

TOWN OF HOT SULPHUR SPRINGS,  
GRAND COUNTY  
COLORADO

RESOLUTION NO. 2014-8-1

A RESOLUTION CALLING A SPECIAL ELECTION FOR THE TOWN AND SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, AT THE COORDINATED GENERAL ELECTION OF NOVEMBER 4, 2014, (A) A QUESTION OF WHETHER, IF THE TOWN BOARD OF TRUSTEES TAKES ACTION TO ALLOW THE OPERATION OF RETAIL MARIJUANA CULTIVATION FACILITIES WITHIN THE TOWN FOLLOWING THE ELECTION, THE TOWN SHOULD IMPOSE A NEW EXCISE TAX OF 10% TO BE PAID TO THE TOWN WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY AS A NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (“TABOR”); AND (B) A QUESTION OF WHETHER, IF THE TOWN BOARD OF TRUSTEES TAKES ACTION TO ALLOW THE RETAIL SALE WITHIN THE TOWN FOLLOWING THE ELECTION, THE TOWN SHOULD IMPOSE A SALES TAX OF TEN PERCENT (10%) ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY LICENSED RETAIL MARIJUANA FACILITIES AS A NEW TAX PURSUANT TO TABOR, BOTH TAX QUESTIONS AUTHORIZING FUTURE RETAIL MARIJUANA SALES TAX AND EXCISE TAX RATE INCREASES TO A MAXIMUM OF 15%; (C) FOUR ADVISORY QUESTIONS OF WHETHER MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES SHOULD OPERATE WITHIN THE TOWN; AND (D) SETTING THE BALLOT TITLES AND PROVIDING FOR THE CONDUCT OF THE ELECTION

WHEREAS, on November 6, 2012, the voters of Colorado approved the adoption of Amendment 64, *Personal Use and Regulation of Marijuana*, of the Colorado Constitution; and

WHEREAS, Amendment 64 added a new Section 16 to Article XVIII of the Colo. Constitution; and

WHEREAS, Part 5(f) of Section 16 provides that a locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year; and

WHEREAS, Amendment 64 defines a “locality” in part in Section 2(e) of Section 16 to include a municipality; and

WHEREAS, the Board of Trustees of the Town adopted Ordinance No. 2013-3-1-388 prohibiting the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the Town and evidencing an intent to seek voter input to determine whether the voters desire to allow or prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores within the Town; and

WHEREAS, the Colorado legislature passed and the governor signed into law HB13-1317, which has come to be known as the “Colorado Retail Marijuana Code;” and

WHEREAS, the Colorado Retail Marijuana Code authorizes the issuance by the state and local authorities of licenses for the lawful sale of retail marijuana by licensed retail marijuana establishments; and

WHEREAS, in accordance with § 31-11-111(2), C.R.S., the Town Board has authority to submit any question to a vote of the registered electors of the Town; and

**WHEREAS**, the Town Board of Trustees desires to obtain voter input on whether the voters do or do not support the current prohibition on operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the Town (“Marijuana Advisory Questions”)

**WHEREAS**, if the Marijuana Advisory Questions set by this Resolution are supported by the voters in an advisory capacity only, following the certification of the results of the November 2014 election, it is the intent, but not the obligation of the Board of Trustees to amend Title 9 of the Town Code appropriately to allow such voter-supported uses and to adopt appropriate regulation governing such uses; and

**WHEREAS**, if the Marijuana Advisory Questions set by this Resolution are supported by the voters in an advisory capacity only and if the Town’s Board of Trustees subsequently adopts its own local regulations for the sale of retail marijuana and retail marijuana products and/or operation of retail marijuana cultivation facilities pursuant to the authority provided in the Colorado Retail Marijuana Code, the Board finds that the adoption of a system of licensing and regulating retail marijuana businesses will impose an administrative and financial burden on the Town, and that new, dedicated taxes on the sale of retail marijuana and transfer of retail marijuana from cultivation facilities within the Town is warranted to offset that burden; and

**WHEREAS**, pursuant to Article X, Section 20 of the Colorado Constitution, known as the “TABOR Amendment,” the Town may not adopt a new tax until and unless the question has been approved by a majority of the voters at a Town election; and

**WHEREAS**, Section 1-41-103, C.R.S., provides that a local government question involving a matter arising under the TABOR Amendment, including but not limited to approval of a new tax, may be submitted to the voters of the municipality at a local election to be held on the first Tuesday of November of each year; and

**WHEREAS**, the Board finds and determines that there should be submitted to the registered electors of the Town, at a special Town election to be held on November 4, 2014, in conjunction with the coordinated election to be held on that date, as referred measures, the questions of (a) whether effective January 1, 2015, should the Board of Trustees subsequently adopt local regulations for the sale of retail marijuana and retail marijuana products pursuant to the authority provided in the Colorado Retail Marijuana Code, the Town should levy a new and additional ten percent (10%) tax on the sale of retail marijuana and retail marijuana products within the Town by licensed retail marijuana establishments, and with approval to increase such rate up to fifteen percent (15%) by ordinance without need for additional voter approval, and (b) whether effective January 1, 2015, should the Board of Trustees subsequently adopt local regulations for the operation of retail marijuana cultivation facilities within the Town, it should levy and collect an excise tax upon the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at the rate of ten percent (10%) of the average market rate of the unprocessed retail marijuana, and with approval to increase such rate up to fifteen percent (15%) by ordinance without need for additional voter approval, pursuant to the authority provided in the Colorado Retail Marijuana Code; and

**WHEREAS**, the Board of Trustees recognizes that, pursuant to the approval of the voters at the November 5, 1996, election, any such revenues from such new sales and/or excise tax shall be exempt from the revenue and spending limitations of TABOR; and

**WHEREAS**, Section 31-11-111(2), C.R.S., provides that the Board or its designee shall fix a ballot title for the referred measure set forth in Section 2 of this ordinance; and

**WHEREAS**, the Board has determined that it should fix the ballot title for the referred measure set forth in Section 2 of this ordinance.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Hot Sulphur Springs as follows:

**Section 1.** The Board of Trustees hereby calls a special Town election to be held pursuant to the Uniform Election Code in coordination with the regular general election to be

held on November 4, 2014 coordinated by the Grand County Clerk and Recorder. At the November 4, 2014, special Town election, there shall be submitted to the vote of the registered electors of the Town, as a referred measured under Article X, Section 20 of the Colorado Constitution, the ballot issue hereinafter set forth (the "Ballot Issue") in the following form:

**TABOR ISSUE #2a**

SHALL TOWN OF HOT SULPHUR SPRINGS TAXES BE INCREASED BY \$60,000 ANNUALLY IN THE FIRST FISCAL YEAR COMMENCING JANUARY 1, 2015 AND ENDING DECEMBER 31, 2015, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, AND ONLY IN THE EVENT THAT THE TOWN BOARD OF TRUSTEES TAKES ACTION TO PERMIT THE RETAIL SALE OF MARIJUANA AND MARIJUANA INFUSED PRODUCTS WITHIN THE TOWN, BY IMPOSING, EFFECTIVE JANUARY 1, 2015, A NEW SALES TAX ON THE SALE WITHIN THE TOWN OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS AS DEFINED IN THE COLORADO RETAIL MARIJUANA CODE AND APPLICABLE TOWN ORDINANCES, AT THE RATE OF TEN PERCENT (10%) OF THE PRICE PAID BY THE PURCHASER OF THE RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, WHICH IS HEREBY APPROVED; WITH THE RATE OF SUCH SALES TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF SUCH TAX DOES NOT EXCEED 15%?

YES \_\_\_\_\_ NO \_\_\_\_\_

Section 2. At the November 4, 2014, special Town election, there shall also be submitted to the vote of the registered electors of the Town, as a referred measured under Article X, Section 20 of the Colorado Constitution, the ballot issue hereinafter set forth (the "Ballot Issue") in the following form:

**TABOR ISSUE #2b**

SHALL TOWN OF HOT SULPHUR SPRINGS TAXES BE INCREASED BY \$60,000 ANNUALLY IN THE FIRST FISCAL YEAR COMMENCING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, AND ONLY IN THE EVENT THAT THE TOWN BOARD OF TRUSTEES TAKES ACTION TO PERMIT THE OPERATION OF RETAIL MARIJUANA CULTIVATION FACILITIES WITHIN THE TOWN, BY IMPOSING, EFFECTIVE JANUARY 1, 2015, A NEW EXCISE TAX OF 10% TO BE PAID TO THE TOWN WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY; WITH THE RATE OF SUCH EXCISE TAX BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF SUCH TAX DOES NOT EXCEED 15%?

YES \_\_\_\_\_ NO \_\_\_\_\_

Section 3. At the November 4, 2014 special Town election coordinated by the Grand County Clerk and Recorder, there shall also be referred the following four advisory only ballot questions for submission to the qualified electors to appear on the ballot for such election:

**MARIJUANA QUESTION #2c**

Do you support the current ban on the operation of retail marijuana stores within the Town of Hot Sulphur Springs?

YES \_\_\_\_ NO \_\_\_\_  
MARIJUANA QUESTION #2d

Do you support the current ban on the operation of marijuana cultivation facilities (warehouses, growhouses or greenhouses) within the Town of Hot Sulphur Springs?

YES \_\_\_\_ NO \_\_\_\_

MARIJUANA QUESTION #2e

Do you support the current ban on the operation of marijuana product manufacturing facilities (prepare retail marijuana products on licensed premises which exclusively produce marijuana products) within the Town of Hot Sulphur Springs?

YES \_\_\_\_ NO \_\_\_\_

MARIJUANA QUESTION #2f

Do you support the current ban on the operation of marijuana testing facilities (labs that test for potency, microbial fungi, pesticides, and other harmful substances) within the Town of Hot Sulphur Springs?

YES \_\_\_\_ NO \_\_\_\_

**Section 4.** If a majority of all the votes cast at the election shall be for the Ballot Issue set forth in Section 2 of this resolution, and if the Board of Trustees takes action to permit the sale of retail marijuana and marijuana infused products within the Town following its consideration of the Marijuana Advisory Questions vote, the Board intends to also take further action by ordinance to amend the Hot Sulphur Municipal Code effective January 1, 2015 by the addition of a new Section 3-1-9 to read substantially as follows in its entirety, subject to such further action by ordinance.

**3-1-9: MARIJUANA SALES TAX**

- (A) Definitions: For the purpose of this Section, the definitions contained in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the state administrative regulations adopted pursuant to such statutes, and the Town's retail marijuana licensing ordinances, each as amended from time to time, are incorporated into this Chapter by reference.
- (B) Tax Imposed: A tax is levied and shall be collected upon the lawful sale of marijuana within the Town at the rate of ten percent (10.0%) of the price paid by the purchaser thereof rounded off to the nearest penny. The tax shall be collected by the licensed person and paid to the Town. The tax imposed by this Section is in addition to, and not in lieu of, the sales tax owed to the Town in connection with the sale of retail marijuana under state statute and under Section 3-1-2.
- (C) The maximum tax rate that may be imposed pursuant to this Section is fifteen percent (15%). At any time on and after January 1, 2015, the Board of Trustees may, by ordinance:
  - (1) Establish a tax rate that may be imposed pursuant to the Section that is lower than fifteen percent (15%); or

(2) After establishing a tax rate that is lower than fifteen percent (15%), increase the tax rate to be imposed pursuant to this Section, except that in no event shall the rate be increased above fifteen percent (15%). Notwithstanding any other provision of law, an increase in the tax rate pursuant to this subsection shall not require voter approval, such approval having been provided at the November 4, 2014, special Town election.

(D) Collection and Enforcement: The Town shall administer, collect and enforce the Town's sales tax imposed under this Section in similar manner as the administration, collection and enforcement of taxes as set forth in Section 3-1-5 except that the State Department of Revenue obligations shall be obligations of the Town in relation to the tax imposed hereunder.

**Section 5.** If a majority of all the votes cast at the election shall be for the Ballot Issue set forth in Section 1 of this resolution, and if the Board of Trustees takes action to permit the operation of retail marijuana cultivation facilities within the Town following its consideration of the Marijuana Advisory Questions vote, the Board intends to also take further action by ordinance to amend the Hot Sulphur Municipal Code effective January 1, 2015 by the addition of a new Section 3-1-10 to read substantially as follows in its entirety, subject to such further action by ordinance.

### **3-1-10: RETAIL MARIJUANA EXCISE TAX**

(A) Definitions: For the purpose of this Section, the definitions contained in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, the state administrative regulations adopted pursuant to such statutes, and the Town's retail marijuana licensing ordinances, each as amended from time to time, are incorporated into this Chapter by reference.

(B) Tax Imposed: An excise tax is levied and shall be collected upon the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at the rate of ten percent (10%) of the average market rate of the unprocessed retail marijuana. The 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 rounded off to the nearest penny. The tax shall be collected by the licensed person and paid to the Town. The tax imposed by this Section is in addition to, and not in lieu of, the sales tax owed to the Town in connection with the sale of retail marijuana under state statute and under Section 3-1-2.

(C) The maximum tax rate that may be imposed pursuant to this Section is fifteen percent (15 %). At any time on and after January 1, 2015, the Board of Trustees may, by ordinance:

- (1) Establish a tax rate that may be imposed pursuant to the Section that is lower than fifteen percent (15%); or
- (2) After establishing a tax rate that is lower than fifteen percent (15%), increase the tax rate to be imposed pursuant to this Section, except that in no event shall the rate be increased above fifteen percent (15%). Notwithstanding any other provision of law, an increase in the tax rate pursuant to this subsection shall not require voter approval, such approval having been provided at the November 4, 2014, special Town election.

(D) Collection and Enforcement: The Town shall administer, collect and enforce the Town's excise tax imposed under this Section in similar manner as the administration, collection and enforcement of taxes as set forth in Section 3-1-5 except that the State Department of Revenue obligations shall be obligations of the Town in relation to the tax imposed hereunder.

Section 6. For purposes of C.R.S. § 31-11-111, this Resolution shall serve to set the title and content for the Marijuana Advisory Questions set forth herein and the ballot titles for such questions shall be the text of the questions themselves. In connection with the fixing of the ballot title for the Section 1 and Section 2 Ballot Issues, the Town Board of Trustees of the Town of Hot Sulphur Springs finds and determines as follows:

- A. The Town Board of Trustees finds that the general understanding of the effect of a “yes” or “no” vote on the Ballot Issue will be clear to the electors.
- B. The ballot title for the Ballot Issue will not conflict with those titles selected for any other measure that will appear on the municipal ballot at the November 4, 2014 special Town election; and
- C. The ballot title for the Ballot Issue correctly and fairly expresses the true intent and meaning of the measure.

Section 7. The Board of Trustees hereby appoints the Town Clerk as the designated election official for the purposes of the coordinated election to be held on November 4, 2014.

Section 8. The Board of Trustees hereby approves the standard form of intergovernmental agreement with the Grand County Clerk and Recorder to participate in the coordinated general election as a special election for the Town and authorizes the Mayor, in consultation with the Town Attorney, to execute the same on behalf of the Town.

Section 9. The Town Clerk is authorized to correct typographical errors and omissions and to cause to be entered the appropriate ballot question numbers or letters upon designation of the ballot number or letter by the appropriate election official.

Section 10. The Mayor, Town Attorney, and Town Clerk are hereby authorized and directed to take all necessary and appropriate action to effectuate the provisions of this Resolution including all reasonable and necessary action to cause such approved ballot issue to be printed and placed on the ballot for the election.

Section 11. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.


Section 12. Effective Date. This Resolution shall become upon its adoption.

PASSED AT ITS REGULAR MEETING HELD ON THE 21<sup>st</sup> DAY OF AUGUST, 2014, BY A VOTE OF 4 IN FAVOR, 1 AGAINST, and 0 ABSTAINING.

TOWN OF HOT SULPHUR SPRINGS

By:   
Bob McVay, Mayor

ATTEST:

By:   
Sandy White, Town Clerk

