

Ordinance

No. 3-2023

AN ORDINANCE OF THE BOROUGH OF WESTVILLE ESTABLISHING A NEW CHAPTER OF THE CODE BOOK OF THE BOROUGH OF WESTVILLE ENTITLED "CANNABIS ESTABLISHMENTS"

WHEREAS, pursuant to N.J. S. A. 40: 48- 2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and unposed by this subtitle, or by any law; and

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

WHEREAS, on February 22, 2021, Governor Murphy signed into law P. L. 2021, c. 16, known as the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (the "Act" or "NJCREMM"), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, the Act establishes six marketplace classes of licensed businesses, including:

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

Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;

Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;

Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;

Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and

Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchases items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.; and

WHEREAS, section 31a 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,

Ordinance

No. 3-2023

Page 2

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, section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality; and

WHEREAS, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (i. e., by August 22, 2021); and

WHEREAS, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

WHEREAS, regulating the manufacture, distribution, and sale of marijuana is of paramount concern to the Borough of Westville and must be designed in such a way that that enhances public health, minimizes potential harm to the community and enhances the Borough's ability to keep marijuana away from minors; and

WHEREAS, the Borough of Westville believes it to be necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants to the Borough of Westville to create a new Chapter of the Borough Code of the Borough of Westville, " Cannabis Establishments" to allow for strict regulation of the legalized marijuana market and industry in the Borough of Westville, with stringent quality control and best practices by all licensees that will better ensure a safer product than an unregulated market; and

WHEREAS, the Borough of Westville seeks to regulate the legalized marijuana market and industry by prohibiting the retail sale or delivery of cannabis within the Borough of Westville Class 5 Cannabis Retailer and/ or Class 6 Cannabis Delivery), obtaining and selling cannabis items for later resale to other licensed businesses (Class 3 Cannabis Wholesaler) and transporting cannabis from one licensed business to another licensed business (Class 4 Cannabis Distributor), and permitting the growing and cultivation of cannabis (Class 1 Cannabis Cultivator), and manufacturing, preparation and packaging of cannabis items (Class 2 Cannabis Manufacturer), within the I-4 Light Industrial District.

Ordinance

No. 3-2023

Page 3

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Westville, County of Gloucester, State of New Jersey, does hereby establish a new chapter of the Code Book of the Borough of Westville entitled "Cannabis Establishments" to read as follows:

Article I General Provisions

1. Purpose and Intent.

It is the purpose and intent of this chapter to promote the health, safety, morals, and general welfare of the residents and businesses within the Borough of Westville by regulating the cultivation, processing, extraction, manufacturing, testing, distribution, transportation, sale, and consumption of marijuana, whether for medical or recreational purposes as currently allowed under New Jersey State law. It is the purpose and intent of this chapter to prohibit cannabis dispensaries but permit cannabis businesses, upon application and approval of a regulatory license, and in accordance with the criteria and procedures set forth in this Code. It is the purpose and intent of this chapter to provide opportunities for cannabis businesses to operate in the Borough, while imposing regulations on the use of land to protect the Borough's neighborhoods, residents, and businesses from negative impacts. It is a further purpose and intent of this chapter to regulate the cultivation, manufacturing, processing, testing and transporting of cannabis and cannabis-related products in a manner which is responsible, and which protects the health, safety, and welfare of the residents of the Borough Westville, and to enforce rules and regulations consistent with state law. In part to meet these objectives, an annual license shall be required in order to own and/or to operate a cannabis business within the Borough of Westville. Nothing in this chapter is intended to authorize the possession, use, or provision of cannabis for purposes which violate state or federal law. The provisions of this chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the Borough and are in addition to any permits, licenses and approval required under state, county, or other law.

2. Legal authority; applicability of standards.

Pursuant to the New Jersey Constitution, and the provisions of the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (the "Act" or "NJCREMM"), the Borough of Westville is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis-related activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of New Jersey, or any of its departments or divisions, shall be the minimum standards applicable in the Borough of Westville to cannabis and/or cannabis-related activity.

3. Compliance with other provisions

It is the responsibility of the owners and operators of the cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder, and any specific additional operating procedures or requirements which may be imposed as conditions of approval of the cannabis business license. Nothing in this chapter shall be construed as authorizing any actions which violate federal law, state law or local law with respect to the operation of a cannabis business.

Ordinance

No. 3-2023

Page 4

Article II Definitions

1. Words and terms defined.

When used in this chapter, the following words shall have the meanings ascribed to them as set forth herein. Any reference to New Jersey statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision.

BOROUGH

The Borough of Westville, a municipal corporation of the State of New Jersey general law Borough.

CANNABIS

All parts of the Cannabis sativa linnaeus, 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 separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by the New Jersey Health and Safety Code. "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, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by the New Jersey Food and Agricultural Code.

CANNABIS BUSINESS ACTIVITY

Includes cultivation, manufacture, processing, laboratory testing, transporting, delivery, distribution, or sale of cannabis or a cannabis product, within the meaning of the New Jersey Business and Professions Code.

CANNABIS CONCENTRATE

Manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible cannabis product is not considered food, as defined by the New Jersey Health and Safety Code, or a drug, as defined by the New Jersey Health and Safety Code.

CANNABIS BUSINESS

The businesses of commercial cannabis cultivation, cannabis manufacturer, cannabis testing laboratory, and cannabis distributor.

CANNABIS BUSINESS LICENSE

A regulatory permit issued by the Borough pursuant to this chapter to a cannabis business and which is required before any cannabis activity may be conducted in the Borough of Westville. The initial license and annual renewal of a cannabis business license is made expressly contingent upon the business' ongoing compliance with all of the requirements of this chapter, any regulations adopted by the Borough governing the cannabis activity at issue, compliance with any conditions of approval placed on the use of the cannabis business site, and payment of all fees, taxes and any other amounts owed to the Borough related to the cannabis business activity.

Ordinance

No. 3-2023

Page 5

CANNABIS DISTRIBUTOR

A cannabis operator permitted pursuant to this chapter to operate a location or a facility where a person conducts the business of procuring cannabis from permitted cannabis cultivation sites or cannabis manufacturers for sale to permitted cannabis dispensaries, and the inspection, quality assurance, batch testing by a licensee, storage, labeling, packaging and other processes prior to transport to permitted cannabis dispensaries.

CANNABIS LICENSE

A state license issued pursuant to NJCREMM, as may be amended from time to time.

CANNABIS LICENSEE

A person issued a cannabis license under NJCREMM to engage in commercial cannabis activity.

CANNABIS NURSERY

A location operating as a nursery solely for purposes of supplying immature plants to cannabis cultivation facilities.

CANNABIS OPERATOR or OPERATOR

The person or entity that is engaged in the conduct of any commercial cannabis use.

CANNABIS TESTING LABORATORY

A facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and is both of the following:

- A. Accredited by an accrediting body that is independent from all other persons involved in the cannabis testing laboratory.
- B. Registered with the New Jersey Department of Public Health.

CULTIVATION

Any activity, whether occurring indoors or outdoors, involving the propagation, planting, growing, harvesting, drying, curing, grading, and/or trimming of cannabis plants or any part thereof for any purpose, including cannabis.

CULTIVATION SITE

A facility where cannabis is cultivated, propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, and where the operator holds a valid cannabis business license for cultivation from the Borough and a valid state license for cultivation pursuant to the NJCREMM (as the same may be amended from time to time).

DELIVERY

The commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined to be authorized by the State of New Jersey, or any of its departments or divisions, to anyone for any purpose. "Delivery" also includes the use by a dispensary of any technology platform owned, controlled, and/or licensed by the dispensary, or independently licensed by the State of New Jersey under the NJCREMM (as the same may be amended from time-to-time), that enables anyone to arrange for or facilitate the commercial transfer by a licensed dispensary of cannabis or cannabis products.

Ordinance

No. 3-2023

Page 6

DISPENSARY

A cannabis business facility where cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment (whether fixed or mobile) that delivers, pursuant to express authorization, medical cannabis and medical cannabis products as part of a retail sale, and where the operator holds a valid cannabis business license from the Borough authorizing the operation of a dispensary and a valid state license as required by state law to operate a dispensary.

DISPENSING

Any activity involving the retail sale of cannabis or cannabis products from a dispensary.

DISTRIBUTION

The procurement, sale, and transport of medical cannabis or cannabis products between cannabis businesses.

DISTRIBUTOR

A person holding a valid cannabis business license for distribution issued by the Borough, and a valid state license for distribution, pursuant to the NJCREMM (as the same may be amended from time to time).

DRIED FLOWER

All dead cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

EDIBLE CANNABIS PRODUCT

Manufactured cannabis that is intended to be used, in whole or in part, for human consumption. An edible medical cannabis product is not considered food as defined by the New Jersey Health and Safety Code or a drug as defined by the New Jersey Health and Safety Code.

INDOOR STRUCTURE

A fully enclosed and secured structure, a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, complies with all odor control and other design standards required by this chapter, and which is accessible only through one or more lockable doors and is inaccessible to minors.

INDOORS

Within a fully enclosed and secure structure. The term "indoors" includes any indoor structures.

LIVE PLANTS

Living cannabis flowers and plants, including seeds, sprouts, immature plants (including unrooted clones), and vegetative stage plants.

MANUFACTURER

A person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, as defined in this section, or cannabis products, either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, at a fixed location that packages

Ordinance

No. 3-2023

Page 7

or repackages cannabis or cannabis products or labels or relabels its container, where the operator holds a valid cannabis business license for manufacturing from the Borough of Westville and a valid state license for manufacturing pursuant to the NJCREMM (as the same may be amended from time to time).

MANUFACTURED CANNABIS

Raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate or manufactured product intended for internal consumption or topical application.

MANUFACTURING SITE

A location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid cannabis business license for manufacturing from the Borough and a valid state license for manufacturing pursuant to the NJCREMM (as the same may be amended from time to time).

MARIJUANA

Cannabis, as that term is defined in this chapter.

OUTDOORS

Any location within the Borough that is not within a fully enclosed and secure structure.

PERSON

An individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and includes the plural as well as the singular number.

STATE LICENSE

A permit or license issued by the State of New Jersey, or one of its departments or divisions, pursuant to the New Jersey Constitution, and the provisions of NJCREMM (as the same may be amended from time to time) to engage in cannabis activity.

TOPICAL CANNABIS

A product intended for external use. A topical cannabis product is not considered a drug as defined by the New Jersey Health and Safety Code.

TRANSPORT

The transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting cannabis activity authorized by the NJCREMM (as the same may be amended from time to time).

TRANSPORTER

A person issued a state license, and a cannabis business license by the Borough of Westville, authorizing the transport of cannabis or cannabis products in amounts authorized by the State of New Jersey, or by one of its departments or divisions under NJCREMM.

Ordinance

No. 3-2023

Page 8

Article III Licenses Required for Owner/Operator and Employees

1. Cannabis business license required.

No person may engage in any cannabis business, including cultivation, manufacture, processing, laboratory testing, transporting, dispensing or distribution of cannabis or a cannabis product unless the person:

A. Has a valid cannabis business license or cannabis dispensary license from the Borough of Westville; and

B. Is currently in compliance with all applicable state and local laws and regulations pertaining to the cannabis business and the cannabis business activities, including the duty to obtain any required state licenses.

2. Cannabis business employee authorization and identification

A. Any person who is an employee or who otherwise works or volunteers within a cannabis business must be legally authorized to do so under applicable state law.

B. Any person who is an employee or who otherwise works or volunteers within a cannabis business shall wear a name badge issued by the cannabis business management for identification purposes.

Article IV Application for Cannabis Business License

1. Initial application procedure

A. Any person desiring a license under this chapter shall file with the Borough of Westville an original and five copies of an application under oath, in writing, on a form furnished by the Borough Clerk.

B. The application shall set forth the following information:

(1) The applicant's name, business name and business address.

(2) Whether the applicant is an individual, partnership, corporation or another entity and, if another entity, a full explanation and description thereof.

(3) If the applicant is an individual, the applicant's residence address and date and place of birth.

(4) If the applicant is a partnership, the full names, residence addresses, dates and places of birth of each partner.

(5) If the applicant is a corporation or other entity: in the case of a corporation, the full names, residence addresses, dates and places of birth of each major officer and each stockholder, the name and address of the registered agent and the address of the principal office upon whom and where service of process is authorized to be made (the term "stockholder" as used herein means and includes

Ordinance

No. 3-2023

Page 9

any person having an interest, either legal or equitable, in 10% or more of the stock issued and outstanding of the applicant corporation); in the case of another entity, the full names, residence addresses, dates and places of birth of each person owning or having any interest, legal or equitable, aggregating in value 10% or more of the total capital of the said entity, the name and address of the registered agent, if any, and the address of the principal office, if any, upon whom and where service of process is authorized to be made.

(6) Whether the applicant or any partners, officers or stockholders thereof have ever been convicted of a crime and, if so, the name of the person convicted, the nature of the crime or charge involved and the disposition thereof (the term "officers" as used herein means and includes the president, vice president, secretary and treasurer of a corporate applicant).

(7) The business addresses of the manager or the person in charge of the licensed premises during the five-year period preceding the date of application.

(8) A description of the metes and bounds of the place where the business is to be located and carried on.

(9) A survey or scale drawing of the plot showing the structures and open spaces/areas to be used in the business, approved existing or proposed entrances and exits to and from the place where the business is to be conducted, the location and place of said business and the location and size of all structures and fences thereon and the setback thereof from street lines.

(10) A scale drawing of the interior of the premises showing all entrances and exits to and from the place where the business is to be conducted; the location and placement of all antifire equipment, i.e., hoses, extinguishers, sprinkler systems, etc.; and the location of all fire exits.

(11) A scale drawing showing the proposed plan of evacuation in the event of an emergency.

(12) A valid certificate of occupancy for the premises.

(13) A copy of all documents submitted by the applicant to the state in connection with the application for a state operating number and all documents issued by the state indicating that the applicant has been qualified or prequalified for a state operating license.

(14) A non-refundable Application Fee of \$5,000.00.

Ordinance

No. 3-2023

Page 10

C. The Borough's reservation of rights: The Borough reserves the right to reject any or all applications. The Borough may also modify, postpone, or cancel any request for applications, or the entire program under this chapter, at any time without liability, obligation, or commitment to any party, firm, or organization. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this chapter, may be canceled at any time prior to permit issuance. The Borough further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to any other appropriate reasons for rejection, including, but not limited to, a failure to comply with any requirement of any state or local law, rule or regulation, an application risks being rejected for any of the following reasons:

- (1) Proposal not containing the required elements, or exhibits, nor organized in the required format.
- (2) Proposal considered not fully responsive to this request for license application.

2. Processing of application

A. Submission by Clerk to Departments.

(1) Upon receipt of such application, the Borough Clerk shall submit same to the Chief of Police or his designee, Fire Inspector, Department of Code Enforcement, and Zoning Officer or his designee for reports with reference to the compliance or noncompliance of the proposed establishment with municipal and state rules, regulations, statutes and ordinances and the truth of the matter contained in the application.

(2) The Clerk shall submit each completed application for license or renewal thereof to the various departments within 10 days of receipt of the completed application, and the department shall have 30 days from its receipt to investigate and prepare the reports concerning the license application or renewal, except in the event the Department of Code Enforcement identifies a violation of the premises sought to be used by the license applicant. Notice of the violation shall immediately be given to the applicant, who shall have the time afforded by the appropriate municipal ordinance or regulation to correct the violation. The Department of Code Enforcement shall not issue its report to the Borough Clerk until such time as the period to correct has expired.

B. Upon return of said application and reports, the Borough Clerk shall submit same to the Borough Council for action at its next scheduled Borough Council meeting. If there are objections to the issuance of the license, the Clerk must submit the application and reports to the Council within 10 days, and the Council must give notice to the applicant within five days of its receipt of the reports concerning this application; and within 30 days of the submission, a hearing shall be held by the Borough

Ordinance

No. 3-2023

Page 11

Council concerning the application to decide to grant or deny the license unless the parties agree to additional time for that decision.

C. Upon the consent and approval of the Borough Council and upon receipt of a copy of a certificate of occupancy for the licensed premises, the Borough Clerk shall issue such license.

3. License fee; term.

A. The annual fee for a license under this chapter shall be \$5,000.

B. Such license shall run for a period of one year, commencing January 1 and ending December 31 of the year of its issuance.

4. Denial of license

No license shall be granted by the Council if:

A. The licensee has failed to comply with the provisions of this chapter;

B. The licensed premises or use thereof is not permitted by the terms and provisions of the zoning ordinances;

C. The licensee is in violation of any law, code or regulation involving the business to be licensed;

D. The individual applicant or the principals and manager of a firm applicant, or any of them, have been convicted of an offense against the narcotic laws of the State of New Jersey or a crime involving moral turpitude which touches on the business to be licensed.

5. License renewals

A. All existing licenses and those that hereafter issue, upon payment of the prescribed license fee and compliance with the terms of this chapter, shall be renewed annually as of January 1. Applications for renewal of an expiring license shall be made with the payment of the annual fee and the filing of an application provided by the Borough Clerk. The application shall include a statement that no changes have been made in any of the facts or information stated in the original application or to the licensed premises during the preceding licensed period. If there are any material changes, those shall be noted on the application form.

B. All applications for renewal of a cannabis license shall be submitted to the Borough Clerk no later than October 1 prior to the January 1 renewal date. If the application for renewal shall not be received by June 1, then there shall be a delay in the processing of the license application. Inasmuch as 90 days is required for the Borough of Westville to properly process all applications, then any licensee submitting a renewal after October 1 shall be delayed at least 90 days from submission for processing. The delay in submitting the

Ordinance

No. 3-2023

Page 12

application for renewal shall cause the license, which expires on January 1, to be suspended on January 1 until the application can be processed by the Borough. The suspension shall be for the same time frame as the late filing. If the Borough delays beyond the time frames set forth in this section to review and consider the license application, then the license shall be reinstated temporarily until the Council can consider the license renewal application.

6. Transferability

The license shall authorize the licensee to conduct business only on the premises specified in the license. Without the consent of the Borough Council, the license shall not be transferable to any other premises nor assignable or transferable in any manner or to any other person.

7. Suspension or revocation of license

All licenses are subject to suspension or revocation after due notice and hearing by the Borough Council for the violation of any of the terms of this chapter, for the violation by the licensee of state and municipal rules, regulations, statutes and/or ordinances or for allowing, suffering and/or permitting the violation of state and municipal rules, regulations, statutes and/or ordinances upon the licensed premises by the servants, agents, employees and/or patrons thereof where the licensee knew or should have known that such violations were being committed by the servants, agents, employees and/or patrons of the licensee.

8. Effect of license suspension, revocation, or termination

Suspension of a license issued by the State of New Jersey, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the Borough, until the State of New Jersey, or its respective department or division, reinstates or reissues the state license. Should the State of New Jersey, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall also revoke or terminate the ability of a cannabis business to operate within the Borough of Westville.

Article V Operating Requirements for All Cannabis Businesses

1. Records and recordkeeping

- A. Each owner and operator of a cannabis business shall maintain accurate books and records, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a cannabis business license issued pursuant to this chapter), or at any time upon reasonable request of the Borough, each cannabis business shall file a sworn statement detailing the number of sales by the cannabis business during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month and all applicable taxes paid or due to be paid.
- B. Each owner and operator of a cannabis business shall maintain a current

Ordinance

No. 3-2023

Page 13

register of the names and the contact information (including the name, address, telephone number, and percentage of ownership) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the cannabis business. The register required by this subsection shall be provided to the Borough Clerk or his/her designee(s) upon a reasonable request. If at any time a corporation, LLC, company, trust or other entity holds an interest in a cannabis business, the register required by this subsection shall also include the name and contact information of a person designated as being able to answer all questions on behalf of that entity, together with the name of every person holding an interest in that cannabis business. The designated representative shall provide whatever additional information the Borough Clerk or his/her designee or the Police Department may reasonably request concerning the owners of that entity.

C. All cannabis businesses shall maintain an inventory control and reporting system as required by state law.

D. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPPA) regulations, each cannabis business shall allow Borough of Westville officials to have access to the business's books, records, and accounts, together with any other data or documents relevant to its permitted cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than two business days after receipt of the Borough's request, unless otherwise stipulated by the Borough.

2. Security measures

A. A permitted cannabis business shall implement sufficient security measures to deter and prevent unauthorized entrance into areas containing cannabis or cannabis products and to deter and prevent the theft of cannabis or cannabis products at the cannabis business. Except as may otherwise be determined by the Borough, these security measures shall include compliance with all state security regulations required under the cannabis licensee's state cannabis license, as those regulations may be amended from time to time.

B. Every cannabis business and cannabis dispensary shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft. As part of an application for a cannabis use, each applicant shall prepare and submit a security plan for review and approval by the Chief of Police, which approval or denial will be based upon the security standards stated above and in compliance with any security measures agreed upon with the Chief of Police. Said plans shall remain updated and secured on file in the protective custody of the Building Department. The information provided for purposes of this section shall be maintained by the Building Department as confidential information and shall not be disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction.

Ordinance

No. 3-2023

Page 14

- C. The Borough Council may impose further security requirements above and beyond the minimum security requirements imposed by state regulations, upon the recommendation of the Borough Administrator in consultation with the Chief of Police, based on the unique circumstances associated with a particular cannabis business. Except as may otherwise be determined by the Borough Council, these security measures shall include compliance with all state security regulations required under the cannabis licensee's state cannabis license, as those regulations may be amended from time to time.
- D. A cannabis business shall identify a designated security representative/liaison to the Borough of Westville, who shall be reasonably available to meet with the Borough Administrator, the Borough's Police Chief, the Borough Fire Administrator, or their designees, regarding any security-related measures and/or operational issues.
- E. The cannabis business shall cooperate with the Borough whenever the Borough Administrator or his designee makes a request, upon reasonable notice to the cannabis business, to inspect or audit the effectiveness of any security plan or of any other requirement of this chapter.
- F. A cannabis business shall notify the Chief of Police and the Borough Administrator or his/her designee within 24 hours after discovering any of the following:
 - (1) Significant discrepancies identified during inventory.
 - (2) Diversion, theft, loss, or any criminal activity involving the cannabis business or any agent or employee of the cannabis business.
 - (3) The loss or unauthorized alteration of records related to cannabis, registering qualifying patients, primary caregivers, or employees or agents of the cannabis business.

3. Fees and charges.

- A. No person may commence or continue any cannabis activity in the Borough without timely paying in full all fees, taxes and charges required for the operation of a cannabis activity. Fees and charges associated with the operation of a cannabis activity shall be established by resolution of the Borough Council, which may be amended from time to time.
- B. All cannabis businesses authorized to operate under this chapter shall pay all sales, use, business and other applicable taxes and all license, registration, and other fees required under federal, state and local law. Each cannabis businesses shall be required to cooperate with Borough with respect to any request to audit the cannabis business'

Ordinance

No. 3-2023

Page 15

books and records for the purpose of verifying compliance with this section, including, but not limited to, a verification of the amount of taxes required to be paid during any period.

4. Miscellaneous operating requirements.

- A. Restriction on consumption. Cannabis shall not be smoked, ingested, used, or otherwise consumed on the premises of a cannabis business or elsewhere in the Borough of Westville, other than within private residences.
- B. No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a cannabis business license or on any of the vehicles owned or used as part of the cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- C. Emergency contact. Each cannabis business shall provide the Borough Clerk or his/her designee(s), the Borough's Chief of Police, and the Borough's Fire Administrator with the name and telephone number (including mobile number) of one or more on-site employee(s) or owner(s), to whom emergency notice can be provided at any hour of the day.
- D. Signage and notices.
 - (1) In addition to the requirements otherwise set forth in this section, business identification signage for a cannabis business shall conform to the requirements of the Borough of Westville Municipal Code.
 - (2) No signs placed on the premises of a cannabis business shall obstruct any entrance or exit to the building or any window.
 - (3) Each entrance to a cannabis business shall be visibly posted with a clear and legible notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited.
 - (4) Business identification signage shall be limited to that needed for identification only and shall not contain any logos or information that identifies, advertises, or lists the services or the products offered. No cannabis business shall advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises of the cannabis business or elsewhere, including, but not limited to, the public right-of-way.
 - (5) Signage shall not be directly illuminated, internally or externally, except that the name and address of the business may be illuminated at night. No banners, flags, billboards or other prohibited signs may be used at any time.

Ordinance

No. 3-2023

Page 16

- E. Odor control. Odor-control devices and techniques shall be incorporated in all cannabis businesses to ensure that odors from cannabis are not detectable off site. Cannabis businesses shall provide a sufficient odor-absorbing ventilation and exhaust system so that odor generated inside the cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the cannabis business. As such, cannabis businesses must install and maintain the following equipment, or any other equipment which the Borough Administrator or his/her designee(s) determine is a more-effective method or technology:
- (1) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;
 - (2) An air system that creates negative air pressure between the cannabis business' interior and exterior, so that the odors generated inside the cannabis business are not detectable on the outside of the cannabis business.
- F. Display of Borough cannabis business license and Borough business license. The original copy of the cannabis business permit issued by the Borough pursuant to this chapter and the Borough-issued business license shall be posted inside the cannabis business in a location readily visible to the public.
- G. Permits and other approvals. Prior to the establishment of any cannabis business or the operation of any such business, the person intending to establish a cannabis business must first obtain all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such cannabis business intends to establish and to operate.

Article VI Taxation of Cannabis

1. Transfer Tax Imposed

The Borough of Westville hereby imposes a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located within the Borough.

2. Applicability

The transfer tax is applicable to:

- A. Receipts from the sale of cannabis and cannabis items by a cannabis cultivator to another cannabis cultivator;

Ordinance

No. 3-2023

Page 17

- B. Receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; and
- C. Receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older and any combination of sales between any cannabis establishment, cultivator, cannabis retailer and/or cannabis consumer.

3. Rates

The rates of the transfer tax shall be as follows:

- A. Two percent of the receipts from each sale by a cannabis cultivator;
- B. Two percent of the receipts from each sale by a cannabis manufacturer;

4. User tax imposed

A user tax is also hereby imposed, at the equivalent transfer tax rates, on any concurrent license holder, as permitted by N.J.S.A. 24:6I-46 operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items which are not otherwise subject to the transfer tax, 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.

5. Transfer and user tax on addition to other tax

The transfer tax and user tax imposed herein shall be in addition to any other tax imposed by law.

6. Collection and payment

The transfer tax or user tax 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 municipality 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.

7. Liability to Collect Tax

Every cannabis establishment required to collect a transfer tax or user tax imposed by this article 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

Ordinance

No. 3-2023

Page 18

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 nonpayment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax was a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the chief fiscal officer of the Borough shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

8. Charge and refund of tax

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

9. Remittance of revenues

All revenues collected from a transfer tax or user tax imposed by this article shall be remitted to the chief financial officer of the Borough. The Borough shall enforce the payment of delinquent taxes or transfer fees imposed by ordinance pursuant to this section in the same manner as provided for municipal real property taxes.

10. Unpaid tax to become lien

In the event that the transfer tax or user tax imposed by this article 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.

11. Enforcement of Lien

The Borough 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.

Ordinance

No. 3-2023

Page 19

BE IT FURTHER ORDAINED, that all Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

BE IT FURTHER ORDAINED, that each section of this Ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective, shall not be deemed to affect the validity or constitutionality of any other sections or parts hereof.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon final passage and publication as required by law.

Introduced: March 27, 2023

Adopted: May 22, 2023

BOROUGH OF WESTVILLE

**Fritz H. Sims, Jr.
MAYOR**

ATTEST:

**Kathleen Carroll
DEPUTY MUNICIPAL CLERK**