

**ORDINANCE NO. 2022-05**

**ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING CHAPTER 270: "CANNABIS" OF THE BOROUGH'S REVISED GENERAL ORDINANCES TO IMPLEMENT A MUNICIPAL LICENSING AND REGISTRATION SYSTEM FOR POTENTIAL CANNABIS BUSINESSES SEEKING TO OPERATE WITHIN THE BOROUGH AFTER OBTAINING APPLICABLE STATE LICENSES**

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

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

**WHEREAS**, potential cannabis businesses seeking to operate within the State of New Jersey are required to file appropriate applications for applicable licenses with the New Jersey Cannabis Regulatory Commission on or before March 15, 2022; and

**WHEREAS**, the New Jersey Cannabis Regulatory Commission is expected to begin issuing applicable licenses to potential cannabis businesses seeking to operate within the State of New Jersey sometime after the March 15, 2022 State application deadline; and

**WHEREAS**, by Ordinance No. 2021-17, the Borough of Red Bank (the "Borough") established land use regulations and local taxes for potential cannabis businesses within the Borough in accordance with the Act and the New Jersey Municipal Land Use Law; and

**WHEREAS**, in preparation for the anticipated issuance of applicable state licenses by the New Jersey Cannabis Regulatory Commission to cannabis businesses, the Borough hereby amends Chapter 270: "Cannabis" of its Revised General Ordinances to implement a local licensing and registration framework for cannabis businesses seeking to operate within Red Bank;

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Red Bank as follows:

SECTION 1. The Revised General Ordinances of the Borough of Red Bank are hereby supplemented with *new* Chapter 270 entitled "Cannabis" is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

**CHAPTER 270: CANNABIS.**

**§ 270-1 Cannabis Businesses Permitted As Provided By Chapter 490.**

The establishment and/or operation of Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, and Cannabis Delivery Services within the Borough of Red Bank is defined and governed by Chapter 490 of the Borough's Revised General Ordinances and the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act. All cannabis businesses seeking to operate within the Borough shall also require a municipal license pursuant to Section 270-5 of this Chapter.

**§ 270-2 Public Consumption of Cannabis Prohibited.**

- A. It shall be unlawful for any person to consume a cannabis item available for lawful consumption pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act in any public place as defined in said

Act, including any public highway, public street, public sidewalk, public parking lot or lot, playground, park or other property owned by, belonging to or over which the Borough has control, other than school property for which unlawful consumption is a disorderly persons offense, or when not prohibited by the owner or person responsible for the operation of that public place.

- B. Any person violating this Section 270-2 shall be subject to a civil penalty of up to \$200.00, which shall be recovered in a civil action by a summary proceeding in the name of the Borough pursuant to the Penalty Enforcement Law of 1999. The Municipal Court and the Superior Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.

**§ 270-3 Possession or Consumption by Underaged Persons on Private Property.**

- A. It shall be unlawful for any person under the legal age who, without legal authority, knowingly possesses or knowingly consumes a cannabis item on private property.
- B. Any person violating this Section 270-3, in the case of an adult under the legal age to purchase cannabis items, shall be punished as follows:
  - (1) If the cannabis item possessed is an amount which may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a: for a first offense, a civil penalty of \$100.00; for a second offense, a civil penalty of \$200.00; and for a third or subsequent offense, a fine of \$350.00. The civil penalties provided for in this section shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to the Penalty Enforcement Law of 1999. The Municipal Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.
  - (2) If the cannabis item possessed is an amount that exceeds what may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a, or if any cannabis item is consumed: for a first offense, a fine of \$250.00; and for a second or subsequent offense, a fine of \$350.00.

**§ 270-4 Local Cannabis Transfer Tax and User Tax.**

- A. Local Cannabis Transfer Tax.
  - (1) The Borough of Red Bank hereby adopts and imposes a Local Cannabis Transfer Tax on the sale of any cannabis or cannabis items by any cannabis business within the Borough, which Local Cannabis Transfer Tax shall be imposed upon all:
    - (a) Receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator;
    - (b) Receipts from the sale of cannabis items from one cannabis business to another cannabis business;
    - (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
    - (d) Any combination of any of the above-listed transfers.
  - (2) The Local Cannabis Transfer Tax established pursuant to subsection (A)(1) hereinabove shall be charged at the following rates upon cannabis businesses within the Borough:
    - (a) Two-percent (2%) of the receipts from each sale by a Cannabis Cultivator;
    - (b) Two-percent (2%) of the receipts from each sale by a Cannabis Manufacturer;
    - (c) One-percent (1%) of the receipts from each sale by a Cannabis

Wholesaler; and

- (d) Two-percent (2%) of the receipts from each sale by a Cannabis Retailer.

B. Local Cannabis User Tax.

- (1) The Borough of Red Bank hereby adopts and imposes a Local Cannabis User Tax, at the same and equivalent rates as established for the Local Cannabis Transfer Tax rates set forth in subsection (A)(2) hereinabove.
- (2) The Local Cannabis User Tax shall be imposed upon any concurrent license holder operating more than one cannabis business, and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the Local Cannabis Transfer Tax imposed pursuant to subsection (A) hereinabove, from the license holder's business that is located in the Borough to any of the other license holder's businesses, whether located in the Borough or in another municipality.

C. Other Local Cannabis Tax Regulations.

- (1) The Local Cannabis Transfer Tax and User Tax imposed pursuant to this section shall be in addition to any other tax imposed by law.
- (2) The Local Cannabis Transfer Tax and User Tax shall be collected or paid, and remitted to the Borough by the cannabis business from the cannabis business 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.
- (3) The Local Cannabis Transfer Tax and 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.
- (4) Every cannabis business required to collect the Local Cannabis Transfer Tax and User Tax imposed by this section shall be personally liable for the Local Cannabis Transfer Tax and User Tax imposed, collected, or required to be collected under this section. Any cannabis business shall have the same right with respect to collecting the Local Cannabis Transfer Tax and User Tax from another cannabis business or the consumer as if the Local Cannabis 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 Local Cannabis Transfer Tax and User Tax by the cannabis business or consumer, as if the Local Cannabis Transfer Tax and 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 a Local Cannabis Transfer Tax and User Tax.
- (5) No cannabis business required to collect the Local Cannabis Transfer Tax and User Tax pursuant to this section shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the Local Cannabis Transfer Tax and User Tax will not be separately charged and stated to another cannabis business or the consumer, or that the Local Cannabis Transfer Tax and User Tax will be refunded to the cannabis business or the consumer.
- (6) All revenues collected from the Local Cannabis Transfer Tax and User Tax pursuant to this section shall be remitted to the Chief Financial Officer of the Borough. The Chief Financial Officer shall collect and administer the Local Cannabis Transfer Tax and User Tax imposed by this section. The Borough shall enforce the payment of delinquent Local Cannabis Transfer Tax and User Tax in the same manner as provided for municipal real property taxes.
- (7) In the event that the Local Cannabis Transfer Tax and User Tax imposed by this section is not paid as and when due by a cannabis business, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real

property comprising the cannabis business 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. In the event of a delinquency, the Chief Financial Officer shall file with 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 business. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

## **§ 270-5 Cannabis Business Licensing.**

### **§ 270-5.1 License.**

- A. *Laws applicable.* All applications for licenses, all licenses issued, and all proceedings under this Chapter shall be in accordance with the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“the Act”), rules, regulations, and all other applicable laws of the State of New Jersey.
- B. *Issuing authority.* All licenses required by this chapter shall be issued by the Borough Clerk.
- C. *License required.* It shall be unlawful for any person, firm, or corporation to own or operate within the Borough of Red Bank any cannabis businesses for the cultivation, manufacture, wholesale, distribution of cannabis as well as its retail sale without first having obtained properly issued licenses in accordance with the Act and the provisions of this Chapter.
- D. *License fees.* The annual license fee for a license for the cultivation, manufacture, wholesale, distribution, and retail sale of cannabis shall be as follows: initial application fee is \$10,000 and \$2,500 per annum thereafter.

### **§ 270-5.2 Persons Under Legal Age.**

- A. No person under the legal age of 21 shall be allowed in any building where cannabis is sold.
- B. Purchase of cannabis by a person under legal age. No person under the legal age of 21 shall purchase, attempt to purchase or have another purchase for that person any cannabis on any premises licensed for the sale of cannabis.
- C. Purchase of cannabis for a person under the legal age. No person shall purchase, attempt to purchase, or transfer cannabis to a person under the legal age of 21. It shall be unlawful for any person to induce or attempt to induce any licensee or any employee of a licensing to sell, serve or deliver cannabis to a person under the legal age of 21.

### **§ 270-5.3 Other Licensing Requirements.**

- A. On-site sales of alcohol or tobacco products are prohibited.
- B. All cultivation facilities shall be located indoors.
- C. Any licensed establishment located on property that abuts residential property shall be required to have sufficient buffering in place in accordance with Section 40-26(E), between the site and the residential property.
- D. Odor Control: All cannabis operations shall be required to submit an Odor Mitigation Plan as part of their license application. All cannabis establishments shall have appropriate equipment to mitigate cannabis-related odor. All buildings shall be equipped with an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the property

line of the subject property. Odor complaints will be directed to NJDEP's environmental hotline for further investigation and compliance with the Air Pollution Control Act.

E. Security Requirements for all classes of cannabis establishments:

1. All licensed facilities shall be equipped with security cameras covering all exterior parking and loading areas, all points of entry into the facilities, and interior spaces that are open to the public and that are used to store cannabis products. Security cameras shall be installed to monitor and record all areas of the premises, except in restrooms, and where persons may gain or attempt to gain access to cannabis products or cash maintained by the cannabis business. Cameras shall record operations of the business and all potential areas of ingress and egress to the facility with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of sixty (60) days in a secure offsite location or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The offsite location shall be submitted to the Red Bank Police Department and shall be updated within forty-eight hours of any change of such location.
2. All licensed cannabis businesses shall provide the Red Bank Police Department with access to recorded security footage immediately upon request by the Department.
3. All licensed cannabis establishments shall have at least one privately licensed security guard stationed at each facility during operation. The expense of providing the privately licensed security guard shall be paid by the cannabis business.
4. All licensed retail cannabis businesses shall provide a dimensioned floor plan, clearly labeled, showing: the layout of the structure and floor plan in which the retail operation is to be located; the principal uses of the floor area depicted on the floor plan including, but not limited to, public areas, processing and manufacturing areas, loading and unloading areas, storage areas and restricted areas where cannabis products will be located; all points of entry into the facility; and the locations of all security cameras that will be positioned within the facility.
5. All licensed cannabis businesses shall provide a plan for exterior lighting for security purposes.
6. All licensed cannabis businesses shall install and use a safe for storage of any cash on the premises when the business is closed. The safe shall be incorporated into the building structure or securely attached thereto as approved by the Red Bank Police Department and Borough Construction Official.
7. All licensed cannabis businesses shall install and use an alarm system that is monitored by a company that is staffed twenty-four hours a day, seven days a week. The name, location and contact information of the company monitoring the alarm shall be provided to the Red Bank Police Department and shall be updated within forty-eight hours of any change of monitoring company. If the alarm system includes a panic alarm, an operable dedicated phone for the Red Bank Police Department to respond to the alarm shall remain on the premises at all times.

**§ 270-5.4 Revocation of License.**

- A. Any license issued under this chapter may be suspended or revoked for a violation of any of the provisions of this Chapter, or any provision of the Act or any of the rules or regulations of the State of New Jersey.
- B. The provisions of this Ordinance shall be enforced by the Red Bank Police Department and/or the Borough Code Enforcement Officer. If the Borough

finds upon a written complaint that there is such a serious infraction of the rules, regulations and ordinances of the Borough of Red Bank or the rules, regulations and laws of the State of New Jersey or that the operation of a premises licensed hereunder will constitute a serious menace to the health, safety, welfare and morals of the people of the Borough or the occupants of such licensed premises, the Borough shall have the right to hold a hearing where said operator and complainant will be given the right to provide testimony and be subject to cross-examination regarding said complaint. Upon the Borough's finding of good cause, it may immediately suspend the license of such person, firm, partnership, corporation or entity licensed under this article. The hearing to continue the suspension or revocation of the license or take such other action as the Borough deems necessary in its lawful discretion shall proceed where applicable in the same manner as if the proceeding were for the issuance of a new license. Nothing contained herein shall prevent the Borough of Red Bank or the officers of the Borough from proceeding against the applicant in a court of competent jurisdiction.

- C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this Chapter.

**§ 270-5.5 Violations and Penalties.**

Any licensee or any person who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, have his, her or its license subject to a fine of \$500.00 for the first offense and \$2,000.00 for any subsequent offense or by imprisonment for a term not exceeding 90 days or by a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law.

SECTION 2. Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

SECTION 3. Any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall take effect immediately upon its passage and adoption according to law.

|                         | Motion | Yes | No | Abstain | Absent |
|-------------------------|--------|-----|----|---------|--------|
| Councilwoman Mirandi    |        |     |    |         |        |
| Councilwoman Sturdivant |        |     |    |         |        |
| Councilwoman Triggiano  |        |     |    |         |        |
| Councilman Ballard      |        |     |    |         |        |
| Councilman Zipprich     |        |     |    |         |        |
| Councilwoman Horgan     |        |     |    |         |        |