

**BOROUGH OF OAKLAND
BERGEN COUNTY, NEW JERSEY
ORDINANCE 21-CODE-873**

**AN ORDINANCE TO AMEND CHAPTER 8, CANNABIS, OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF OAKLAND PERTAINING TO
CANNABIS ESTABLISHMENTS AUTHORIZED UNDER THE “NEW JERSEY
CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE AND MARKETPLACE
MODERNIZATION ACT,**

WHEREAS, Section 40 of the New Jersey Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act, hereinafter the “Act”, permits a municipality to adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality on receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof and to set its own rate or rates, but in no case exceeding: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer; and

WHEREAS, *N.J.S.A. 24:6I-10(i)* permits a municipality to adopt an ordinance imposing a transfer tax on the sale of Adult-Use Cannabis that is located in the Borough and to set its own tax rate, but in no case, exceed two-percent (2%) for cannabis cultivator, manufacturer and retailer and one-percent (1%) for wholesalers. The tax percentage is based on the receipts for each sale and is paid directly to the municipality in the manner prescribed by the municipality. Any delinquencies are treated the same as delinquent property taxes. The tax cannot apply to delivery services to consumers or transfers for the purpose of bulk transportation.

NOW THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Oakland (hereinafter the “Borough”), County of Bergen, State of New Jersey, that Chapter 8, Cannabis, is hereby amended to include the following:

Section 1. The current text of Borough Ordinance, Chapter 8, Cannabis, is hereby amended to include the following:

§8-2 Transfer Tax Imposed:

- A. There is hereby imposed a transfer tax of two-percent (2%) on receipts from the sale of Adult-Use Cannabis and cannabis items by those Cannabis Establishments located within the Borough possessing a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 4 Cannabis Distributer license, and a Class 5 Cannabis Retailer license.

- B. There is hereby imposed a transfer tax of one-percent (1%) on receipts from the sale of Adult-Use Cannabis and cannabis items by those Cannabis Establishments located within the Borough possessing a Class 3 Cannabis Wholesaler license.
- C. Such tax shall be collected or paid and remitted to the Borough by the Cannabis Establishment purchasing or receiving the cannabis or cannabis item, or from the consumer at the point of sale, on behalf of the Borough by the cannabis retailer selling the cannabis item to that consumer.
- D. The transfer 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. No Cannabis Establishments required to collect a transfer tax imposed hereunder 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 Establishments or the consumer, or that the transfer tax will be refunded to the Cannabis Establishments or the consumer.

§8-2.1 Tax Liability.

Every Cannabis Establishment required to collect a transfer tax imposed by ordinance pursuant to this section shall be personally liable for the transfer tax or user tax imposed, collected, or required to be collected under this section. Any Cannabis Establishment shall have the same right with respect to collecting the transfer tax from another Cannabis Establishment or the consumer as if the transfer tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the Cannabis Establishment or consumer, as if the transfer tax was a 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.

§8-2.2 Collection of Taxes and Lien.

- A. All revenues collected from a transfer tax imposed by ordinance pursuant to this section shall be remitted to the Borough's Chief Financial Officer in the manner prescribed herein. The Chief Financial Officer shall collect and administer any transfer tax imposed by ordinance pursuant to this chapter.
- B. The Borough may enforce the payment of delinquent taxes or transfer fees imposed by ordinance pursuant to this section in the same manner as provided for municipal real property taxes. In the event that the transfer tax imposed by ordinance pursuant to 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. The Borough shall file in the office of its 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. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

- C. The collection of taxes pursuant to the section shall be used towards the payment of debt service.

§8-2.3 Administration of Transfer Tax.

- A. The Borough's Chief Financial Officer is charged with the administration and enforcement of the provisions of this chapter, and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this chapter. Should a Cannabis Establishment fail or refuse to provide adequate information to the Chief Financial Officer to determine the amount of tax due, the Chief Financial Officer may use information provided to the Chief Financial Officer from other sources (i.e., the Commission or Department of Treasury) to determine the amount of tax liability.
- B. It shall be the duty of the Chief Financial Officer to collect and receive the taxes, fines, and penalties imposed by this chapter. It shall also be the duty of the Chief Financial Officer to keep a record showing the date of such receipt. The Chief Financial Officer is authorized to enter into agreements with the State of New Jersey to obtain information to facilitate administration of the tax. The Chief Financial Officer is authorized to issue a ruling upon written request of a taxpayer or upon its own volition.
- C. The Chief Financial Officer is hereby authorized to examine the books, papers and records of the Cannabis Establishment to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every Cannabis Establishment 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.

§8-2.4 Recordkeeping.

A Cannabis Establishment liable for the transfer tax is required to keep such records as will enable the filing of true and accurate returns or the tax and such records shall be preserved for a period of not less than three (3) years from the filing date or due date, whichever is later, in order to enable the Chief Financial Officer or any agent designated to verify the correctness of the declarations or returns filed. If records are not available in the Borough to support the returns which were filed or which should have been filed, the Cannabis

Establishment will be required to make them available to the Chief Financial Officer either by producing them at a location in the Borough or by paying for the expenses incurred by the Chief Financial Officer or his agent in traveling to the place where the records are regularly kept.

§8-2.5 Returns.

All Cannabis Establishments and Cannabis Delivery operating in the Borough are required to file a transfer tax return with the Chief Financial Officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this chapter. Returns shall be filed and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A Cannabis Establishment who has overpaid the transfer tax, or who believes it is not liable for the tax, may file a written request on an amended tax return with the Chief Financial Officer for a refund or a credit of the tax. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the chief financial officer within two (2) years of the date of the payment.

§8-2.6 Confidentiality.

The returns filed by the Cannabis Establishments and the records and files of the Chief Financial Officer respecting the administration of the transfer tax, shall be considered confidential and privileged and neither the Borough nor any employee or agent engaged in the administration thereof or charged with the custody of any such records or files, nor any former officer or employee, nor any person who may have secured information therefrom, shall divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the Chief Financial Officer nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of the State Uniform Tax Procedure Law or of the tax law affected, or when there has been a request under the Open Public Records Act and no exemption is applicable, or where the determination of the action or proceeding will affect the validity or amount of the claim of the Borough under the tax provisions of this chapter.

§8-2.7 Audit and Assessment.

- A. The Borough's Chief Financial Officer may initiate an audit by means of an audit notice to be served on any agent at the Cannabis Establishment's principal place of business. If, as a result of an examination conducted by the Chief Financial Officer, a return has not been filed by a Cannabis Establishment or a return is found to be incorrect and transfer taxes are owed, the Chief Financial Officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due

may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a Cannabis Establishment has filed a return but is found to owe additional tax) shall include taxes for up to three (3) years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment. All expenses incurred by the Borough associated with the audit and the collection of the outstanding taxes shall be paid by the delinquent Cannabis Establishment.

- B. Upon proposing an assessment, the Chief Financial Officer shall send the Cannabis Establishment an interim notice by certified mail, return receipt requested, which advises the taxpayer of additional taxes that are due. Should the taxpayer wish to dispute the assessment administratively by requesting a hearing with the chief financial officer, it must do so within thirty (30) days of the date of such interim notice. If, after the Chief Financial Officer sends an interim notice, a taxpayer fails to timely request a hearing with the Chief Financial Officer or requests a hearing and after conducting a hearing, the Chief Financial Officer determines that the taxes are due, the Chief Financial Officer shall send the Cannabis Establishment by certified mail, return receipt requested, a final notice. Should the Cannabis Establishment wish to dispute the assessment set forth in the final notice, the Cannabis Establishment must initiate an appeal in the New Jersey Tax Court within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder.

§8-2.8 Time Limitations.

The following periods of limitations shall apply to suits for collection of taxes: When a return has been filed but no tax paid, any suit brought to recover the tax due and unpaid shall be filed within two (2) years after the return was due or filed, whichever is later; Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes; Where, before the expiration of the time prescribed in this section for the filing a lawsuit against the taxpayer, both the Chief Financial Officer and the taxpayer have consented in writing to its extension after such time, the suit may be filed at any time prior to the expiration of the period agreed upon; The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§8-2.9 Hearings.

Any person who receives an interim notice from the Chief Financial Officer may within thirty (30) days after the date of an interim notice, request a hearing with the chief financial officer. Any person who fails to request a chief financial officer's hearing in a timely manner waives the right to administratively contest any element of the assessment. The Chief Financial Officer shall accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with this section.

§8-2.10 Appeals.

Any aggrieved Cannabis Establishment may, within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder, or publication of any rule, regulation or policy of the Chief Financial Officer, appeal to the Tax Court pursuant to the jurisdiction granted by N.J.S.A. 2B:13-2a(3) to review actions or regulations of municipal officials by filing a complaint in accordance with the New Jersey Court Rule 8:3-1. The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a final decision of the chief financial officer in respect to a determination of liability for the tax imposed by this chapter.

§8-2.11 Definitions and Repealer.

Unless specifically defined otherwise herein, any term used herein shall incorporate the definition of that term in the Act. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Oakland Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

§8-2.12 Interpretation and Savings Provision.

No ordinance, regulation or interpretation thereof shall conflict with the Act. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to conflict with the Act or otherwise be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

§8-2.13 Violations and penalties.

Any person or business who violates any provision of this chapter shall, upon conviction, be subject to the penalties provided by §3-1.1 of this Code.

§8-2.14 Non-applicability.

No provision of this Chapter shall be applied so as to impose any unlawful burden on either interstate commerce or any activity of the State or Federal government.

§8-2.15 Violations and penalties.

Any person, firm or corporation who shall violate any of the provisions of this chapter shall, upon conviction, be subject to the penalties provided by § 1.5 of this Code, and each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

Section 2. Any article, chapter, section, paragraph, subsection, clause, or other provision of the Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

Section 3. In case, for any reason, any portion or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other portion or provision of this Ordinance, except so far as the portion or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 4. The Borough Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this Ordinance to the Borough of Oakland Planning Board and to all other entities entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon adoption of this ordinance, after public hearing thereon, the Borough Clerk is further directed to publish notice of the passage thereof and to file a copy of this ordinance as finally adopted.

Section 5. This Ordinance shall be part of the Code of the Borough of Oakland as though codified and fully set forth therein. The Borough Clerk shall have this Ordinance codified and incorporated in the official copies of the Code.

Section 6. This Ordinance shall take effect immediately upon publication and final passage according to law.

ATTEST:

BOROUGH OF OAKLAND

Lisa M. Duncan, Borough Clerk

Linda H. Schwager, Mayor