

# Ordinance 2023-20

*BOROUGH OF HIGHTSTOWN  
COUNTY OF MERCER STATE OF  
NEW JERSEY*

**AN ORDINANCE REPEALING ORDINANCE 2021-06, AND TO CONDITIONALLY PERMIT CERTAIN CLASSES OF CANNABIS BUSINESSES TO LOCATE WITHIN SPECIFIED GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF HIGHTSTOWN IN MERCER COUNTY, NEW JERSEY, ADDING LICENSING REQUIREMENTS TO CHAPTER 4, ENTITLED “GENERAL LICENSING,” AMENDING AND SUPPLEMENTING CHAPTER 28, ENTITLED “ZONING,” AND ESTABLISHING CHAPTER 31, ENTITLED “TAXATION OF CANNABIS SALES,” OF THE “REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN.”**

**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, the Hon. Philip 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**, Section 31(a) of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in Section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner and times operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, the Borough Council of the Borough of Hightstown (the “Borough”), in the County of Mercer and State of New Jersey, having previously decided that additional study of cannabis business was warranted and who thus voted to opt out of permitting any cannabis businesses, excepting the delivery of cannabis products as allowed by the Act, through the enactment of Ordinance 2021-06, now codified as Article 28-12 of the “Revised General Ordinances of the Borough of Hightstown,” have further studied the issues at hand, including the receipt of input from the Planning Board, and have at this time found it necessary and appropriate, and in the best interests of the health, safety and welfare of the Borough’s residents and members of the public who visit, travel, and/or conduct business in the Borough, to permit certain classes of cannabis-related businesses, land use and development within the geographic boundaries of the Borough, pursuant to the terms and conditions set forth herein, and to amend the Borough’s Ordinances accordingly.

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Hightstown, in the County of Mercer, and State of New Jersey, as follows:

**Section 1.** Article 4-13, presently “Reserved,” of Chapter 4, “General Licensing,” shall be named “Cannabis Licensing,” and shall constitute the following:

**Article 4-13. Cannabis Licensing.**

**§ 4-13-1. Definitions.**

As used in this article, the following terms shall have the meanings as defined in the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” also referenced herein as the “Act” or “P.L. 2021, c. 16,” as it may be amended or superseded, and are included herein for purposes of general acknowledgement and ease of use:

**CLASS 1 CANNABIS CULTIVATOR LICENSE**

A license for facilities involved in growing and cultivating cannabis.

**CLASS 2 CANNABIS MANUFACTURER LICENSE**

A license for facilities involved in the manufacturing, preparation, and packaging of cannabis items.

**CLASS 3 CANNABIS WHOLESALE LICENSE**

A license for facilities involved in obtaining and selling cannabis items for later resale by other licensees.

**CLASS 4 CANNABIS DISTRIBUTOR LICENSE**

A license for businesses involved in transporting cannabis plants in bulk from a 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**

A license for locations at which cannabis items and related supplies are sold to consumers.

**CLASS 6 CANNABIS DELIVERY LICENSE**

A 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.

All other terms as defined in the Act are hereby incorporated herein by reference and shall have the meanings set forth in the Act, as may be amended or superseded.

In addition, the following terms shall have the meanings indicated:

## **GIFTING**

Shall mean the sale of any object containing cannabis or a cannabis product wherein the cannabis itself is assigned no or a below market price sales price.

### **§ 4-13-2. Non-Licensed Cannabis Businesses and Individual Proprietors and Gifting Prohibited.**

The cultivation, manufacturing, preparation, packaging, wholesaling, distributing, retailing, delivery and other related enterprise consisting in whole or in part of cannabis growing, harvesting, drying, producing, marketing and selling by non-licensed businesses or individuals is hereby prohibited throughout the Borough of Hightstown. No licensed cannabis enterprise and no non-licensed business or individual may undertake the gifting of cannabis in the Borough of Hightstown. In addition to any criminal penalties which may be applicable, the Borough shall impose a civil penalty for the violation of any of the provisions of this section in accordance with §4-13-5.

### **§ 4-13-3. Licensed Use Applicability.**

The use of any cannabis license shall only be in strict accordance with the land use and location requirements of Chapter 28 of the Revised General Ordinances of the Borough of Hightstown. Consequently, the Borough of Hightstown may or may not establish locations for the use and operation of the six types of cannabis business licenses and operations as set forth in the Act. Should the Borough of Hightstown establish more than one type of cannabis license, nothing herein shall prohibit a single owner from owning more than one such license, provided such ownership is not prohibited by State statute or rule.

### **§ 4-13-4. Local Licensing Authority.**

- A. The Borough Council is hereby designated to act as the local licensing authority for the Borough of Hightstown for all cannabis businesses within the Borough. The Borough Administrator shall act as the receiver of any communications from the State Cannabis Regulatory Commission and shall promptly convey any item of information with regard to the licensing of cannabis businesses by the State or in which State law requires any review or approval by the Borough of any action to the Borough Council.
- B. Under no circumstances shall a local license for a cannabis business issued by the Borough Council be effective until or unless the State has issued the requisite licenses to operate such a facility. It is the intent of this article that no cannabis business may lawfully operate in the Borough of Hightstown without the issuance of a State license and full regulatory oversight of the cannabis business by the Cannabis Regulatory Commission or other state licensing authority as required by law as well as oversight and issuance of a license by the Borough.
- C. Municipal licensing for cannabis businesses shall follow the nomenclature of the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” as indicated in the definitions in this article.

- D. Maximum number of licenses and fees. Subject to the provisions of Chapter 28, the Borough may issue up to and including the following number of licenses which shall require the associated license application and annual renewal fee:

**BOROUGH OF HIGHTSTOWN CANNABIS LICENSE AND FEE SCHEDULE**

License	Class	Maximum Number of Licenses to be Issued	Nonrefundable Application Fee	Annual License Renewal
Cannabis Cultivator	1	1	\$10,000.00	\$25,000.00
Cannabis Manufacturer	2	1	\$10,000.00	\$25,000.00
Cannabis Wholesaler	3	1	\$10,000.00	\$25,000.00
Cannabis Distributor	4	1	\$10,000.00	\$25,000.00
Cannabis Retailer	5	0	N/A	N/A
Cannabis Delivery	6	0	N/A	N/A

For any class of cannabis license referenced in the schedule above in which the number “0” is specified under the column entitled “Maximum Number of Licenses to be Issued,” the Borough hereby continues to “opt out” relating to that class of cannabis license under the Act, as originally declared in Ordinance 2021-06.

- E. A resolution of support issued by the Borough Council pursuant to N.J.A.C. 17:30-5.1(g)1 to a cannabis business shall expire within eighteen (18) months unless the business has secured at least one of the annual State issued cannabis licenses for operation of a Class 1 through 4 business within the Borough of Hightstown. The Borough Council may extend the resolution of support at its discretion for up to two (2) additional periods of six (6) months each for good cause, including but not limited to delays in the processing of approvals required from State, county or other local agencies. There shall be a fee of \$2,500.00 for each extension request.

- F. Additional licensing regulations.

(1) Hours of operation.

- (a) The hours of operation of vehicles on the premises of a cannabis business with a gross vehicle weight rating of 25,000 lbs. or greater for Classes 2 through 4 licensees shall be limited from 7:00 am to 7:00 pm, inclusive, unless, as part of a site plan application and for good cause shown and mitigation of noise, appropriate access and site layout, an extended period, not to exceed 14 hours total in any day, is approved by the Planning Board.

- (b) Such hours shall be construed to mean Eastern Standard Time or Eastern Daylight Savings Time, whichever time shall be in effect within the Borough of Hightstown.
- (2) Prohibited consumption. The consumption of cannabis items through smoking, vaping, aerosolizing or other means (e.g. edibles) is prohibited within or on the grounds of any licensed cannabis establishments, distributors, or delivery service of any class of license within the Borough of Hightstown.
- (3) Security. All structures shall be designed, using safety and security barriers, to prevent the unlawful and unauthorized entry into the structures as prescribed by State law.
  - (a) There shall be controlled access to the site, with 24/7 on-site video monitoring of the exterior and interior of the facility. Video records shall be retained and stored for the period prescribed by State law, but in no case shall such video be retained and stored for less than 30 days.
  - (b) Any site plans, construction plan, reports and similar documents depicting or describing access and security details information concerning the facility shall be deemed and protected as confidential security documents and exempt from disclosure as public records.
- (4) Emergency power. All licensed cannabis establishments, distributors, or delivery services shall have a backup generator, capable of maintaining, at a minimum, all electronic security systems and odor control systems in the event of a power failure for a period of at least forty-eight (48) hours.
- (5) Enclosed building. All cultivation, manufacturing, storage and distribution activities, as may be permitted within the Borough, shall take place within an enclosed building. Any facility that is not the sole occupant of its building shall have no internal doorways, windows, or utility chases in common with other spaces in the building and shall have a separate HVAC system (which incorporates odor control) solely for the cannabis business.
- (6) Pollen and seed control. Any cannabis business shall implement measures to prevent cross-pollination and to prevent cannabis pollen and seeds from leaving the premises, which may include, but not limited to, use of pollen screens, ultraviolet light and other methods to ensure that employees, customers, vendors and other persons on site do not leave the premises while carrying any cannabis pollen or seeds knowingly or unknowingly.
- (7) Fencing. All fencing or walls installed for security purposes shall be at least six (6) feet in height. Such security structure may be extended in height as approved on a site plan by the Planning Board.
- (8) Site management. Any cannabis business shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations. No cannabis business shall dispose of cannabis or cannabis products

unless they have been made unusable and unrecognizable.

- (9) Noise. All cannabis business facilities shall operate in compliance with state, county, and local noise laws and regulations, except in emergency situations requiring the use of a backup generator.
  - (10) Odor. All cannabis business facilities shall utilize available technology to filter and recirculate air, so that odors are not discernable by a reasonable person beyond the property line. Such determination shall be supported by such exhibits, submissions and expert testimony in a development application before the Planning Board for site plan approval to which the approving authority may attach reasonable conditions. The Planning Board may engage such experts as needed to evaluate the submissions made by the applicant in accordance with the procedures set forth in N.J.S.A. 40:55D-1, *et seq.*
  - (11) Site Plan and other necessary land use approvals. All applicants for a license to operate a cannabis business within the Borough shall be required to apply for and obtain site plan approval and any other necessary land use approvals from the Planning Board.
  - (12) Host community benefits agreement. Following the receipt of all necessary approvals, any applicant for a license to operate a cannabis business within the Borough shall be required to enter into a host community benefits agreement with the Borough to (i) address on- or off-site impacts reasonably anticipated because of the nature of the business and/or the property on which such business is proposed to be located as a condition of local land use approval, and/or (ii) memorialize an applicant's commitment to the Borough.
  - (13) Sales Restricted to Persons Over Age 21. No sales of cannabis items shall be permitted to persons who are under the age of twenty-one (21) years.
- G. Application for Local License. Persons wishing to obtain any permitted classification of cannabis license within the Borough shall file a license application with the Borough Clerk, on a standardized form established by the Borough and available in the Borough Clerk's office or other suitable locations as determined by the Borough. An application shall be deemed incomplete, and shall not be processed by the Borough, until all documents and application fees are submitted. To be deemed complete, all applications shall be submitted to the Borough Clerk's Office and shall be accompanied by the items referenced below. The following regulations shall apply:
- (1) The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, which proof may consist of: a deed, a lease, a real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises to the entrant contingent upon successful licensing.
  - (2) The applicant shall submit an affidavit and documentary proof of compliance with all State and local laws regarding affirmative action, anti-discrimination and fair employment practices. The applicant shall also certify under oath that they will not and shall not discriminate based on race, color, religion (creed), gender, gender expression, age, national

origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

- (3) The applicant shall submit all required nonrefundable fees for the application and conditional license in accordance with the BOROUGH OF HIGHTSTOWN CANNABIS LICENSE AND FEE SCHEDULE.
- (4) The applicant and the application shall otherwise comply with any and all qualification standards set forth in the State and Borough laws or regulations.
- (5) Completed applications shall include a business plan outlining the proposed operations of the cannabis business.
- (6) All applications shall be evaluated by the Hightstown Cannabis Committee. The Committee shall consist of the Borough Administrator and the Chief of Police, or their respective designees, and another Borough employee or non-Governing Body official to be designated by the Borough Administrator. The Committee shall evaluate all applications and issue to the Borough Council a recommendation as to the issuance of a resolution of support, a resolution of support with conditions or a rejection of the application. The recommendation shall be made after consideration and evaluation of the following criteria:
  - (a) The applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including cannabis, healthcare, pharmaceutical manufacturing, or retail pharmacies, with preference to experience operating such businesses within the State of New Jersey and where the value of the owners' experience shall outweigh the experience of non-owner principals.
  - (b) The applicant's qualifications and experience related to public safety and security, including any of the applicant's owners' or principals' experience in securing controlled substances or valuable items. Applicant shall submit a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management as well as training plans.
  - (c) The status of the applicant's control over the premises at the proposed location, and specifically whether the applicant owns or has executed an agreement to lease or purchase the site.
  - (d) The extent of the applicant's ties to the community as measured by residency in Hightstown by employees, managers and/or shareholders, historical operation of a local business, historical ties to Hightstown or area civic organizations and/or charities.
  - (e) Any other information that the applicant may wish to highlight and bring to the Borough's attention regarding the proposed cannabis business operation and/or the owners, principals or employees of the business.
- (7) The Borough Council shall act on the recommendations made by the Hightstown Cannabis

Committee within 45 days of the committee issuing its recommendations to issue a resolution of support, resolution of support with conditions, or to not issue a resolution of support of a municipal cannabis license under the terms of paragraph H hereinbelow. The Borough Council shall not issue resolutions of support in excess of the number of local cannabis licenses permitted in accordance with the BOROUGH OF HIGHTSTOWN CANNABIS LICENSE AND FEE SCHEDULE. The Borough Administrator shall engage with an applicant granted a resolution of support or a resolution of support with conditions for a host community benefits agreement which must be approved by the Borough Council.

- (8) Notwithstanding the foregoing competitive application process, a notification of a resolution of support shall entitle the recipient applicant to pursue a State license in the appropriate cannabis class for up to eighteen (18) months, which may be extended at the Borough Council's discretion for up to two (2) additional periods of six (6) months each for good cause. No license to operate shall issue until the applicant has received a State annual license and satisfied other prerequisites of municipal licensure. If the recipient of a resolution of support has not received a State license within eighteen (18) months from issuance, unless extended for good cause, the Borough Administrator shall issue a new request for applications and evaluate all applicants for licensure under the above criteria.

#### H. Terms of local cannabis license and cannabis license renewals:

- (1) Before the occupancy of a building or buildings where the local cannabis license will be used to operate the cannabis business, the license holder shall obtain site plan approval, along with any and all other land use approvals deemed necessary, from the Hightstown Planning Board, along with any additional outside governmental agency approval(s) which may be necessary.
- (2) Any local license issued pursuant to this article shall be valid for a period of one (1) year from the date of issuance and shall be renewed in accordance with the provisions of this article.
- (3) The Borough Administrator may, at the official's discretion, adjust the renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.
- (4) Renewal of any license shall be governed by any code amendments, additional restrictions or changes in regulations adopted since the previous license was issued or renewed.
- (5) Transfer of ownership of any local license or change of location of any license or modification to expand a licensed premise shall be subject to joint Borough Council and Planning Board review and approval as well as a new license application.
- (6) Except where the Borough Clerk has received a complete renewal application along with the requisite fees, and the Borough has issued a license renewal, it shall be unlawful for any person to manufacture, sell, distribute, transfer, transport, or otherwise remove cannabis or cannabis products from the premises of any licensee after the expiration date recorded on the face of the license, except for the closure of the business.



#### **§ 4-13-5. Enforcement and Penalties.**

- A. This ordinance shall be enforced by the Code Enforcement Officer and/or their designee.
- B. Jurisdiction. Violations of this ordinance shall be adjudicated in the Hightstown Municipal Court. This ordinance shall not affect the judicial proceedings of any other aspect of cannabis use in the Borough of Hightstown.
- C. Penalties. Convictions shall result in the following penalties:
  - (1) First offense and subsequent offenses: A mandatory fine shall be imposed in an amount not to exceed \$2,000.00 per day per violation. In addition to the mandatory fine, the following penalties may be imposed in the discretion of the Municipal Court Judge:
    - (a) Imprisonment in the Mercer County Jail for any term not exceeding 90 days; or
    - (b) Imposition of a period of community service for a period not exceeding 90 days.
  - (2) Each and every day of the violation shall be construed as a single and separate offense.
  - (3) Summary suspension. Notwithstanding the foregoing, when the Borough Administrator has been notified of a third conviction by a licensee or has reasonable grounds to believe that a licensee has engaged in deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and/or general welfare has been jeopardized and requires immediate action, or in circumstances where the licensee has failed to reimburse the municipality for outside third party financial consultant fees in a timely manner as set forth in § 31-1.5a of the Borough Code, the Borough Administrator, in consultation with the Hightstown Cannabis Committee, may enter a summary suspension order which immediately suspends the licensee's license to operate and schedule a hearing as follows:
    - (a) The summary suspension order shall be in writing, shall state the reasons therefor, and shall schedule a hearing not less than ten (10) nor more than thirty (30) days from the date of the order. The order shall be served upon the licensee immediately.
    - (b) The Borough Administrator shall convene the Hightstown Cannabis Committee to conduct the hearing. The licensee shall be permitted to appear at the hearing, along with counsel, if so desired. The licensee must notify the Borough Administrator at least five (5) days prior to the hearing if the licensee plans to bring counsel to the hearing. At the conclusion of the hearing, the Hightstown Cannabis Committee may lift the suspension order and reinstate the license in cases where the licensee has taken sufficient immediate actions to rectify the violation(s) which were the cause of the summary suspension order. Alternatively, the Hightstown Cannabis Committee may impose any fines, conditions, restrictions, suspensions, revocations or combination thereof as warranted.
    - (c) Inactive licenses. Following the commencement of operations by a cannabis business,

the Borough Council may suspend or revoke any license if the licensed premises has been inactive or unoccupied by the licensee for at least six (6) months.

- (4) State license. The Borough Council may suspend or revoke any locally-issued license if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked.

**Section 2.** Section 28-3-14, entitled “H-C Highway Commercial District,” of Article 28-3, “Districts Established; Zoning Map,” of Chapter 28, “Zoning,” of the “Revised General Ordinances of the Borough of Hightstown,” is hereby amended and supplemented as follows (additions are shown with underline):

**§ 28-3-14, H-C Highway Commercial District.**

- A. Permitted Uses. In the H-C Highway Commercial District, the following uses, and no others, shall be permitted:

(1) Principal Uses. [Unchanged]

(2) Accessory Uses and Structures.

(a) Off-street parking and loading facilities.

(b) Private garages and storage buildings.

(c) Fences, walls and landscaping.

(d) Amusement machines: as permitted in the DTC Downtown Core District.

(e) Satellite dishes, subject to the restrictions and requirements set forth in § 28-10-19.

(f) Signs in accordance with Chapter 29.

(g) Accessory uses and structures customarily incidental and on the same lot as a principal or conditional use.

(3) Conditional Uses. The following uses shall be permitted when authorized as a conditional use by the Planning Board when meeting their associated criteria:

(a) Cannabis Cultivation, Manufacturing, Wholesaling or Distribution, subject to the following criteria:

[1] Such use or uses shall be located on a tract of land comprising at least ten (10) contiguous acres. The vertically integrated operation of Cannabis Cultivation and Cannabis Manufacturing shall be permitted on the same tract of land.

[2] Such use shall operate fully within an enclosed building.

[3] Excepting emergency egress doors, each entrance and exit, including loading docks doors, shall be designed to prevent interior air from escaping out of doors unless properly treated as required under §4-13-4F10 through air locks, negative pressurization or other means of preventing untreated air from exiting the building.

[4] All criteria set forth in the licensing regulations at §4-13-4F shall apply.

(b) Notwithstanding § 4-13-4D, and subject to approval of the State Cannabis Regulatory Commission, nothing herein shall prohibit multiple licensees within each permitted class from operating simultaneously on the same tract of land, provided that each licensee otherwise satisfies the conditional use criterion herein and any requirements of the State with respect to the co-location of cannabis businesses on the same tract of land or within the same building.

B. Other Restrictions. *[Editor's Note: For brevity, the language of the existing Code is not recited hereafter, as all existing language and subsections which are currently in effect under §28-3-14B are not being revised as part of the within Ordinance and shall remain unchanged.]*

**Section 3.** Article 28-12, entitled "Cannabis," of Chapter 28, "Zoning," of the "Revised General Ordinances of the Borough of Hightstown" is hereby REPEALED in its entirety.

**Section 4.** There is hereby created Chapter 31, entitled "Taxation of Cannabis Sales," of the "Revised General Ordinances of the Borough of Hightstown," which shall read as follows:

### **Chapter 31. Taxation of Cannabis Sales**

#### **§ 31-1-1. Title.**

This chapter shall be known as the "Taxation of Cannabis Sales."

#### **§ 31-1-2. State Enablement.**

A. Legislation. 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.

B. The Act establishes six marketplace classes of licensed businesses, including:

(1) Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;

(2) Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing,

preparation, and packaging of cannabis items;

- (3) Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
  - (4) 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;
  - (5) Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
  - (6) 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.
- C. 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 a Vertically Integrated Cannabis Business is defined as any Cannabis Business that holds more than one Cannabis License.
- D. 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 twenty-one (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 manufacture; 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.
- E. Section 40a(2) of the Act requires a municipality enacting a Transfer Tax to also enact a User Tax.

### **§ 31-1-3. Definitions.**

#### **CANNABIS**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

#### **CANNABIS CULTIVATOR**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CANNABIS ESTABLISHMENT**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CANNABIS ITEMS**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CANNABIS MANUFACTURER**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CANNABIS RETAILER**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CANNABIS WHOLESALER**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**CONSUMER**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**PREMISES**

Shall mean the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

**TAXPAYER BUSINESS**

Shall mean for the purposes of this Chapter any cannabis business defined in this sub-section.

All other terms as defined in the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” also referenced herein as the “Act” or “P.L. 2021, c. 16,” are hereby incorporated herein by reference and shall have the meanings set forth in the Act, as may be amended or superseded.

**§ 31-1-4. Establishment of Transfer and User Taxes.****A. Transfer Tax.**

- (1) There is hereby imposed a transfer tax in the amount of two percent (2%) on receipts from the sale of cannabis as follows:
  - (a) From the sale of cannabis by a cannabis cultivator to another cannabis establishment;  
and
  - (b) From the sale of cannabis items from one cannabis manufacturer to another cannabis establishment.
  - (c) From the sale of cannabis items from a cannabis retailer to the consumer, if retail cannabis sales become permitted in Hightstown Borough.
- (2) There is hereby imposed a transfer tax in the amount of one percent (1%) on receipts of the

sale of cannabis as follows:

- (a) From the sale of cannabis items from one cannabis wholesaler to another cannabis establishment.
- B. Collection of Transfer Tax. 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.
- C. User Tax. There shall also be 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.24:6 -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 paragraphs A and B 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. 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.
- D. 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 paid by the cannabis establishment purchasing or receiving any cannabis or cannabis item from any cannabis cultivator or cannabis manufacturer or cannabis wholesaler licensed by the municipality, and shall be collected and remitted to the municipality by the cannabis establishment licensed by the municipality. 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.
- E. 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 financial officer of the Borough of Hightstown 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.

**§ 31-1-5. Administration of Transfer and User Taxes.**

- A. Unless otherwise determined by the Borough Council, the chief financial officer of Hightstown 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 statements, 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. The Borough Council may determine at any time, in its sole discretion, to retain an outside third party financial consultant (the “outside consultant”) to exercise all of duties and responsibilities of the chief financial officer as set forth above, with the exception of the power of enforcement, levying of fines and penalties and entering into agreements with the State of New Jersey. In the event that the Borough Council retains such an outside consultant, the fee schedule for the outside consultant shall be presented, for informational purposes only, to the cannabis business before such audit and other work is undertaken. The cannabis business shall be responsible for reimbursement to the Borough of the fees incurred by the Borough to the outside consultant for services rendered in its examination of the business’s accounts for the determination of tax to be paid. A copy of the invoice shall be sent to the cannabis business by the municipality after the municipality is billed for the outside consultant’s work. The cannabis business shall reimburse the municipality for the outside consultant’s fees and expenses within sixty (60) days thereafter. Failure to timely reimburse the municipality shall invoke §4-13-5 of the Borough Code. Should a cannabis business fail or refuse to provide adequate information to the chief financial officer or the outside consultant to determine the amount of tax due, the chief financial officer or the outside consultant may use information provided from other sources (i.e., the NJ Cannabis Regulatory Commission or NJ Department of Treasury) to determine the amount of tax liability, and the licensee shall be subject to the penalties set forth in §4-13-5 of the Borough Code.
- B. It shall be the duty of the chief financial officer or the outside consultant, as applicable, to collect and receive the taxes, fines, and penalties imposed by this chapter. It shall also be the duty of the chief financial officer or the outside consultant, as applicable, 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 taxes. The chief financial officer is authorized to issue a ruling upon written request of a taxpayer or upon his or her own volition.

- C. The chief financial officer or the outside consultant, as applicable, is hereby authorized to examine the books, papers and records of any taxpayer to verify the accuracy of any declaration or financial statement, or if no declaration or financial statement was filed, to ascertain the tax due. Every taxpayer is hereby directed and required to give to the chief financial officer, or to the outside consultant, as applicable, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized or otherwise permitted by law.
- D. In the event that the transfer tax or user tax imposed pursuant to this ordinance is not paid 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 or outside consultant, as applicable, 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.
- F. Returns and records filed by a licensee, and the records and files of the chief financial officer or the outside consultant, as applicable, respecting the administration of the Transfer and User Tax, shall be considered confidential and privileged and neither the chief financial officer nor any employee or outside consultant 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 returns, records or files or from any examination or inspection of the premises or property of any person, or to an officer of a public entity for a reason authorized by N.J.S.A. 54:50-9. Neither the chief financial officer nor any employee or outside consultant engaged in such administration or charged with the custody of any such returns, 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 to collect or challenge the assessment of Transfer or User Taxes hereunder, or where the determination of the action or proceeding will affect the validity or amount of the claim of the Borough hereunder, or in any lawful proceeding for the investigation and prosecution of any violation of this Article 31 or of the criminal provisions of the State Uniform Tax Procedure Law or of any State tax law, or where production is required



pursuant to the New Jersey Open Public Records Act (N.J.S.A. 47:1A-1, et seq.) or the Common Law, or the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c.16) or other applicable law.

**§ 31-1-6. Recordkeeping, Tax Payments and Financial Statements.**

- A. **Requirement to Keep Records.** Taxpayers liable for the transfer and/or user tax are required to keep such records as will enable the filing of true and accurate financial statements of 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 financial statements filed. If records are not available in the Borough of Hightstown to support the financial statements 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.
- B. **Tax Payments and Financial Statements.** All cannabis establishments operating in the Borough of Hightstown shall be required to file a transfer and/or user tax statement 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. Financial statements 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 financial statement with the chief financial officer for a refund or a credit of the tax.

**Section 5. Repealer.** Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Hightstown, inconsistent with the provisions of this ordinance, is hereby repealed to the extent of such inconsistency, only.

**Section 6. 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 7. Enactment.** This ordinance shall become effective immediately after publication in the manner provided by law.

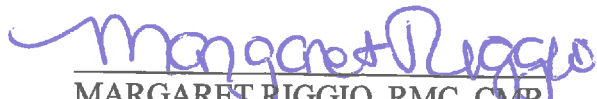
**Section 8. Continuation and codification.** This ordinance shall be a part of the “Revised General Ordinances of the Borough of Hightstown,” as through codified and fully set forth herein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and Borough Attorney are authorized and directed to change any chapter, article and/or section number of the “Revised General Ordinances of the Borough of Hightstown,” 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.

Introduction: December 4, 2023

Adoption: December 18, 2023

ATTEST:

  
MARGARET RIGGIO, RMC, CMR  
MUNICIPAL CLERK

  
SUSAN BLUTH  
MAYOR