

BOROUGH OF GIBBSBORO
HEARING NOTICE

The ordinance published herewith was introduced and passed on first reading at a meeting of the Governing Body of the Borough of Gibbsboro on July 14, 2021, at 7:00 PM and will be further considered for final passage after public hearing at a meeting of said Governing Body to be held via conference call on August 11, 2021 beginning at 7:00 PM. Details for public participation will be posted to the municipal website at www.gibbsborotownhall.com. The ordinance will also be posted in full to the municipal website for public inspection.

2021-09

**ORDINANCE OF THE BOROUGH OF GIBBSBORO
ESTABLISHING TRANSFER AND USER TAXES ON CANNABIS BUSINESSES
WITHIN THE BOROUGH OF GIBBSBORO**

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 marijuana 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 marketplace classes of licensed businesses, 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 Distributor 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 purchased 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, for purposes of this ordinance a Cannabis Business is defined as any business that holds one or more State of New Jersey issued license for Class 1 through Class 6 cannabis business; and

WHEREAS, for purposes of this ordinance a Vertically Integrated Cannabis Business is defined as any Cannabis Business that holds more than one Cannabis License; and

WHEREAS, section 40a(1) of 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 (2) percent of the receipts from each sale by a cannabis cultivator; two (2) percent of the receipts from each sale by a cannabis manufacturer; one (1) percent of the receipts from each sale by a cannabis wholesaler; and two (2) percent of the receipts from each sale by a cannabis retailer; and

WHEREAS, section 40a(2) of the Act requires a municipality enacting a Transfer Tax to also enact a User Tax.

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Gibbsboro, in Camden County, State of New Jersey, as follows:

Section 1. Definitions.

“**Cannabis**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis cultivator**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis establishment**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis items**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis manufacturer**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis retailer**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Cannabis wholesaler**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Consumer**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

“**Premises**” means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

Section 2. Establishment of Transfer and User Taxes.

- A. **Transfer Tax** - There is hereby imposed a transfer tax of two (2) percent 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 manufacturer to another cannabis establishment; and receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; and a tax of one (1) percent of the receipts from each sale by a cannabis wholesaler. 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, or from the consumer at the point of sale, on behalf of the municipality by the cannabis retailer selling the cannabis item to that consumer. 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 the consumer, or that the transfer tax will be refunded to the cannabis establishment or the consumer.
- B. **User Tax** – There is also imposed a user tax, at the equivalent transfer tax rates, on any concurrent license holder, as permitted by section 33 of P.L.2021, c.16 (C.24:6I-46), operating more than one cannabis establishment. 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 paragraph IIa of this subsection, from the license holder’s establishment that is located in the municipality to any of the other license holder’s establishments, whether located in the municipality or another municipality.
- C. **Relationship To Other Taxes** - A transfer tax or user tax imposed pursuant to 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.). The transfer tax or user tax shall be collected or paid, and remitted to the Borough of Gibbsboro by the cannabis establishment from 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 of Gibbsboro by the cannabis retailer selling the cannabis item to that consumer. 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.

D. Tax Liability - Every cannabis establishment required to collect a transfer tax or user tax imposed pursuant to this ordinance 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 or user tax from another cannabis establishment or the 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 tax or user tax by the cannabis establishment or consumer, as if the transfer tax or 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 fiscal officer of the Borough of Gibbsboro which imposes the transfer tax or user tax shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax. No cannabis establishment required to collect a transfer tax or user tax imposed by pursuant to this ordinance 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.

Section 3. Administration of Transfer Tax.

- A. 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.
- 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 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.
- D. In the event that the transfer tax or user tax imposed by pursuant to this ordinance 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.
- E. The chief financial officer 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.

Section 4. Recordkeeping. Taxpayers liable for the transfer and/or user 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 Borough of Gibbsboro 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.

Section 5. Tax Payments and Returns. All cannabis establishments operating in the Borough of Gibbsboro are required to file a transfer and/or user 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 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.

Section 6. Repealer. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Gibbsboro, inconsistent with the provisions of this ordinance, is hereby repealed to the extent of such inconsistency, only

Section 7. Severability. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to 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.

Section 8. Enactment. This ordinance shall become effective immediately after publication in the manner provided by law.

Section 9. Continuation and codification. This ordinance shall be a part of the General Code of the Borough of Gibbsboro as through codified and fully set forth herein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and Borough Attorney are authorized and directed to change any chapter, article and/or section number of the General Code of the Borough of Gibbsboro in the event that the codification of this ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and accidental repeal of existing provisions not intended to be repealed.

Edward G. Campbell, III
Mayor

Amy C. Troxel, RMC
Borough Clerk

Introduced: July 14, 2021
Public Hearing: August 11, 2021
Adoption Date:

Roll Call Vote: Councilman Brown
Councilman Deterding
Councilwoman Karsh
Councilman MacFerren
Councilman Rickert
Councilman Werner

CERTIFICATION

I, Amy C. Troxel, Borough Clerk of the Borough of Gibbsboro, County of Camden, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance introduced by the Mayor and Council of the Borough of Gibbsboro at a meeting held on the 14th day of July, 2021.

Amy C. Troxel, RMC
Borough Clerk