TOWNSHIP OF PEQUANNOCK

ORDINANCE NO. 2024-17

AN ORDINANCE AMENDING CHAPTERS 119 "CANNABIS ESTABLISHMENT LICENSE", AND 120 "CANNABIS TRANSFER TAX" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF PEQUANNOCK

BE IT ORDAINED, by the Township Council of the Township of Pequannock, in the County of Morris, and State of New Jersey, as follows:

SECTION 1. Chapter 120 of the Revised General Ordinances of the Township of Pequannock, "Cannabis Transfer Tax," shall be retitled and amended to read, in its entirety, as follows:

"Chapter 120

Cannabis Transfer and User Taxes

§120-1 Transfer Tax Imposed.

There is hereby imposed a transfer tax of two (2) percent on receipts from the sale of cannabis by a cannabis establishment to another cannabis establishment. Such tax shall be collected or paid and remitted to the municipality by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item. 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 establishment 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 establishment, or that the transfer tax will be refunded to the cannabis establishment.

§120-2 Concurrent License Holder User Tax

Pursuant to N.J.S.A. 40:48I-1, a user tax is hereby established on any concurrent license holder, as permitted by section 33 of P.L. 2021, c. 16, operating more than one cannabis establishment. The user tax rate shall be equivalent to the transfer tax rates on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed from the license holder's establishment that is located in the Township of Pequannock to any of the license holder's other establishments, whether located in the municipality or another municipality. The value of each transfer or use of cannabis or cannabis items for user tax computation shall equal the statewide average retail price of an ounce of usable cannabis for consumer purchase, as determined by the Cannabis Regulatory Commission, less ten percent (10%) or the third-party dispensary wholesale price, whichever is less.

§120-3 Tax Liability.

Every cannabis establishment is required to collect a tax imposed pursuant to this Chapter and shall be personally liable for the tax collected or required to be collected under this Chapter. Any cannabis establishment shall have the same right with respect to collecting the tax from another cannabis establishment as if the tax was a part of the sale and payable at the same time, or with respect to non-payment of the tax by the cannabis establishment, as if the 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 municipality shall be joined as a party in any action or proceeding brought to collect the tax.

§120-4 Collection of Taxes and Lien.

All revenues collected from a tax imposed by this Chapter shall be remitted to the chief financial officer in the manner prescribed herein. The chief financial officer shall collect and administer any tax imposed by this Chapter. The municipality may enforce the payment of delinquent taxes imposed by this Chapter in the same manner as provided for municipal real estate property taxes. In the event that the tax imposed 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 municipality 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.

§120-5 Administration.

The 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.

A. 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.

B. 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.

C. On an annual basis, the chief financial officer at the chief financial officer's sole discretion may retain the services of a duly accredited accountant or accounting/auditing firm to review the books, papers, records, receipts and reports to confirm the taxes due have been paid. The cannabis establishment shall be responsible for all costs and fees associated with the review. Failure of the cannabis establishment, cultivator or manufacturer to pay the bill for all costs and fees associated with a review of the establishment's report may be grounds for revocation of the establishment's annual license to cultivate or manufacture cannabis.

§120-6 Recordkeeping.

Taxpayers liable for a tax are 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 by him to verify the correctness of the declarations or returns filed. If records are not available in the municipality to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the chief financial officer either by producing them at a location in the municipality 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.

§120-7 Returns.

All cannabis establishments operating in the municipality are required to file a 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 taxpayer who has overpaid a 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.

§120-8 Confidentiality.

The returns filed by taxpayers, and the records and files of the chief financial officer respecting the administration of the tax, shall be considered confidential and privileged and neither the municipality 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 where the determination of the action or proceeding will affect the validity or amount of the claim of the municipality under the tax provisions of this chapter.

§120-9 Audit and Assessment.

The chief financial officer may initiate an audit by means of an audit notice. If, as a result of an examination conducted by the chief financial officer or the retained accountant or accounting firm, a return has not been filed by a taxpayer or a return is found to be incorrect and 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 taxpayer 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.

Upon proposing an assessment, the chief financial officer shall send the taxpayer 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 taxpayer by certified mail, return receipt requested, a final notice. Should the taxpayer wish to dispute the assessment set forth in the final notice, he or she 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.

§120-10 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.

§120-11 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.

§120-12 Appeals.

Any aggrieved taxpayer 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."

SECTION 2. Chapter 119 of the Revised General Ordinances of the Township of Pequannock, "Cannabis Establishment License", Section 119-3 "License" shall be amended to read, in its entirety, as follows:

§ 119-3. Licenses.

A. Laws applicable. All applications for licenses, all licenses issued and all proceedings under this Article shall be in accordance with the Act, rules and regulations referred to in § 119-1 and all other applicable laws of the State of New Jersey.

B. Issuing authority. The Clerk of the Township is authorized and empowered to issue licenses for cannabis establishments.

C. License applications; provisions. No license shall be issued except after written application presented by the proposed licensee in such form and upon complying with the provisions of this Chapter.

D. License fees - Cultivation. The initial license fee shall be $15,000.00. The annual license fee shall be $10,000.00.

SECTION 3. This Ordinance may be renumbered for codification purposes.

SECTION 4. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

SECTION 5. In the event that any section, part or provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

SECTION 6. This Ordinance shall take effect upon passage as required by law.

Introduced: September 10, 2024
Adopted: October 8, 2024

Carol J. Marsh, Township Clerk

Ryan Herd, Mayor