

ORDINANCE NO. 2016-1

AN ORDINANCE ENACTING A SALES TAX IN THE TOWN OF SAGUACHE
FOR THE PURPOSE OF FUNDING LAW ENFORCEMENT

Whereas, the Town of Saguache “Town” has determined that it requires additional revenue for the purpose of funding law enforcement;

Whereas, article 2 of title 29, C.R.S., authorizes the Town to adopt a tax on sales of tangible personal property at retail and services, subject to the approval of the Town’s registered electors;

Whereas, the Town finds that the revenue from a sales tax would significantly assist the Town in addressing the need for law enforcement;

Whereas, pursuant to Section 29-2-102(2), C.R.S., the Town has determined that no county in which any part of the Town sits has adopted a resolution for a countywide sales tax on which the registered electors of those counties have yet to vote;

Whereas, the Town has determined that there is not a regular Town election scheduled to occur within 90 days after the date of the adoption of this Ordinance; and

Whereas, the Town electorate, at a regular biennial town election held on April 5, 2016 approved the measure hereinafter described as Section 19 of this Ordinance; and

Whereas, the Town intends that its enactment of a sales tax as set forth herein shall comply and be interpreted to comply with the requirements of section 20, article X of the Constitution of the State of Colorado; article 2, title 29, C.R.S.; article 10, title 31, C.R.S.; and all other applicable provisions of law.

Now therefore be it ordained by the Board of Trustees of the Town of Saguache:

Definitions

Section 1 – Definitions. All terms used in this ordinance shall have the same meaning as provided for in Section 39-26-102, C.R.S.

Section 2 – Application of State Sales Tax. Unless otherwise provided in this sales tax, any amendments thereto, or article 2, title 29, C.R.S., the provisions of article

26, title 39, C.R.S., shall govern the collection, administration, and enforcement of this sales tax.

Sales Tax Imposed

Section 3 – Imposition of Sales Tax. There is hereby imposed and there shall be collected a tax on all sales of tangible personal property and services described in Section 4 and occurring within the Town. The tax is imposed as provided for in Section 29-2-105(1)(d), C.R.S. The sales tax shall be set at a rate of one percent of the amount of each sale. The taxable amount of a sale shall not include the amount of any sales or use tax imposed by article 26, title 39, C.R.S.

Section 4 – Property and Services Taxed. The sales of tangible personal property and services taxable under this sales tax shall be the same as the sales of tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., subject to the exemptions set forth below.

Section 5 – Place of Sale; Delivery Charges; Retailers Without a Permanent Place of Business in the Town. For the purpose of this sales tax, all retail sales are consummated at the retailer's place of business unless the tangible personal property sold is delivered by the retailer or his agent outside the Town's limits. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26, title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town, the place at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of article 26, title 39, C.R.S., and by rules and regulations promulgated by the Colorado Department of Revenue.

Section 6 – Mobile Telecommunications Services. Without limiting the broad application of Section 4 and recognizing that mobile telecommunications services are subject to particular legal requirements, this sales tax shall apply to mobile telecommunications services to the greatest extent permitted under Section 29-2-105(1.5), C.R.S.

Exemptions and Exclusions

Section 8 – General Sales Tax Exemptions. Except as otherwise provided herein or in Section 29-2-105(1)(d), C.R.S., the sales of tangible personal property and services taxable under this ordinance shall be subject to the same exemptions as those specified in part 7, article 26, title 39, C.R.S.

Section 9 – Specific Exemptions Required by Section 29-2-105(1)(d), C.R.S.

Pursuant to Section 29-2-105(1)(d)(I)(A)-(N), C.R.S., which requires the Town to expressly exempt certain sales from the Town's sales tax, the Town adopts the following additional exemptions:

- a. The exemption for sales of machinery or machine tools specified in Section 39-26-709(1), C.R.S.
- b. The exemption for sales of electricity, coal, wood, gas, fuel, oil, or coke specified in Section 39-26-715(1)(a)(II), C.R.S.
- c. The exemption for sales of food specified in Section 39-26-707(1)(e), C.R.S. For the purposes of this subsection, "food" is defined in Section 39-26-102(4.5), C.R.S.
- d. The exemption for vending machine sales of food specified in Section 39-26-714(2), C.R.S.
- e. The exemption for sales by a charitable organization specified in Section 39-26-718(1)(b), C.R.S.
- f. The exemption for sales of farm equipment and farm equipment under lease or contract specified in Section 39-26-716(2)(b) and (2)(c), C.R.S.
- g. The exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources specified in Section 39-26-719(1), C.R.S.
- h. The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles specified in Section 39-26-723, C.R.S.
- i. The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source specified in Section 39-26-724, C.R.S.
- j. The exemption for sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.;
- k. The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization specified in Section 39-26-718(1)(c), C.R.S.;
- l. The exemption for sales of property for use in space flight specified in Section 39-26-728, C.R.S.; and
- m. The exemption for sales of components used in biogas production systems specified in Section 39-26-724(1)(c), C.R.S.

Section 10 – Food. Notwithstanding any other provision of this sales tax regarding the taxation of food, this sales tax shall not apply to the following:

- a. Sales of food purchased with food stamps. For the purposes of this subsection (a), “food” has the same meaning as provided in 7 U.S.C. § 2012, as currently in effect and subsequently amended.
- b. Sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. § 1786. For the purposes of this subsection (b), “food” has the same meaning as provided in 42 U.S.C. § 1786, as currently in effect and subsequently amended.

Section 11 – Certain Construction and Building Materials. This sales tax shall not apply to the sale of “construction and building materials,” as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid on the materials.

Section 12 – Cigarettes. This sales tax shall not apply to sales of cigarettes.

Section 13 – Sales to a Telecommunications Provider. This sales tax shall not apply to sales to a telecommunications provider of equipment used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications service. It is the policy of this Town that this exemption be applied in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

Section 14 – Sales Subject to Prior Ownership Tax. Sales of personal property on which a specific ownership tax has been paid or is payable are exempt from this sales tax when the sale meets both of the following conditions: (i) the purchaser is a nonresident of the Town or has his principal place of business outside the Town and (ii) the personal property sold is registered or required to be registered outside the Town’s limits under the law of the State of Colorado.

Section 15 – Sales Subject to Prior Payment of Sales or Use Tax. This sales tax shall not apply to the sale of tangible personal property or services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by this sales tax. A credit shall be granted against this sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user

to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed herein.

Election

Section 16 – Submission to Registered Electors. This matter was submitted to a vote of the Town's registered electors on April 5, 2016, The election was conducted in accordance with section 20, article X of the Constitution of the State of Colorado; article 2, title 29, C.R.S.; article 10, title 31, C.R.S.; and all other applicable provisions of law.

Section 17 – Agreements with Related Counties. The Town Clerk is authorized to execute and enter into such agreements or amendments to agreements on the Town's behalf with Saguache County regarding the conduct of the election and the preparation and mailing of the notice required by Section 20, article X of the Constitution of Colorado.

Section 18 – Town Clerk as Election Official. The Town Clerk served as the 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 the election.

Section 19 – Ballot Title. The ballot title for the sales tax question read as follows:

SHALL THE TOWN OF SAGUACHE'S SALES TAXES BE INCREASED BY AN ESTIMATED \$30,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY IN EACH SUBSEQUENT YEAR, BY IMPOSITION OF AN ADDITIONAL 1% SALES TAX TO BE SPENT AS A VOTER-APPROVED REVENUE CHANGE (AND AS AN EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY) THE PROCEEDS TO BE DEDICATED TO LAW ENFORCEMENT IN THE TOWN OF SAGUACHE AND, IN CONNECTION THEREWITH, SHALL AN ORDINANCE BE APPROVED, PROVIDING FOR AN INCREASE IN THE TOWN'S SALES TAX RATE FROM THREE PERCENT TO FOUR PERCENT, SUCH CHANGE TO BE IN EFFECT AS OF JULY 1, 2016, AND EACH SUBSEQUENT YEAR THEREAFTER – WITHOUT LIMITING THE COLLECTION AND SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE TOWN UNDER ARTICLE X, SECTION 20, OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES _____

NO _____

Enforcement

Section 20 – Delivery to Colorado Department of Revenue. The ballot measure has been approved by the registered electors; the Town clerk shall now provide a copy of this ordinance and notice of its adoption and approval to the executive director of the Colorado Department of Revenue at least 45 days prior to the effective date of the sales tax created herein.

Section 21 – Colorado Department of Revenue to Enforce. The collection, administration, and enforcement of this sales tax shall be performed by the executive director of the Colorado Department of Revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax, as supplemented by article 2, title 29, C.R.S.

General Provisions

Section 22 – Effective Date. As approved by the registered electors, this sales tax shall become effective on July 1, 2016.

Section 23 – Duration. As approved by the Town's registered electors, this sales tax shall continue until repealed.

Section 24 – Codification. This sales tax as been approved by the Town's registered electors; the Town Clerk is hereby directed to codify the provisions of this sales tax in the Saguache Municipal Code in substantially the same form as set forth herein.

Section 25 – Amendment. This ordinance and the sales tax adopted herein may be amended by subsequent ordinance, unless otherwise prohibited by law.

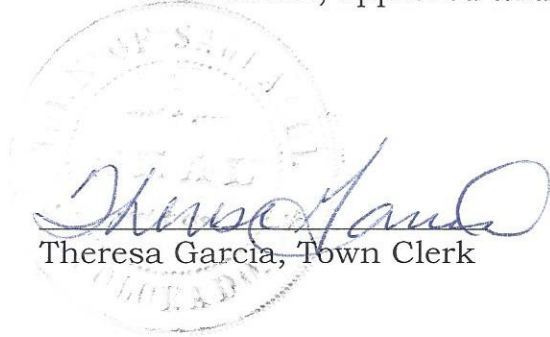
Section 26 – Severability. If any portion of this ordinance or the sales tax adopted herein is declared to be void or ineffective by a court of competent jurisdiction, it shall be deemed severed from this ordinance. The remaining portions shall remain valid and in full force and effect.

Section 27 – Authority Vested in Town Officials. The Town's officials are authorized and directed to take all action necessary and appropriate to effectuate the provisions of this ordinance and the sales tax adopted herein.

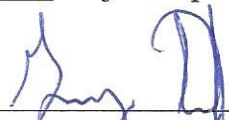
Section 28 – References to Colorado Law. References to Colorado law are to the versions of those laws in effect at the time this ordinance was adopted as well as any subsequent amendments thereto.

THE TOWN BOARD FINDS THAT THIS ORDINANCE IS NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH, AND SAFETY BASED ON CURRENT NEED FOR LAW ENFORCEMENT WITHIN THE TOWN AND THE PRESERVATION OF THE SAFETY OF THE PUBLIC AND WILL BECOME EFFECTIVE UPON PASSAGE OF THE SAME.

Read in full, approved and adopted this 18th day of April, 2016.



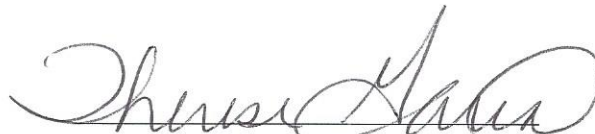
Theresa Garcia, Town Clerk



Greg Terrell, Mayor

CERTIFICATION

I hereby certify that the within Ordinance was introduced, read in full, approved and adopted at the regular meeting of the Board of Trustees of the Town of Saguache, Colorado on the 18th day of April, 2016, and published by title in the Saguache Crescent, a legal newspaper in the Town of Saguache on April 28, 2016: *May 12, 2016*



Therese Garcia, Town Clerk