

ORDINANCE NO. 23-5

AN ORDINANCE BY THE BOROUGH OF CARLSTADT, BERGEN COUNTY, NEW JERSEY REPEALING ORDINANCE NO. 21-9 AND AMENDING ARTICLE XXI ZONING, CHAPTER 21-21, SPECIAL REGULATIONS, SECTION 21-21.13, MARIJUANA (CANNABIS) PROHIBITED, OF THE CODE OF THE BOROUGH OF CARLSTADT

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 twenty-one (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 twenty-one (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 (6) 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 Distributor license, for businesses involved in transporting cannabis plants in bulk from one 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; and

WHEREAS, Section 31(a) of the Act authorizes municipalities by ordinance to adopt regulations governing the number of Cannabis Establishment, Cannabis Distributors or Cannabis Delivery Services, 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, the Mayor and Borough Council have determined that it is appropriate to permit a limited number of Class 1, 2, 3, 4 & 5 licenses 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, on August 18, 2021, the Borough Council adopted Ordinance 21-9 prohibiting the operation of any class of cannabis businesses within the Borough and amending Section 21-21.13 of the Borough of Carlstadt Municipal Code; and

WHEREAS, the Borough council finds and declares that it is in the best interest of the Borough and its residents to amend Section 21-21.13 to permit a limited number of Class 1, 2, 3, 4 & 5 licensed businesses to operate in Carlstadt.

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Carlstadt, Bergen County, New Jersey, as follows:

SECTION 1. Chapter 21, section 21.13 entitled Marijuana (Cannabis) Prohibited of the Borough Code is hereby amended and supplemented as shown below by addition (underline) and deletion (strikethrough) as follows:

21-21.13 ~~Marijuana (Cannabis) Prohibited~~ Cannabis.

a. ~~The cultivation, manufacture, warehousing, distribution and sale of marijuana (Cannabis) and/or the paraphernalia that facilitates the use of such marijuana (Cannabis) for recreational use is prohibited in all zones established in the Borough as set forth in § 21-4 of this chapter entitled "Establishment of Zones." All classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service to the extent that such deliveries are otherwise permitted by law. [Amended 8-18-2021 by Ord. No. 21-9]~~

a. Definitions.

MARIJUANA (CANNABIS)

~~All parts of the plant Cannabis sativa Linneaus, Cannabis indica or Cannabis ruderalis, whether growing or not; the seeds thereof, the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Cannabis also means the separate resin, whether crude or purified, obtained from cannabis. Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture salt derivative mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, Cannabis does not mean industrial hemp.~~

"Cannabis" means all parts of the plant Cannabis sativa, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with N.J.S.A. 24: 61-31, et. seq.

for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product.

“Cannabis Cultivator” means any State-regulated person or entity that grows, cultivates or produces cannabis in this State, and sells, and may transport, such cannabis to other Cannabis Cultivators, or usable cannabis to Cannabis Manufacturers, Cannabis Wholesalers or Cannabis Retailers, but not to customers. This person or entity shall hold a Class 1 Cannabis Cultivator license.

“Cannabis Manufacturer” means any State-regulated person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other Cannabis Manufacturers, Cannabis Wholesalers, or Cannabis Retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturer license.

“Cannabis Wholesaler” means any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers. This person or entity shall hold a Class 3 Cannabis Wholesaler license.

“Cannabis Distributor” means any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities. This person or entity shall hold a Class 4 Cannabis Distributor license.

“Cannabis Retailer” means any State-regulated person or entity that purchases or otherwise obtains usable cannabis from Cannabis Cultivators and cannabis items from Cannabis Manufacturers or Cannabis Wholesalers, and sells these to consumers from a retail store, and may use a Cannabis Delivery Service or a certified cannabis handlers for the off-premises delivery of cannabis items and related supplies to consumers. A Cannabis Retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a Cannabis Delivery service which will be delivered by the Cannabis Delivery Service to that consumer. This person or entity shall hold a Class 5 Cannabis Retailer license.

“Cannabis Delivery Service” means any State-regulated person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a Cannabis Retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the Cannabis Delivery Service, which after presenting the purchase order to the Cannabis Retailer for fulfillment, is delivered to that consumer. This person or entity shall hold a Class 6 Cannabis Delivery License.

“Microbusiness” means a person or entity licensed by the Cannabis Regulatory Commission as a cannabis grower, cultivator, cannabis processor, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service that may only, with respect to its business operations, and capacity and quantity of product: (1) employ no more than 10 employees;

operate a cannabis establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis grower or cultivator, grow cannabis on an area no more than 2,500 square feet measured on a horizontal plane and grow above that plane not higher than 24 feet; (3) possess no more than 1,000 cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation shall not be subject to this limit; (4) acquire and process each month, in the case of a cannabis processor or manufacturer, no more than 1,000 pounds of usable cannabis in dried form; (5) acquire for resale each month, in the case of a cannabis wholesaler, no more than 1,000 pounds of usable cannabis in dried form, or the equivalent amount in any other form of manufactured cannabis product or cannabis resin, or any combination thereof; and (6) acquire for retail sale each month, in the case of a cannabis retailer, no more than 1,000 pounds of usable cannabis in dried form, or the equivalent amount in any other form of manufactured cannabis product or cannabis resin, or any combination thereof.

Unless specifically defined otherwise herein, any term used herein shall incorporate the definition of that term in the Act.

b. Cannabis Advisory Committee.

A Borough Cannabis Advisory Committee (CAC or Committee) as appointed below will act as the body for local review for the Borough for all cannabis establishments but the authority and responsibility to adopt a resolution of support remains with the Borough Council. Under all circumstances in which State law requires communication to the Borough by the Cannabis Regulatory Commission or any other State agency with regard to the licensing of cannabis establishments by the State, or in which State law requires any review or approval by the Borough of any action taken by the State licensing authority, the exclusive authority for receiving such communications shall be communicated through the Borough Administrator's Office upon recommendation by the Borough's Cannabis Advisory Committee and authorized by the Borough's Governing Body.

A. Members of said CAC shall include the following individuals:

- (1) The Borough Administrator
- (2) The Chief of Police
- (3) The Borough Attorney
- (4) The Borough Economic Development Coordinator

B. To the extent necessary and in their sole discretion, the Committee shall be supported by other legal and planning professionals. The Committee may request additional resources as necessary to effectuate the responsibilities of the Committee. The applicants shall deposit and fund an escrow in the amount of \$5,000.00 for the costs of said professionals. If the Borough must hire one or more consultants to evaluate a first-time or renewal application for a license, the applicant will be responsible for the review fees of the Borough's hired consultant(s). To the extent that the escrow is exhausted, the applicant shall provide any replenishment amount required by the Committee within ten (10) days of a replenishment request by the Committee.

C. Duties of the Committee will be to advise the Borough Governing Body as to the issuance of a Resolution of Support and local cannabis license within the Borough. The committee's work shall be made consistent with the criteria outlined in this Chapter but has discretion to deviate from same.

c. Local Licensing Application.

Persons wishing to obtain any permitted classification of cannabis license within the Borough shall file a license application with the Borough Administrator, on a standardized form established by the Borough Administrator and available in the Borough Administrator's office or other suitable locations as determined by the official. The Borough Administrator shall establish a reasonable application period and deadline for all applications. An application shall be deemed incomplete, and shall not be processed by the Borough Administrator, until all documents and application fees are submitted. To be deemed complete, all applications shall be submitted to the Borough Administrator's Office and shall be accompanied by the items referenced below:

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 the following: a deed, a lease, a real estate contract contingent upon successful licensing, or a binding letter of intent from the owner of the premises indicating an intent to lease the premises to the applicant contingent upon approval of required licenses.

2. Completed applications shall include a business plan outlining the proposed operations of the cannabis business.

3. 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.

4. A letter from the appropriate zoning official indicating that the location proposed for licensing by the applicant complies with all applicable Borough zoning laws and the location restrictions set forth herein.

5. The applicant shall submit a nonrefundable application fee in the amount of \$10,000.00. The microbusiness applicant shall submit a nonrefundable application fee in the amount of \$5,000.00. The amount of the non-refundable application fee may be modified from time to time by a subsequent duly adopted resolution of the Borough Council.

6. Every applicant shall specify the location where the cannabis facility will operate. A separate application shall be required for each location at which a cannabis facility operates. The Borough shall permit the co-location of cannabis businesses at the same location subject to State statute and regulations. Such co-location shall constitute one (1) license for the calculation of limitation on the number of licenses only. All other requirements and fees apply.

7. An application shall be deemed incomplete and shall not be processed by the Borough Administrator until all documents and application fees are submitted. The applicant shall submit any other additional information requested by the Borough in its evaluation of their application. The applicant may be required to appear for a meeting with the Cannabis Advisory Committee.

- a. The Borough Administrator, after consulting with the Committee, may deny any application that is lacking any required element or exhibit.
- b. The Borough Administrator, after consulting with the Committee, may deny any application due to an applicant's non-responsiveness to the Borough's request for additional information.

8. The applicant and the application shall otherwise comply with any and all qualification standards set forth in the State and Borough laws or regulations.

d. Application Evaluation Criteria.

1. All applications shall be evaluated by the Cannabis Advisory Committee, who shall evaluate all applications and issue to the Borough Council a recommendation as to the issuance of a resolution of support, or a denial to recommend an application for a resolution of support. The Cannabis Advisory Committee may recommend or refuse to recommend an application at its sole discretion based on an evaluation of the benefits compared to the potential harm of the prospective licensee's operation of a cannabis facility as proposed in the prospective licensee's application. The Cannabis Advisory Committee pursuant to this subsection shall prepare a memorandum addressed to the Mayor and Council recommending whether to grant or deny each completed application.

The recommendation or refusal to recommend shall be made after consideration and evaluation of the following guiding criteria:

(a) The applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including but not limited to, cannabis with preference to experience operating such businesses within the State of New Jersey.

(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 or a binding letter of intent.

(d) The extent of the applicant's ties to the community as measured by residency in Carlstadt by employees, managers and/or shareholders, historical operation of a local business, historical ties to Carlstadt 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.

e. Timelines.

1. The Borough Council shall act on the recommendations made by the Cannabis Advisory Committee within 45 days of the committee issuing its memorandum addressed to the Mayor and Council. The Borough Council shall not issue resolutions of support in excess of the number of local cannabis licenses permitted.

2. The Borough Administrator, in consultation with the Committee, shall engage with an applicant granted a resolution of support for a "Host Community Agreement" which must be approved by the Borough Council establishing the applicant's willing commitment to the community, and in particular the surrounding neighborhoods, and its support for, by example, local cannabis education programs, local employment and jobs training, enhanced neighborhood security, public safety programs, the Special Improvement District (SID), social services and welfare programs, or other mutually beneficial community investments.

3. Notwithstanding the foregoing 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 twelve (12) months, which may be extended at the Borough Council's discretion for an additional six (6) months 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 twelve (12) months from issuance of a resolution of support, unless extended for good cause, such license(s) shall be deemed to be null and void and any fees associated with such license(s) shall be forfeited. The Borough Administrator shall thereafter issue a new request for applications and evaluate all applicants for licensure under the above criteria.

f. Inspections.

Subject to the requirements and limitations of state law, the municipality shall have the reasonable right to inspect the premises of any approved cannabis establishment during its regular hours of operation to ensure compliance with local ordinances and regulations. It shall be unlawful for any cannabis business to refuse to allow such inspection or to hinder such an inspection.

g. Term of License and License Renewals; Annual License Fee.

A. Any local cannabis license issued pursuant to this Chapter shall be valid for a period of one year, beginning on January 1 in each year. At the time of licensure, the applicant shall pay an annual \$10,000.00 license fee. The microbusiness applicant shall pay an annual fee in the amount of \$5,000. The amount of the fee may be modified from time to time by a subsequent duly adopted resolution of the Borough Council.

B. The Borough Administrator may, at his/her discretion, adjust the annual renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.

C. Upon renewal of a license, the licensee shall be governed by any amendments, additional restrictions, or changes in requirements adopted since the previous license was issued or renewed.

D. Change of location of any license, or modification to expand a licensed premises shall be treated as a new application, subject to Cannabis Advisory Committee and Municipal Land use review and approval.

E. Any local cannabis license issued pursuant to this Chapter is nontransferable and shall automatically expire upon transfer.

F. Except where the Borough has received a complete renewal application along with the requisite fees and 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.

h. Permitted licensees; limitation on the number of licenses.

A. A maximum of 5 Class 1 Cannabis Cultivator licenses shall be permitted to operate in the Borough.

B. A maximum of 5 Class 2 Cannabis Manufacturer licenses shall be permitted to operate in the Borough.

C. A maximum of 5 Class 3 Cannabis Wholesalers licenses shall be permitted to operate in the Borough.

D. A maximum of 5 Class 4 Cannabis Distributer licenses shall be permitted to operate in the Borough.

E. A maximum of 4 Class 5 Cannabis Retailer licenses shall be permitted to operate in the Borough.

F. A maximum of one Microbusiness license in total shall be permitted to operate in the Borough.

G. Pursuant to Section 31(b) of the Act, all other classes of licensed cannabis businesses not expressly permitted herein, including Class 6 Cannabis Delivery licenses, are hereby prohibited from operating anywhere in the Borough, except for the delivery of cannabis items and related supplies by a delivery service from another municipality.

i. Security and Reporting.

A. There shall be at least two employees on continuous duty in any part of a Cannabis Establishment to which the public is invited.

B. The premises shall have in operation a security device approved by the Chief of Police of the Borough which may consist of a silent and/or audible burglar alarm connected to a central security monitoring system designed to activate police response, a closed circuit television connected to a central security monitoring system designed to activate police response, or such other device which can be activated instantaneously to notify law enforcement officers that a crime or disorderly person's activity is in progress.

C. The Borough Police Department shall be provided with the name and phone number of a contact person to notify about suspicious activity during or after operating hours. Security staff is required on the premises during all hours of operation.

D. A burglarproof drop safe that regulates an employee's access to cash shall be used on the premises of a cannabis retailer.

E. The exterior portion of a Cannabis Establishment, including parking areas, shall be well lit during business hours. Said lighting shall be designed so as to not unduly interfere with any neighbor's reasonable use and/or enjoyment of the property.

F. Security protocols shall be submitted to the Borough Police Department for compliance review with all safety and security standards established by the State of New Jersey for Cannabis Establishments. The Borough Police Department may, at their discretion and upon review of the proposed location, recommend additional safety and security measures which shall be submitted to the Committee for its consideration.

j. Cannabis Tax

Purpose.

It is the purpose of this article to implement the provisions of P.L. 2021, c. 16, which authorizes the governing body of a municipality to adopt an ordinance imposing a tax at a uniform percentage rate not to exceed two percent (2%) of the receipts from each sale by a cannabis cultivator; two percent (2%) of the receipts from each sale by a cannabis manufacturer; one percent (1%) of the receipts from each sale by a cannabis wholesaler; and two percent (2%) of the receipts from each sale by a cannabis retailer, which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the cannabis establishment.

Unless otherwise defined herein, the Borough adopts by reference the terms and definitions established by Section 40 of Public Law 2021-16 (N.J.S.A. 24:61-33).

1. Tax Established.

A. There is hereby established a local cannabis transfer tax in the Borough which shall be fixed at a uniform percentage rate of two percent (2%) of the receipts from each sale by a cannabis cultivator; two percent (2%) of the receipts from each sale by a cannabis manufacturer; one percent (1%) of the receipts from each sale by a cannabis wholesaler; and two percent (2%) of the receipts from each sale by a cannabis retailer for every occupancy of a cannabis establishment in the Borough.

B. In addition to the tax established in paragraph A of this section, a user tax, at the equivalent transfer tax rates, is hereby established on any concurrent license holder, as permitted by section 33 of P.L.2021, c.16 (C.24:61-46), 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 A of this subsection, from the license holder's establishment that is located in Borough to any of the other license holder's establishments, whether located in this Borough 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.

C. 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.)

2. Tax in addition to other taxes or fees.

The cannabis transfer tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon property or cannabis establishment.

3. Collection.

A. The transfer tax or user tax imposed by this article shall be collected or paid, and remitted to the Borough 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 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.

B. Every cannabis establishment required to collect a transfer tax or user tax imposed by ordinance pursuant to this section shall be personally liable for the transfer tax or user tax imposed, collected, or required to be collected under this section. Any cannabis establishment shall have the same right with respect to collecting the transfer tax 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 shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

C. No cannabis establishment required to collect a transfer tax or user tax imposed by this section 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.

D. All revenues collected from a transfer tax or user tax imposed by ordinance pursuant to this section shall be remitted to the Borough's Chief Financial Officer on a quarterly basis payable for the prior three month's activities and due at the same time as quarterly dates for the collection of property taxes. The revenues due on February 1 of each year shall include all transfer taxes or user taxes collected for the prior year months of October, November and December. The revenues due on May 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of January, February and March. The revenues due on August 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of April, May and June. The revenues due on November 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of July, August and September.

4. Payment; vendor violations and penalties.

A. The Chief Financial Officer shall collect and administer any transfer tax or user tax imposed to this section.

B. The municipality shall enforce the payment of delinquent taxes or transfer fees imposed pursuant to this section in the same manner as provided for municipal real property taxes.

C. In the event that the transfer tax or user tax imposed by this section is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year.

D. A 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.

5. Chief Financial Officer's Authority

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.

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.

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. The chief financial officer can require an audit by a third-party municipal auditor at the taxpayer's expense.

6. Cannabis Taxpayer's Obligations

Taxpayers liable for the transfer 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.

All Cannabis Establishments operating in the municipality are required to file a transfer tax return with the chief financial officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this chapter. Returns shall be filed, and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A 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.

The returns filed by taxpayers, and the records and files of the chief financial officer respecting the administration of the transfer tax, shall be considered confidential and privileged and neither the 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.

7. Audit of Cannabis Taxpayer and Assessment

The chief financial officer may initiate an audit at the taxpayers' expense by means of an audit notice. If, because of an examination conducted by the chief financial officer, a return has not been filed by a taxpayer or a return is found to be incorrect and transfer taxes are owed, the chief financial officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a 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.

8. Lawsuits for Collection of Taxes

The following periods of limitations shall apply to suits for collection of taxes: (i) 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; (ii) Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes; and (iii) 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.

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 a refund of such monies must be filed in accordance with this Section.

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. Stat. Ann. § 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.

k. Compliance with Law.

A Cannabis Establishment shall comply with all applicable state and local laws and regulations.

l. Denial, Revocation or Suspension of License. Appeal Process.

A. The Borough Administrator, in consultation with the Committee, shall suspend or revoke any license if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked.

B. Where it is found that a licensee has engaged in a 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 emergency action, the Borough Administrator, after consulting with the Committee, is authorized and empowered to immediately suspend any license or permit issued pursuant to this Chapter and order that the licensee cease all operations until such time as the violations are abated.

C. Any person aggrieved by the action of the Cannabis Advisory Committee in the denial of a recommendation, any person aggrieved by the action of the Borough Administrator in the denial of a local license or the decision with reference to the revocation or suspension of a license in accordance with this Chapter, shall have the right of appeal to the Cannabis Advisory Committee. Such appeal shall be taken by filing with the Borough Administrator, within 20 days of the action complained of a written statement setting forth fully the grounds for the appeal. The Cannabis Advisory Committee may decide the matter on the papers or schedule a time and place for a hearing on such appeal. Notice of any such hearing shall be served upon the applicant/licensee (whichever is appropriate) or mailed, postage prepaid, to the applicant/licensee at the address given on the application for license in accordance with this Chapter, at least five days prior to the date set for said hearing. The decision and order of the Cannabis Advisory Committee, on such appeal shall be final and conclusive.

m. Operational requirements.

A cannabis business or facility issued a license by the State of New Jersey and operating in the Borough under this Chapter shall at all times comply with the following operational requirements:

A. A cannabis facility shall comply with all regulatory rules promulgated by the Cannabis Regulatory Commission, laws of the State of New Jersey, laws of Bergen County, and laws or ordinances of the Borough of Carlstadt.

B. A cannabis facility shall comply with the Zoning Code, the Building Code, and the Property Maintenance Code at all times.

C. All operations of cannabis businesses shall occur within a single, or series of, completely enclosed buildings. No outdoor storage shall be permitted

D. A cannabis retail Class 5 dispensary shall not be located within 500 feet of a school or child care facility measured by walking legally from door to door.

E. Prior to the operation of any cannabis facility, a State cannabis license must be obtained from the State of New Jersey and a local cannabis license from the Borough of Carlstadt for the applicable type(s) of cannabis facility. No cannabis facility shall be permitted to operate without state and municipal building permits and licenses.

F. The consumption of any cannabis items shall be prohibited on the cannabis facility's premises.

G. State and municipal licenses shall be prominently displayed inside the permitted premises in a location where it can be easily viewed by law enforcement and administrative authorities.

H. No person under the age of 21 shall be permitted to enter into the Cannabis establishment unless otherwise permitted by State law.

I. Cannabis facilities shall have equipment to mitigate odor. The building shall be equipped with a ventilation system with carbon filters sufficient in type and capacity to mitigate cannabis odors emanating from the interior of the premises.

J. Outside generators and other mechanical equipment used for any kind of power supply, cooling, or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.

K. No cannabis retail Class 5 dispensary may open to customers for business before 8:00 a.m. or remain open to customers for business after 10:00 p.m. This time restriction does not apply to Class 1-4 cannabis establishments.

L. Cannabis plants, products, accessories, and associated paraphernalia shall not be visible from a public sidewalk, public street or right-of-way, or any other public place. On-site storage of usable Cannabis shall comply with applicable State and local laws and regulations.

M. The amount of cannabis on the permitted property and under the control of the permit holder, owner or operator of the facility shall not exceed the amount permitted by the State license.

N. Cannabis offered for sale and distribution must be packaged and labeled in accordance with State law.

O. No pictures, photographs, or drawings of cannabis or cannabis paraphernalia shall appear on the outside of any licensed premises nor be visible outside of the licensed premises on the licensed property.

P. The word "marijuana," and any other words used or intended to convey the presence or availability of marijuana, shall not appear on the outside of the licensed premises nor be visible outside of the licensed premises on the licensed property.

Q. Any signage must first be approved by the Building Department.

R. No person operating or employed by a cannabis facility shall provide or otherwise make available cannabis to any person who is not legally authorized to possess the same under State law.

S. The owner and operator of a cannabis facility shall use lawful methods in controlling and disposing of waste or by-products from any activities allowed under the State license or permit.

T. Cannabis may be transported within the Borough under this Chapter by a company licensed to do so by the State, and to effectuate its purpose, only:

1. In a manner consistent with all applicable state laws and rules, as amended;
2. In a secure manner designed to prevent the loss of the cannabis;
3. Using vehicles that do not have exterior markings, including the words "marijuana," "cannabis," or any similar or slang words; pictures or other renderings of the cannabis plant; advertisements for cannabis or for its sale, transfer, cultivation, delivery, transportation or manufacture; or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting cannabis.

U. No vehicle, trailer, or otherwise moveable structures may be used for the ongoing or continuous storage of cannabis but may only be used incidental to, and in furtherance of, the transportation of cannabis and cannabis products.

n. Limitations on Consumption or Smoking on Premises.

The consumption of cannabis in any form is prohibited in all public spaces within the Borough of Carlstadt.

A. Nothing in this Chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of cannabis on or in that property.

B. Nothing in this Chapter is intended to permit the transfer of cannabis with or without remuneration, to a person under the age of 21.

C. Nothing in this Chapter is intended to allow driving under the influence of cannabis to supersede laws related to driving under the influence of cannabis.

D. Nothing in this Chapter is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of cannabis in the workplace or to affect the ability of employers to have policies restricting the use of cannabis by employees.

o. Violations and penalties.

A. Penalties for any such violations shall be as follows:

1. First offense: up to \$500 per violation per day;
2. Second offense: up to \$1,000 per violation per day;
3. Third offense: summary suspension.

B. A first offense that is not cured within three days shall become a second offense. A second offense that is not cured within three days shall become a third offense.

E. Obligation to Report. Any licensee who has been disciplined for any infraction of the Act must notify the Borough Administrator of any such discipline within 24 hours of such discipline.

p. Public Nuisance Declared.

Operation of any prohibited or unpermitted cannabis business operation within the municipality in violation of the provisions of this Chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

q. Prohibition of Unregulated Sale of Cannabis.

A. No person shall sell cannabis in the Borough of Carlstadt without a state cannabis license and a Borough local cannabis license and shall be abated pursuant to all available remedies.

B. No person shall gift cannabis in the Borough of Carlstadt as part of a sale of another item or items and shall be abated pursuant to all available remedies. Gifting is the knowing circumvention of the state's cannabis laws by "gifting" cannabis in exchange for non-cannabis-related purchases such as overpriced cookies, brownies, jars, stickers and many other items.

SECTION 2. Chapter 21, section 21.13 entitled Marijuana (Cannabis) Prohibited of the Borough Code is hereby amended and supplemented as shown below by addition (underline) and deletion (strikethrough) as follows:

21-21.13b. Class 5 Retail Cannabis Dispensaries. Class 5 Retail Cannabis Dispensaries shall be a conditional use within the Commercial, Light Industrial A, and Light Industrial B Zones, as well as the Commercial Gateway Center District of the Paterson Plank Road Redevelopment Area subject to and permitted only under the following conditions:

1.

The site proposed for such retail cannabis use within the Commercial Zone must be located east of the northbound lanes of Route 17 on Borough of Carlstadt Tax Block 82, Lots 1-7; Block 90, Lots 1 and 1.01; Block 96, 1-8; and Block 108, Lots 1-6

2.

The retail sales component of a site proposed for such retail cannabis use within the Light Industrial A and Light Industrial B Zones must be accessory to the primary permitted use of warehousing and distribution of the cannabis products. Otherwise, the retail cannabis use is considered a Special Exception Use in the LI-A and LI-B Zones.

3.

The number of Class 5 Retail Cannabis Dispensaries shall not exceed four
(4);

4.

A Class 5 Retail Cannabis Dispensary shall not be located within 500 feet of a school or child care facility measured by walking legally from door to door.

5.

The consumption of any cannabis items shall be prohibited on the Class 5 Retail Cannabis Dispensary's premises.

6.

No Class 5 Retail Cannabis Dispensary may open to customers for business before 8:00 a.m. or remain open to customers for business after 10:00 p.m.

7.

No pictures, photographs, or drawings of cannabis or cannabis paraphernalia shall appear on the outside of any Class 5 Retail Cannabis Dispensary premises nor be visible outside of the premises.

8.

Drive through access shall be prohibited in all Cannabis establishments authorized herein.

9.

Any Cannabis establishments authorized herein, if located in a multi-tenant commercial building, shall have a separate entrance where no part of the cannabis establishment shall be directly accessible from any common area within the building.

10.

All Cannabis establishments authorized herein shall provide appropriate landscape buffers at least six feet high at the time of installation, or other equivalent method of buffering, to be installed adjacent to any property line shared with a residential property.

21-21c. Class 1 Cannabis Cultivation. Class 1 Cannabis Cultivation facilities shall be a permitted use within the Light Industrial A and Light Industrial B Zones, as well as the Commercial Gateway Center and Light Industrial Center Zones of the Paterson Plank Road Redevelopment Area subject to pertinent regulations in the Code.

21-21d. Class 2 Cannabis Manufacturing. Class 2 Cannabis Manufacturing facilities shall be a permitted use within the Light Industrial A and Light Industrial B Zones, as well as the Commercial Gateway Center and Light Industrial Center Zones of the Paterson Plank Road Redevelopment Area subject to pertinent regulations in the Code.

21-21e. Class 3 Cannabis Wholesaling. Class 3 Cannabis Wholesaling facilities shall be a permitted use within the Light Industrial A and Light Industrial B Zones, as well as the Commercial Gateway Center and Light Industrial Center Zones of the Paterson Plank Road Redevelopment Area subject to pertinent regulations in the Code.

21-21f. Class 4 Cannabis Distribution. Class 4 Cannabis Distribution facilities shall be a permitted use within the Light Industrial A and Light Industrial B Zones, as well as the Commercial Gateway Center and Light Industrial Center Zones of the Paterson Plank Road Redevelopment Area subject to pertinent regulations in the Code.

Inconsistencies with other Code provisions.

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

Conflict with other provisions.

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.

Effective date.

This ordinance shall take effect upon its passage and publication, and filing with the Bergen County Planning Board, and as otherwise provided for by law.

INTRODUCED: June 21, 2023

PUBLISHED: June 27, 2023

ADOPTED: July 5, 2023

APPROVED: Robert J. Zimmermann
ROBERT J. ZIMMERMANN, MAYOR

ATTEST: Claire Foy
CLAIRE FOY, BOROUGH CLERK

I hereby certify that the foregoing is a true copy adopted by the Borough Council of the Borough of Carlstadt, New Jersey on

July 5, 2023
Claire Foy
Claire Foy, Borough Clerk