price of unprocessed medical marijuana that is sold or transferred from medical marijuana cultivation facilities to other medical marijuana establishments and individuals.

(B) "Person" means a corporation, firm, other body corporate, partnership, association or individual, including an agent, subsidiary corporation, executor, administrator, trustee or receiver or other representative acting in a representative capacity.

(C) "Vendor" means a marijuana cultivation facility, as that term is defined by Section 5.22.020 of this Code.

##### **Sec. 3.16.030 Imposition and Rate of Tax**

On and after January 1, 2016, there is levied and shall be paid and collected an excise tax of seven and one-half percent (7.5%) in 2016 and up to fifteen percent (15%) thereafter on the average market rate of unprocessed marijuana that is sold by or transferred from a Vendor.

##### **Sec. 3.16.040 Vendor Liability for Collecting the Tax**

(A) Each Vendor shall pay the tax imposed in Section 3.16.030 on every sale or transfer of marijuana from the Vendor.

(B) The burden of proving that any transaction is not subject to the tax imposed by this Chapter 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 Chapter 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.

**Sec. 3.16.050 Sales Tax License Required**

No Vendor within the Town shall engage in business beginning January 1, 2016, without first obtaining a Town sales tax license.

**Sec. 3.16.060 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 therefore. 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.

**Sec. 3.16.070 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.

**Sec. 3.16.080 Failure to Pay or Make Return; Remedial Action by Town**

(A) If any Vendor makes a return as required by this Chapter without paying the excise tax due, or neglects or refuses to make a return and pay the excise tax, such vendor shall be liable to the Town for the tax and a penalty in addition to such tax in the amount of ten percent (10%) of the tax due. The penalty imposed in this section shall become immediately due and payable and the Town shall give the delinquent Vendor written notice of the estimated tax and penalty, which notice shall be served personally upon the Vendor or mailed to the Vendor by certified mail at the address reflected on the Vendor’s sales tax license application.

(B) If any Vendor fails to produce records suitable in the reasonable judgment of the Town Clerk to determine the amount of excise tax due, the Town Clerk shall make an estimate of the amount of the excise tax due, based upon an examination of the Vendor’s books and records, or upon any other information within the possession of the Town Clerk. Promptly thereafter, the Town Clerk shall furnish the delinquent Vendor with written notice of such estimated tax and penalty, which notice shall be served personally upon the Vendor or mailed to the Vendor by

certified mail at the address of the taxable premises as reflected on the sales tax license application for such premises.

(C) If payments are not made by the Vendor within fifteen (15) days after the furnishing of written notice, the Town Clerk shall cause action to be taken for collection of all excise tax due including, without limitation, any and all penalties assessed thereon, interest on the unpaid tax at a rate of five percent (5%) per month, the cost of collection and reasonable attorneys' fees incurred in connection therewith. The Vendor's sales tax license may also be revoked.

**Sec. 3.16.090 Administration**

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

**Sec. 3.16.100 Town Employee Conflicts of Interest Prohibited**

No deputy, agent, clerk, or other officer or employee of the Town engaged in any activity governed by this Chapter shall engage in the business or profession of tax accounting or accept employment with or without compensation from any person holding a sales tax license from the Town for the purpose, directly or indirectly, of preparing tax returns or reports required by the Town, the State of Colorado, its political subdivisions, any other state or the United States, or accept any employment for the purpose of advising, preparing materials or data or auditing books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the Town, the State of Colorado, its political subdivisions, any other state, its political subdivisions or the United States.

**Sec. 3.16.110 Use of Revenues**

All revenues derived from the excise tax, less costs of collection and administration, shall be accounted for separately from other Town revenues. Excise tax revenues may be appropriated and expended upon authorization by the Town Council for uses determined reasonable and necessary by the Town Council.

**Sec. 13.16.120 Right to Amend Article**

The Town Council shall have the right to amend or repeal the provisions of this Chapter, 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 November 3, 2015 shall not be increased, expanded or broadened without additional voter approval.