

T Enteado

From: Frank Corrado <fcorrado@capelegal.com>
Sent: Tuesday, June 27, 2023 8:10 AM
To: T Enteado
Cc: Erika Lezama; Frank Donato
Subject: EXTERNALCannabis tax ordinance
Attachments: 630-23 - Amending Ordinance 603-21 Section 11 Regarding the Process for Collecting a Cannabis Transfer Tax with F Donato comments and modifications .docx

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Theresa:

Here is a redline of the cannabis tax ordinance with Frank Donato's modifications and comments incorporated. This should be a work session discussion topic, and the commissioners can decide whether to put it on the regular agenda for introduction, with or without the changes.

FLC

BOROUGH OF WEST CAPE MAY
COUNTY OF CAPE MAY
STATE OF NEW JERSEY

ORDINANCE NO. 630-23

AN ORDINANCE AMENDING ORDINANCE NO. 603-21 SECTION 11 REGARDING THE
PROCESS FOR COLLECTING A CANNABIS TRANSFER TAX

WHEREAS, on August 3, 2021, the Borough of West Cape May adopted Ordinance No. 603-21 permitting the operation of certain cannabis business within its geographic boundaries;

WHEREAS, on May 2, 2023, the Borough of West Cape May adopted Ordinance No. 625-23 amending Ordinance No. 603-21 Section 11 regarding the local cannabis transfer tax; and

WHEREAS, pursuant to N.J.S.A. 24:6I-10i. and N.J.S.A. 40:48I-1 et seq. the Borough seeks to establish a process for collecting and accounting for the cannabis transfer tax,

NOW THEREFORE, BE IT ORDAINED, by the Borough of West Cape May, in the County of Cape May, State of New Jersey that Section 11 of Borough Ordinance No. 603-11 is hereby amended to add the following **bold and underlined** language:

Section I.

1. The Borough of West Cape May hereby establishes the following local cannabis tax:

- A. On cannabis cultivation, a tax of 2% of the amount of each sale.
- B. On cannabis manufacture, a tax of 2% on the amount of each sale
- C. On cannabis wholesaling, a tax of 1% on the amount of each sale.
- D. On cannabis retailing, a tax of 2% on the amount of each sale.

Said tax shall be payable directly to the Chief Financial Officer of the Borough on a quarterly basis. Failure to make such payments shall subject the cannabis operation to the same penalties as would accompany a failure to make timely payment of property taxes.

2. CANNABIS TRANSFER AND USER TAX

A. Cannabis Transfer Tax.

- a. A Cannabis Transfer Tax is hereby imposed by the Borough on the sale of cannabis or cannabis items by a cannabis establishment that is located in the Borough of West Cape May, pursuant to N.J.S.A. 40:48I- 1 et. seq. This Transfer

Tax shall be imposed on receipts from the sale of cannabis or cannabis items 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.

B. Cannabis User Tax.

- a. The Borough of West Cape May hereby imposes a Cannabis User Tax at rates equivalent to the Cannabis Transfer Tax Rates set forth in Section 11 on any concurrent license holder, as permitted by Section 33 of the New Jersey Cannabis Regulatory, enforcement Assistance, and Marketplace Modernization Act, 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 Ordinance 603- 21 Section 11, from the license holder's establishment that is located in the Borough of West Cape May to any of the license holder's other establishments, whether located in the Borough or another municipality.

C. Medical Cannabis Transfer Tax.

- a. Pursuant to N.J.S.A. 24:61-1, et seq. entitled "Jake Honig Compassionate Use Medical Cannabis Act (hereinafter the "Act") a Medical Cannabis Transfer Tax shall be fixed at a uniform percentage of two percent (2%) rate on all receipts, each transfer or use of cannabis or cannabis items furnished by a licensed medical cannabis alternative treatment centers as defined by the Act, located in the Borough of West Cape May to a medical cannabis handler for delivery to a purchaser or to a registered qualifying patient or the patient's caregiver.
- b. The Medical Cannabis Transfer Tax shall be in addition to any other tax or fee imposed pursuant to any state or federal statute, local ordinance, or resolution by any governmental entity upon a Medical Cannabis Dispensary.
- c. All taxes imposed by this section shall be collected on behalf of the Borough of West Cape May, by the person dispensing cannabis to the patient, the patient's designated caregiver, or cannabis handler from the license holder's establishment that is located in the Borough to any of the other license holder's establishments, whether located in this Borough or another municipality.
- d. The Borough and the alternative treatment center shall enter into any sales and use tax agreements as may be required by New Jersey law.

3. COLLECTION OF CANNABIS TRANSFER AND USER TAXES.

- A. Every person required to collect any taxes imposed by this article shall be personally liable for the tax imposed, collected or required to be collected. Any such person shall have the same right in respect to collecting the tax from his or her customer; provided,

however, that the Borough of West Cape May shall be joined as a party in any action brought to collect the tax.

- B. Every person responsible for the collection of the Medical Cannabis Transfer Tax shall maintain books and/or records to substantiate the tax obligation, even if no tax is due.
- C. All transfer taxes or user taxes imposed by this section shall be paid to the Chief Financial Officer of the Borough of West Cape May for the proceeding calendar quarter on or before the last day of April, July, October, and January, respectively. A 10-day grace period, until the 10th of each month, shall be allowed for payment. Each quarter the Medical Cannabis Dispensary or cannabis establishment shall produce, to the Borough's Chief Financial Officer, a report certified as true and accurate by an appropriate employee, showing the receipts of each month of the preceding quarter. Each year before February 1, a financial report from an independent accountant, certifying as true the dispensary's or the establishment's revenues, shall be provided to the Borough's Chief Financial Officer.
- D. Pursuant to state law, any person who attempts to avoid the full disclosure of the tax due under this article or to avoid the payment of the tax, and any person who refuses to permit an officer or agent designated by the Borough of West Cape May to examine their books, records and papers is a disorderly person.
- E. If for any reason the tax imposed by this article is not paid when due, interest at a rate of twelve percent (12%) per annum on the amount of the tax due and an additional penalty of half of one percent (1/2%) of the amount of the unpaid tax for each month or fraction thereof during which the tax remains unpaid shall be added and collected or a minimum of fifty dollars (\$50), whichever is greater. Where action is brought for the recovery of any tax hereunder, the person liable shall, in addition, be liable for the cost of collection, including attorney's fees, interest and penalties imposed.

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Commented [FC1]: Frank D questions the practicality of this provision. The board should consider that issue.

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 Ordinance, or any provision of the applicable statute or any of the rules or regulations of the State of New Jersey.
- B. Proceedings for the suspension or revocation shall be in accordance with the provisions of Chapter 4 of the West Cape May Code, or any provision of the applicable statute or any of the rules or regulations of the State of New Jersey by a service of the notice of charges preferred against the licensee and affording a reasonable opportunity for a hearing. Any suspension or revocation shall carry the penalties and prohibitions provided in the ordinances and statutes are referred to herein.
- 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.

5. VIOLATIONS AND PENALTIES.

- A. Any licensee who shall violate or fail to comply with the provisions of this Chapter shall, upon conviction, be subject to a fine of \$2,000 for the first offense and \$3,500 for any subsequent offense within a year, as well as such penalties as may otherwise be provided by law.
- B. Any person who shall violate or fail to comply with the provisions of this Ordinance shall, upon conviction, be subject to a minimum fine of \$250.00 or a maximum of \$2,000 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. Repealer. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of that conflict.

Section 3. Severability. Should any portion of this ordinance be declared unconstitutional or invalid, the remaining portion of this ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this ordinance are declared to be severable.

Section 4. Effective Date. This ordinance shall take effect 20 days after passage and publication, according to law.

Carol E. Sabo, Mayor

Alan Crawford, Deputy Mayor

George Dick, Commissioner

Theresa Entead, RMC
Municipal Clerk

Introduced:
First Publication:
Second Reading & Adoption:
Final Publication:
Effective Date:

I hereby certify that the foregoing is a true copy of an Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on _____.

Municipal Clerk

NOTICE OF PENDING ORDINANCE

The foregoing Ordinance was introduced at a Regular Meeting of the Board of Commissioners of the Borough of West Cape May held on _____, when it was read for the first time and then ordered to be published according to law. This Ordinance will be further considered for final passage by the Board of Commissioners of the Borough of West Cape May at a meeting to be held at Borough Hall, 732 Broadway, West Cape May, New Jersey on _____, at 7:00pm or as soon thereafter as possible, at which time and place, all persons interested will be given an opportunity to be heard concerning such ordinance.

Theresa Enteadó, RMC

Municipal Clerk

NOTICE OF FINAL ADOPTION

The above captioned Ordinance was passed on Second Reading, Public Hearing and Final Adoption by the Board of Commissioners of the Borough of West Cape May, in the County of Cape May, State of New Jersey, at a Regular Meeting of the Board of Commissioners held on _____.

Theresa Enteadó, RMC

Municipal Clerk