



KROB LAW OFFICE, LLC
Attorneys at Law

MEMORANDUM

**To: Town of Palmer Lake
 Board of Trustees**

From: Matthew Z. Krob

Date: February 20, 2023

Re: Maximum Excise Tax Rate on Marijuana

The question presented is whether the Board may impose an excise tax on marijuana greater than 5%. Although the Voters approved an excise tax of up to 10% in the November 2016 election, pursuant to State Statute, as well as Town Code, the maximum excise tax on marijuana is 5%.

The controlling statute is Colorado Revised Statute §29-2-114(2)(a), which reads:

In addition to any sales tax imposed pursuant to section 29-2-102 and articles 26 and 28.8 of title 39, and in addition to the excise tax imposed pursuant to article 28.8 of title 39, each municipality in the state is authorized to levy, collect, and enforce a municipal excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility at a rate of **up to five percent** of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101(1), of the unprocessed retail marijuana if the transaction is between affiliated retail marijuana business licensees and at a rate of **up to five percent** of the contract price, as defined in section 39-28.8-101(2.5), for unprocessed retail marijuana if the transaction is between unaffiliated retail marijuana business licensees; 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

Section 3.24.100 of the Town code also controls. It reads:

3.24.100. - Maximum rate for retail marijuana excise tax.

In accordance with the town voter approval provided at the election held November 8, 2016, the initial retail marijuana excise tax rate imposed pursuant to this chapter is one percent increasing annually until it reaches five percent, and the maximum retail marijuana excise tax rate that may be imposed pursuant to such voter approval is ten percent if C.R.S. § 29-2-114(2)(a), is amended to so permit. If C.R.S. § 29-2-114(2)(a), is amended to so allow, the town board of trustees may, by ordinance:

- (1) Establish another retail marijuana excise tax rate to be imposed pursuant to this chapter that is equal to or less than the maximum ten percent tax rate provided in this chapter; or
- (2) After establishing a retail marijuana excise tax rate that is lower than ten percent, increase the tax rate to be imposed pursuant to this section.

Simply put: if C.R.S. 29-2-114 is amended, the Board would then have the ability to increase the total excise tax collected up to 10% without having to go back to the Voters. But, as it sits now, pursuant to State Statute and supported by the Town Code, the maximum excise tax the Town may assess is 5%.