

ORDINANCE NO. 40

Series 2019

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL
AMENDING CHAPTER 4 OF THE CRESTED BUTTE MUNICIPAL CODE
TO INCLUDE NEW PROVISIONS ESTABLISHING A TAX ON
CIGARETTES, TOBACCO AND OTHER NICOTINE PRODUCTS**

WHEREAS, the Town of Crested Butte, Colorado ("Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and public under and by virtue of the Colorado Constitution and laws of the State of Colorado; and

WHEREAS, at an election held on November 5, 2019, a majority of those voting approved the following ballot question approving the levy of a tax of fifteen cents per cigarette or three dollars per pack of twenty cigarettes sold and 40% on the sales price of all other tobacco products for purposes of funding health, safety and other needs as deemed necessary:

SHALL TOWN TAXES BE INCREASED BY UP TO \$200,000 IN 2020 AND BY SUCH AMOUNTS AS MAY BE GENERATED ANNUALLY THEREAFTER BY THE IMPOSITION OF NEW TAXES AS FOLLOWS:

BEGINNING JANUARY 1, 2020, THERE SHALL BE A NEW TAX OF FIFTEEN CENTS PER CIGARETTE OR THREE DOLLARS PER PACK OF TWENTY CIGARETTES SOLD;

BEGINNING JANUARY 1, 2020, THERE SHALL BE A NEW SALES TAX OF 40% ON THE SALES PRICE OF ALL OTHER TOBACCO PRODUCTS; THE TERMS "CIGARETTES" AND "TOBACCO PRODUCTS" SHALL MEAN "A PRODUCT THAT CONTAINS NICOTINE OR TOBACCO OR IS DERIVED FROM TOBACCO AND IS INTENDED TO BE INGESTED OR INHALED BY OR APPLIED TO THE SKIN OF AN INDIVIDUAL."

THE TAX REVENUES SHALL BE USED FOR THE PURPOSES OF FINANCING HEALTH SERVICES, PUBLIC SAFETY AND OTHER NEEDS AS DEEMED NECESSARY;

AND SHALL THE TOWN BE AUTHORIZED TO COLLECT, RETAIN AND EXPEND ALL OF THE REVENUES OF SUCH TAXES AND THE EARNINGS THEREON, NOTWITHSTANDING THE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?;
and

WHEREAS, it is necessary to amend the Town Code to implement the cigarette, tobacco and nicotine tax; and

WHEREAS, for the foregoing reasons, the Town Council hereby finds that the

amendments to the Town of Crested Butte Municipal Code ("Code") set forth herein below are in the best interest of the Town of Crested Butte.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Section 4-2-70 Exemptions from sales tax shall be amended as follows:

Section (4) Cigarettes shall be removed and the numbering of subsequent sections be amended to reflect the change.

Section 2. Adding a New Article 10 to Chapter 4 of the Code. A new Article 10 is added to Chapter 4 of the Code to read as follows:

"Cigarette, Tobacco and Nicotine Products Tax"

Sec. 4-10-10. Purpose.

The purpose of this Article shall be to impose a sales tax known as a cigarette, tobacco and nicotine tax on any and all tobacco and nicotine containing products the proceeds of which will be recorded in the *General Fund* for the purposes of supporting health, safety and other needs deemed necessary.

Sec. 4-10-20. Effective Date.

This Article shall be effective commencing on January 1, 2020, and shall apply to all cigarette, tobacco and nicotine product sales.

Sec. 4-10-30. Definitions.

Cigarettes, tobacco and nicotine products shall mean a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual.

Sec. 4-10-40. Rate, imposition, collection, and distribution of vacation rental tax.

(a) There is hereby levied by the Town a tax of \$0.15 per cigarette or \$3.00 per pack of twenty cigarettes.

(b) All other tobacco (not cigarettes) and nicotine products shall be taxed at 40% of retail price.

Sec. 4-10-50. Cigarette, tobacco and nicotine products tax schedule.

The cigarette, tobacco and nicotine products tax imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Finance Director.

Sec. 4-10-60. Transactions, items and services subject to cigarette, tobacco and nicotine product tax.

The cigarette, tobacco and nicotine product tax shall apply to the retail price charged to any person(s) purchasing said product(s).

Sec. 4-10-70. Exemptions from cigarette, tobacco and nicotine product tax.

The tax levied by Section 4-10-60 shall not apply to FDA-approved nicotine cessation products, such as patches, gum and lozenges.

Sec. 4-10-80. Vendor responsible for collection and payment of tax.

Every vendor engaged in the selling of cigarette, tobacco and nicotine products in the Town shall be liable and responsible for collecting and paying to the Town an amount equivalent to the amount charged to any person for cigarettes, tobacco and nicotine products multiplied by the cigarette, tobacco and nicotine product tax rates established by Section 4-10-40 of this Code.

Sec. 4-10-90. Trust status of tax in possession of vendor.

All cigarette, tobacco and nicotine products tax collected by any vendor shall be the property of the Town and remain public money in the hands of such vendor, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

Sec. 4-10-100. Filing returns; due date.

(a) Every vendor shall file a return, whether or not a tax is due, and remit any tax due to the Town in accordance with 4-2-140

Sec. 4-10-110. Duty to keep books and records.

(a) Every vendor shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.

Sec. 4-10-120. - Authority of Finance Director.

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

- (1) The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.
- (2) The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.
- (3) The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.
- (4) The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
- (5) The Finance Director may accept any partial payment made and apply such payment toward the tax due. Deposit of such payment shall not in any way imply that the remaining balance is or has been abated.
- (6) Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the vendor, or served in person by an officer of the Town Marshal's office.

Sec. 4-10-130. Audit of record.

(a) For the purpose of ascertaining the correct amount of tax due from any vendor in the Town, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, records and accounts of such person.

(b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any vendor refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or an authorized agent, the Finance Director may issue a subpoena to require that the vendor or his or her representative attend a hearing or produce any such books, accounts or records for examination.

(c) Any tax deficiency or overpayment ascertained through audit shall be computed by one or more of the following methods as the Finance Director deems appropriate:

- (1) By comparing the tax reported and paid on returns to the actual tax due.
- (2) By identifying transactions on which the tax was not properly or accurately collected or paid.
- (3) By identifying other irregularities in the calculation of tax due.

Sec. 4-10-140. Tax information confidential.

(a) All specific information gained under the provisions of this Article which is used to determine the tax due from a vendor, whether furnished by the vendor or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.

(b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a vendor or his or her duly authorized representative of a copy of such confidential information relating to such vendor, the publication of statistics so classified as to prevent the identification of particular vendors, or the inspection of such confidential information by an officer, employee or legal representative of the Town.

(c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding.

Sec. 4-9-150. Overpayment from returns.

(a) If the amount remitted with the return is more than the tax due as computed from information in such return, the vendor shall be notified.

(b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the vendor may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.

(c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

Sec. 4-10-160. Tax overpayment determined through audit.

If the Town ascertains through audit of a vendor's records that the tax due is less than

the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the vendor within thirty (30) days of the date of the notice of overpayment.

Sec. 4-9-240. Underpayments from returns.

(a) If the amount remitted with a return is less than the tax computed from information in such return, the vendor shall be notified.

(b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.

(c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period.

Sec. 4-9-260. Tax deficiencies determined through audit.

If the Town determines through an audit of the vendor's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

Sec. 4-9-270. Penalties.

A penalty shall be levied for any tax deficiency as outlined in 4-2-320

Sec. 4-9-280. Interest.

Interest shall be levied on any tax deficiency as outlined in 4-2-330

Sec. 4-9-290. Notice of assessment.

(a) The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.

(b) Notices of assessment shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the vendor.

(c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.

(d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists.

Sec. 4-9-300. - Protest of notice of assessment or denial of refund.

(a) Any notice of assessment may be protested by the vendor to whom it is issued.

(1) A protest of a notice of assessment issued to a vendor or vendor for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

(2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the vendor fails to pursue the protest in a timely manner.

(b) Any denial of a claim for a refund may be protested by the vendor who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.

(c) Any timely protest entitles a vendor to a hearing under the provision of this Article.

(1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the vendor to resolve the issues.

(2) Participation in such an informal meeting does not prevent either the vendor or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting.

Sec. 4-9-390. Status of tax due in bankruptcy and receivership.

Whenever the business or property of any vendor is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the vendor. No sheriff, receiver, assignee or other officer shall sell the property of any such vendor under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant.

Section 3. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

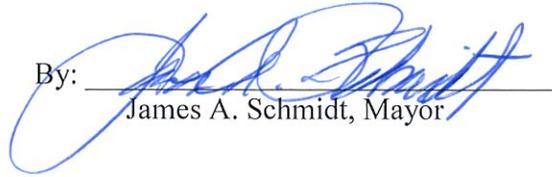
Section 4. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF November, 2019.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 2nd DAY OF December, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By:


James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk

