

## **BOROUGH OF BERGENFIELD**

### **ORDINANCE 22-2591 - AN ORDINANCE AMENDING CHAPTER 186 OF THE CODE OF THE BOROUGH OF BERGENFIELD ENTITLED “LAND DEVELOPMENT” TO PERMIT ONE EACH CLASS 1 CANNABIS CULTIVATOR LICENSE AND CLASS 2 MANUFACTURER LICENSE AND ENACTING NEW CHAPTER 127 TO ESTABLISH A CANNABIS TRANSFER TAX AND USER TAX**

**WHEREAS**, in 2020, New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called “cannabis” for adults at least 21 years of age; and

**WHEREAS**, on February 22, 2021, Governor Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which 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**, the Act establishes six classes of licenses for cannabis establishments, including,

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchases items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

**WHEREAS**, Section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments as well as the location, manner and hours of operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, on May 4, 2021, the Mayor and Council of the Borough of Bergenfield adopted Ordinance 21-2581 prohibiting marijuana establishments within the Borough recognizing that the sale and distribution of marijuana presents concerns of safety, security and general nuisances; and

**WHEREAS**, the Mayor and Council have carefully considered the issue and determined that it is appropriate to permit one each of the Class 1 Cannabis Cultivator license and Class 2 Manufacturer license to operate in designated zone districts in the Borough, subject to sensible regulations to regulate such licensees in a responsible manner to protect the health, safety and welfare of the residents of the Borough and to enforce rules and regulations consistent with State law; and

**WHEREAS**, in doing so, the Mayor and Council recognize that a municipality may impose a transfer tax or user tax on the sale of any cannabis or cannabis products by a cannabis establishment that is located in the municipality, which may result in meaningful revenue for the Borough.

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and Council of the Borough of Bergenfield, County of Bergen and State of New Jersey, as follows:

1. Chapter 186, entitled Land Development, Section 41 entitled Prohibited Uses, Subsection B, shall be amended to as follows:

Pursuant to Section 31b of the Act, Class 3 Cannabis Wholesaler license, Class 4 Cannabis Distributer license, and Class 5 Cannabis Retailer license, as those terms are defined in the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-1 et seq., and implementing regulations set fort at N.J.A.C. 17:30 et seq., are hereby prohibited from operating anywhere in the Borough, except for the delivery of cannabis items and related supplies by a delivery services.

2. Chapter 186, Attachment 1, Schedule A, Zone Uses and Limitations, shall be amended to permit one each of the Class 1 Cannabis Cultivator license and Class 2 Manufacturer license, as those terms are defined in the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:61-1 et seq., as a principally permitted use in the B-2 Business and Professional Zone and M Light Industrial and Automotive Zone.

3. Chapter 127, entitled Local Cannabis Transfer Tax and User Tax, shall be enacted as follows:

A. Definitions. For purposes of this Chapter, the terms set forth herein shall have the same meaning as set forth in the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-1 et seq.

B. Local Cannabis Transfer Tax.

The Borough hereby adopts and imposes a Local Cannabis Transfer Tax in the amount of two-percent (2%) on: receipts from each sale of cannabis by a cannabis cultivator to another cannabis cultivator; cannabis items from one cannabis establishment to another cannabis establishment; or any combination thereof.

C. Local Cannabis User Tax.

(1) The Borough hereby adopts and imposes a Local Cannabis User Tax, at the same and equivalent rates as established for the Local Cannabis Transfer Tax rates set forth in subsection (B) hereinabove.

(2) The Local Cannabis User Tax shall be imposed upon any concurrent license holder operating more than one cannabis business, and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the Local Cannabis Transfer Tax imposed pursuant to subsection (B) hereinabove, from the license holder's business that is located in the Borough to any of the other license holder's businesses, whether located in the Borough or in another municipality.

C. Other Local Cannabis Tax Regulations.

(1) The Local Cannabis Transfer Tax and User Tax imposed pursuant to this section shall be in addition to any other tax imposed by law.

(2) The Local Cannabis Transfer Tax and User Tax shall be collected or paid, and remitted to the Borough by the cannabis business from the cannabis business 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.

(3) The Local Cannabis Transfer Tax and 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.

(4) Every cannabis business required to collect the Local Cannabis Transfer Tax and User Tax imposed by this section shall be personally liable for the Local Cannabis Transfer Tax and User Tax imposed, collected, or required to be collected under this section. Any cannabis business shall have the same right with respect to

collecting the Local Cannabis Transfer Tax and User Tax from another cannabis business or the consumer as if the Local Cannabis 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 Local Cannabis Transfer Tax and User Tax by the cannabis business or consumer, as if the Local Cannabis Transfer Tax and User 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; provided, however, that the Chief Financial Officer of the Borough shall be joined as a party in any action or proceeding brought to collect a Local Cannabis Transfer Tax and User Tax.

- (5) No cannabis business required to collect the Local Cannabis Transfer Tax and User Tax pursuant to this section shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the Local Cannabis Transfer Tax and User Tax will not be separately charged and stated to another cannabis business or the consumer, or that the Local Cannabis Transfer Tax and User Tax will be refunded to the cannabis business or the consumer.
- (6) All revenues collected from the Local Cannabis Transfer Tax and User Tax pursuant to this section shall be remitted to the Chief Financial Officer of the Borough. The Chief Financial Officer shall collect and administer the Local Cannabis Transfer Tax and User Tax imposed by this section. The Borough shall enforce the payment of delinquent Local Cannabis Transfer Tax and User Tax in the same manner as provided for municipal real property taxes.
- (7) In the event that the Local Cannabis Transfer Tax and User Tax imposed by this section is not paid as and when due by a cannabis business, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis business. 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. In the event of a delinquency, the Chief Financial Officer shall file with 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 business. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

Severability. All provisions of this Ordinance are severable. If for any reason, any provision of this Ordinance is held to be invalid, the validity of the remainder of the Ordinance shall not be affected.

Effective Date. This Ordinance shall become effective upon final approval and publication pursuant to law.

**NOTICE IS HEREBY GIVEN** that the foregoing Ordinance was introduced at a meeting of the Borough of Bergenfield on the 18<sup>TH</sup> day of January, 2022 and passed on first reading, and the same was ordered for final passage at a meeting of the Council to be held at the Municipal Building in the Borough of Bergenfield, Bergen County, New Jersey, on the 1<sup>ST</sup> day of March, 2022 at 8 p.m., at which time and place all persons interested will be given an opportunity to be heard concerning such Ordinance.

**Borough Clerk**