

**BOROUGH OF FREEHOLD  
COUNTY OF MONMOUTH**

**ORDINANCE #2023/1**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 3 “REVENUE AND FINANCE” OF THE CODE OF THE BOROUGH OF FREEHOLD PERTAINING TO TRANSFER AND USER TAXES ON THE SALE/TRANSFER OF CANNABIS**

WHEREAS, the Borough of Freehold (the “Borough”) is a public body corporate and politic of the State of New Jersey; and

WHEREAS, the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”) legalizes the recreational use of cannabis by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, due to the issuance of certain regulations by the New Jersey Cannabis Regulatory Commission, the Borough seeks to update its ordinance as to the collection of transfer and/or user taxes on the sale/transfer of cannabis or cannabis items by a cannabis establishment that is located in the municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF FREEHOLD AS FOLLOWS:

**Section 1**

Title 3 “Revenue and Finance” of the Code of the Borough of Freehold shall be amended as follows; additions to the current ordinance are noted in underline; deletions are struck through.

[Chapter 3.20 Cannabis Business Sales Tax – Deleted in toto and replaced as follows:]

**Chapter 3.20 Recreational Cannabis Transfer and User Tax**

**3.20.010 Tax imposed; transfer tax and user tax.**

a. As authorized by N.J.S.A. 40:48I-1, there is hereby a transfer tax imposed on: (1) receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; (2) receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; (3) receipts from the retail sale of cannabis items by a cannabis retail to retail consumers who are twenty-one (21) years of age or older; or (4) by any combination thereof.

b. This transfer tax shall be imposed at the following rates:

1. 2% of the receipts from each sale by a cannabis cultivator;
2. 2% of the receipts from each sale by a cannabis manufacturer
3. 1% of the receipts from each sale by a cannabis wholesaler
4. 2% of the receipts from each sale by a cannabis distributor

4. 2% of the receipts from each sale by a cannabis retailer

c. There shall also be imposed a user tax, at the equivalent transfer tax rates, on any concurrent license holder operating more than one cannabis establishment, as permitted by Section 33 of P.L.2021, c.16 (C.24:6I-46). The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraphs a and b of this Section, from the license holder's establishment that is located in the Borough of Freehold to any of the other license holder's establishments, whether located in the Borough of Freehold or another municipality.

d. All taxes imposed by this section shall be in addition to any other tax imposed by law. Any transaction for which the transfer tax or user tax is imposed, or could be imposed, pursuant to this section, other than those which generate receipts from the retail sales by cannabis retailers, shall be exempt from the tax imposed under the "Sales and Use Tax Act", P.L. 1966, c. 30 (C.54:32B-1 et seq.).

**3.20.020 Collection of transfer tax and user tax.**

a. The transfer tax or user tax shall be collected or paid, and remitted to the Borough of Freehold by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis items, or from the consumer at the point of sale, on behalf of the Borough of Freehold by the cannabis retailer selling the cannabis item to that consumer.

b. The transfer tax or user tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable, or equivalent value of the transfer, for the cannabis or cannabis item.

c. Every cannabis establishment required to collect a transfer or user tax imposed by this section shall be personally liable for the transfer tax or user tax imposed, collected or required to be collected under this section.

d. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment or the cannabis consumer as if the transfer tax or user tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax was part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided however, that the Business Administrator shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

e. No cannabis establishment required to collect a transfer tax or user tax imposed by this section shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer, or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.

**3.20.030 Remittance of transfer and user tax.**

a. Each cannabis establishment collecting transfer and/or user taxes pursuant to this chapter shall remit the collected taxes to the Chief Financial Officer of the municipality on a quarterly basis along with a report certified as true and accurate by the cannabis establishment's Chief Financial Officer, Comptroller, or other similarly situated person showing the gross revenues for the cannabis establishment for each month of the quarter. No tax shall be considered remitted unless and until said report is supplied. Cannabis retailers shall also file a copy of their ST-50C form that they filed with the State. No tax shall be considered remitted unless and until the cannabis retailers file a copy of the ST-50C form.

Remittance shall be payable for the prior three month's activities and due at the same time as quarterly dates for the collection of property taxes. The revenues due on February 1 of each year shall include all transfer taxes or user taxes collected for the prior year months of October, November and December. The revenues due on May 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of January, February and March. The revenues due on August 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of April, May and June. The revenues due on November 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of July, August and September.

There shall be a ten (10) day grace period for the payment of said transfer tax and/or user tax which will coincide with the ten (10) day grace period typically permitted for property tax payments. There shall be no extension of the cannabis transfer tax/ user tax grace period without a resolution of the governing body authorizing a specific extension.

b. Each cannabis establishment shall file on an annual basis no later than February 1 of each year a financial report from an independent accountant certifying as to the annual revenue for the preceding year.

c. Each cannabis establishment shall file with the Borough on a monthly basis a copy of its METRC seed to sale inventory management system report.

d. The Chief Financial Officer of the Borough may order an audit of any taxpayer under this chapter for purpose of ascertaining the correctness or completeness of any return of payment. The Chief Financial Officer is hereby authorized to examine the books, papers and records of any taxpayer to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every taxpayer is hereby directed and required to give to the chief financial officer, or to any agent designated by him/her, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized.

### **3.20.040 – Penalties for nonpayment.**

a. In the event that the transfer tax or user tax imposed by this section is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or

other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year.

b. The Borough shall file in the Office of the Tax Collector, a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises.

c. The Borough of Freehold shall enforce the payment of delinquent taxes or transfer fees imposed by this section in the same manner as provided for municipal real property taxes.

d. In the event that the transfer tax or user tax imposed by this section is not remitted by the cannabis establishment within 30 days of when it is due, that cannabis establishment's municipal license to operate shall be suspended until that tax is remitted. This suspension shall be in addition to any monetary penalties that are imposed by this section.

e. In the event that the transfer tax or user tax imposed by this section is not remitted by the cannabis establishment within 90 days of when it is due, that cannabis establishment's municipal license to operate shall be revoked and forfeited. This revocation shall be in addition to any monetary penalties that are imposed by this section.

### **3.20.050 Violations**

a. For violation of any provision of this section, the penalty upon conviction shall be the maximum fine permitted under New Jersey State law for the violation of a municipal ordinance in accordance with N.J.S.A. 40:49-5, or imprisonment for a period not exceeding the maximum time permitted under New Jersey State law for the violation of a municipal ordinance, in accordance with N.J.S.A. 40:49-5, or both.

b. Separate violation for each day. Each day that a violation of this section is allowed to exist shall constitute a separate violation or offense and shall be subject to the penalty as prescribed herein.

## **Section 2**

All ordinances, or parts of ordinances, in conflict with the provisions of this Ordinance, to the extent of such conflict, are repealed.

## **Section 3**

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this ordinance shall be deemed to be valid and effective

#### **Section 4**

This ordinance shall take effect immediately after final passage, approval and publication as required by law.

Introduced: January 17, 2023

Adopted: February 13, 2023