

BOROUGH OF BUENA

ORDINANCE NO. 705

**AN ORDINANCE OF THE BOROUGH OF BUENA IN ATLANTIC COUNTY
AMENDING CHAPTER 202 OF THE CODE OF THE BOROUGH OF BUENA AND
ENACTING ARTICLE III TITLED CANNABIS**

WHEREAS, Section 40 of the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act, N.J.S.A. 24:6I-31 and N.J.S.A. 40:48I-1 authorizes municipalities by ordinance to adopt regulations which establish limited taxation of the six classes of cannabis activity within the municipality; and

WHEREAS, specifically, a municipality may adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality and at the discretion of the municipality, the tax may be imposed on: receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof; and

WHEREAS, since the amount to be raised by this newly created tax is too uncertain to accurately calculate, the Council is not at this time mandating the dedication of the taxes collected, but does wish to memorialize an intention to dedicate a portion of the revenue collected pursuant to the tax to investment in the community; and

WHEREAS, the Council of the Borough of Buena believes it is in the best interests of the Borough and its residents to enact this Ordinance as permitted by law.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Buena County of Atlantic, State of New Jersey as follows:

Section 1. Chapter 202 of the Code of the Borough of Buena is hereby amended as follows:

Article III. Cannabis

§ 202.12 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACT - Public Law 2021, c. 16, commonly known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” codified at N.J.S.A. 24:6I-31 et seq.

CANNABIS - All parts of the plant *Cannabis sativa* L., 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 the Act for use in cannabis products, 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 BUSINESS - Any person or entity that holds any of the six classes of licenses established under the Act.

CANNABIS CULTIVATOR - Any licensed person or entity that grows, cultivates, or produces cannabis, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivator license.

CANNABIS DELIVERY SERVICE - Any licensed 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.

CANNABIS DISTRIBUTOR - 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 ESTABLISHMENT - A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

CANNABIS MANUFACTURER - Any licensed 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 PRODUCT - A product containing usable cannabis, cannabis extract, or any other cannabis resin and other ingredients intended for human consumption or use, including a product intended to be applied to the skin or hair, edible cannabis products, ointments, and tinctures. "Cannabis product" does not include: (1) usable cannabis by itself; or (2) cannabis extract by itself; or (3) any other cannabis resin by itself.

CANNABIS RETAILER - Any licensed 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 handler 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 TAX - Collectively, the taxes as are established in this Chapter.

CANNABIS WHOLESALER - 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.

LICENSEE - Any person or entity that holds a license issued under the Act, including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license, and includes a person or entity that holds a conditional license for a designated class.

MICROBUSINESS - Any person or entity licensed as a cannabis cultivator, 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; (2) operate a cannabis establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis 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 each month, in the case of a cannabis manufacturer, no more than 1,000 pounds of usable cannabis; (5) acquire for resale each month, in the case of a cannabis wholesaler, no more than 1,000 pounds of usable cannabis, or the equivalent amount in any 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, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof.

BOROUGH- Borough of Buena

Any term not defined herein shall have the meaning as established by Section 40 of Public Law 2021-16 (N.J.S.A. 24:61-33).

§202-13. Intent.

It is the intent of this Chapter to establish the regulatory framework to implement the provisions of the Act, including the imposition of Cannabis Taxes, as permitted by Section 40 of the Act, 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 any other statute or local ordinance or resolution by any governmental entity having regulatory authority over the Cannabis Establishment.

§ 202.14. Permitted Uses.

Cannabis Cultivators, Manufacturers, Wholesalers, Distributors, Retailers, and Delivery Services are permitted uses in the Borough in accordance with the standards set forth in Chapter 150 titled Land Use.

§202.15. License.

A. **Local License Required.** Pursuant to the authority granted by N.J.S.A. 24:61- 45(c) (2), no person or entity shall operate a Cannabis Business in the Borough without obtaining a license pursuant to this Chapter.

B. **Local Licensing Authority.** The Borough Council shall constitute the issuing authority for the issuance of a local license, and for the suspension or revocation of any license issued hereunder.

C. **Application.** In order to obtain a license to operate a Cannabis Business in the Borough, an applicant shall file an application, signed by the applicant, with the Borough Clerk upon a form provided by the Clerk which sets forth all information necessary for a proper consideration of the application. Such application shall be filed contemporaneous to filing an application for a license pursuant to the Act.

D. **Fee.** At the time the application is made, the applicant shall pay to the Borough a nonrefundable application fee in the amount of \$300.

E. **Issuance.** Upon approval of an application, the Borough Council shall, by resolution, issue a license to operate a Cannabis Business in the Borough.

F. **Suspension or Revocation.** Any license required by this chapter may be suspended or revoked for violation of any of the following:

(1) Subsequent knowledge of fraud, misrepresentation or incorrect statements provided by an applicant on the application form.

(2) Any fraud, misrepresentation, or false statements made in conducting the Cannabis Business.

(3) Any violation of the Act, or the rules and regulations of the Cannabis Regulatory Commission.

(4) Subsequent conviction of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the Cannabis Business in a professional, honest and legal manner. Such violations shall include, but are not limited to, violations of Chapter 35 of Title 2C of the New Jersey Statutes, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.

(5) Violation of any other provision of this chapter.

G. **Notice of Hearing.** Notice of a hearing to consider the suspension or revocation of a license under the preceding subsection shall be given in writing by the Borough Clerk, setting forth the grounds of the proposed action and the time and place of the hearing. Such notice shall be personally delivered, or mailed, by certified and regular mail, to the Licensee at the address indicated on the license application, at least ten days prior to the date of the hearing.

H. **Appeal.** Any person whose permit is suspended or revoked under this section shall have the right to appeal that decision to a court of competent jurisdiction.

§ 202-16. Prohibitions.

A. Consumption of Cannabis Products in public is prohibited.

B. The sale of Cannabis Products to visibly intoxicated individuals is prohibited.

§ 202-17. Cannabis Tax.

A. **Tax Established.** There is hereby established a local cannabis transfer tax on the sale of Cannabis or Cannabis Products by a Cannabis Establishment located in the Borough. The tax is hereby imposed on the receipts from the sale of Cannabis by a Cannabis Cultivator to another Cannabis Cultivator; receipts from the sale of Cannabis or Cannabis Products from one Cannabis Establishment to another Cannabis Establishment; receipts from the retail sales of Cannabis or Cannabis Products by a Cannabis Retailer to retail consumers who are 21 years of age or older; or any combination thereof. Sales by a Cannabis Establishment located in the Borough are subject to the tax established herein even if the Cannabis or Cannabis Products are delivered to another municipality.

B. **Rate.** The amount of the tax shall be 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.

C. **User Tax.** 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 (N.J.S.A.24:6I-46) and N.J.S.A. 40:48I-1 operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of Cannabis or Cannabis Products not otherwise subject to the transfer tax imposed pursuant to paragraph A of this subsection, from the licensee's establishment that is located in the Borough to any of the other licensee's establishments, whether located in the Borough or another municipality.

D. The Cannabis Tax set forth in this section shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance on a Cannabis Establishment.

§ 202.18. Collection of Cannabis Tax.

A. The Cannabis Tax imposed by this Chapter 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 Product, 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 Cannabis Tax imposed by this chapter shall be personally liable for the Cannabis Tax imposed, collected, or required to be collected under this chapter. Any Cannabis Establishment shall have the same right with respect to collecting the Cannabis Tax from another Cannabis Establishment or the consumer as if the Cannabis Tax was a part of the sale and payable at the same time, or with respect to non-payment of the Cannabis Tax by the Cannabis Establishment or consumer, as if the Cannabis Tax was a part of the purchase price of the Cannabis or Cannabis Product, or equivalent value of the transfer of the Cannabis or Cannabis Product, and payable at the same time.

C. No Cannabis Establishment required to collect a Cannabis Tax imposed by this chapter shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the Cannabis Tax will not be separately charged and stated to another Cannabis Establishment or the consumer, or that the Cannabis Tax will be refunded to the Cannabis Establishment or the consumer.

D. All Cannabis Tax imposed by this chapter shall be remitted to the Chief Financial Officer of the Borough 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 Cannabis Taxes collected for the prior year months of October, November and December. The revenues due on May 1 of each year shall include all Cannabis Taxes collected for the immediate prior months of January, February and March. The revenues due on August 1 of each year shall include all Cannabis Taxes collected for the immediate prior months of April, May and June. The revenues due on November 1 of each year shall include all Cannabis Taxes collected for the immediate prior months of July, August and September.

E. Simultaneous with payment of the Cannabis Tax, the Licensee shall submit an affidavit signed by an individual who is responsible for the Licensee that certifies the total receipts from each sale so that an accurate calculation of the Cannabis Tax due may be determined.

F. The Borough shall enforce the payment of delinquent Cannabis Taxes imposed pursuant to this chapter in the same manner as provided for municipal real property taxes. In the event that the Cannabis Tax imposed by this chapter is not paid as and when due by a Cannabis Establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the Cannabis Establishment's premises in the same manner as all other unpaid municipal taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year. The Borough shall file in the office of the 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.

G. Upon written request of the Borough, a Cannabis Establishment shall submit an

auditor's report for the preceding fiscal or calendar year, certified by a Certified Public Accountant, to the Borough. The auditor's report shall include, but not be limited to, all receipts generating Cannabis Taxes, and such details as may relate to the financial affairs of the Cannabis Establishment and to its operations and performance, and shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board. Said auditor's report shall be submitted to the representatives of the Borough within thirty (30) days of receipt by the Cannabis Establishment of the Borough's request for said auditor's report.

Section 2. Repealer. Any and all other ordinances inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 3. Severability. In the event that any section, paragraph, clause, phrase, term, provision or part of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the section, paragraph, clause, term, provision or part thereof directly involved in the controversy in such judgment shall be rendered.

Section 4. Effective Date. This ordinance shall take effect upon proper publication and in accordance with law.

PASSED FIRST READING: MARCH 28, 2022

ENACTED AND ADOPTED by the Council of the Borough of Buena on this 11th day of _____ 2020.

ATTEST:

By: 

Borough of Buena- Acting Clerk

Pamela Johnston

By: 

Council President

Matthew Walker, Sr.


APPROVED on this _____ day of _____ 2020, by the Mayor of the Borough of Buena.

ATTEST:

By: 

Borough of Buena- Acting Clerk

Pamela Johnston

By: 

Mayor

DAVID ZAPPARIELLO