

Robert Tarver, Esq., Borough Attorney

**BOROUGH OF PENNS GROVE**

**ORDINANCE NO. 2021-26**

**AN ORDINANCE OF THE BOROUGH OF PENNS GROVE AMENDING CHAPTER 410  
REGULATING TAXATION WITHIN THE BOROUGH OF PENNS GROVE**

**WHEREAS**, on February 22, 2021, the Governor of the State of New Jersey signed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, CREAMMA, P.L. 2021, c. 16 (the “Act”) codified at N.J.S.A. 24:6I-31; and

**WHEREAS**, the Borough of Penns Grove retains authority pursuant to N.J.S.A. 40:48-2 to make, amend, repeal and enforce such ordinances, regulations, or rules not contrary to the laws of the State of New Jersey or the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**WHEREAS**, the provisions of N.J.S.A. 2C:35-10a, section 40, authorize the Borough to impose Cannabis Transfer and User Taxes up to 2% on Cannabis Cultivators, Cannabis Manufacturers Cannabis Distributors and Cannabis Retailers and up to 1% on Cannabis Wholesalers; and

**WHEREAS**, the Borough of Penns Grove, having reviewed the matter, deems it in the Borough’s best interest to impose Cannabis Transfer and User Taxes to the limit of the law.

**NOW THEREFORE BE IT ORDAINED** by the Borough Council of the Borough of Penns Grove that Borough Code Chapter 231, Taxation, is amended as follows:

**SECTION 1.**

**Article VI. Recreational Cannabis Transfer and User Taxes**

**231-52 Intent and Purpose.**

The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, P.L. 2021, c. 16 (the “Act”) codified at N.J.S.A. 24-6I-31., authorizes the Borough to impose Cannabis Transfer and User Taxes up to 2% on Cannabis Cultivators, Cannabis Manufacturers Cannabis Distributors and Cannabis Retailers and up to 1% on Cannabis Wholesalers;

**231-53 Definitions**

The definitions are defined in the CREAMMA, N.J.S.A. 24-6I-31, and are incorporated herein by reference and shall have the same meanings.

## **231-54 Administration of Transfer Tax**

### **A. Transfer Tax**

There shall be a transfer tax imposed on the receipts from the sale of cannabis and cannabis items from the following licensed person or entity located in this municipality:

- i. From a cannabis cultivator to another cannabis cultivator; and
- ii. From one cannabis establishment to another cannabis establishment; and
- iii. From a cannabis retailer to retail consumers who are 21 years of age or older; and
- iv. By any combination thereof.

The transfer tax rate shall be assessed at 2% of receipts from each sale by a Cannabis Cultivator, Cannabis Manufacturer, Cannabis Distributer, Cannabis Delivery (where the delivery originates within the municipality) and Cannabis Retailer. The tax rate shall be assessed at 1% of receipts for each sale by a Cannabis Wholesaler.

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

Any transaction for which the transfer tax is imposed, is exempt from the tax imposed under the “Sales and Use Tax Act”, except for those which generate receipts from the retail sales by cannabis retailers.

The transfer 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. User Tax**

There shall be a user tax imposed on any concurrent license holder operating more than one cannabis establishment.

The user tax rate shall be assessed at 2% of receipts from each sale by a Cannabis Cultivator, Cannabis Manufacturer, Cannabis Distributer, Cannabis Delivery (where the delivery originates within the municipality) and Cannabis Retailer. The tax rate shall be assessed at 1% of receipts for each sale by a Cannabis Wholesaler.

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 on the license holder's establishment that is located in the municipality to any of the other license holder's establishments, whether located in this municipality or any other municipality.

The user tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

Any transaction for which the user tax is imposed, is exempt from the tax imposed under the "Sales and User Tax Act", except for those which generate receipts from the retail sales by cannabis retailers.

The transfer 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.

### **C. Collection of transfer and user tax**

In accordance with the provisions of N.J.S.A. 24:6I-31:

Every cannabis establishment required to collect the transfer and user taxes imposed by this Chapter shall be personally liable for the transfer and user tax imposed, collected, or required by this Chapter and N.J.S.A. 24:6I-31, section 40:

Any cannabis establishment collecting a transfer tax or user tax shall have the same right with respect to collecting the tax from another cannabis establishment or the consumer as if the tax was a part of the sale and payable at the same time. With respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the tax was part of the purchase price of the cannabis or cannabis item and payable at the same time, provided that the CFO of the municipality which imposes the transfer tax and user tax is joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

No cannabis establishment required to collect the transfer and user taxes 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 transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.

### **D. Remittance of Cannabis Taxes; Delinquencies**

Each cannabis establishment collecting transfer and user taxes pursuant to this chapter shall remit the collected taxes to the CFO of the municipality on a quarterly basis.

Delinquent taxes. If the transfer tax or user tax is not paid when due, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises.

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 municipality shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance of cannabis taxes 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.

**SECTION 2.** The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

**SECTION 3.** All other ordinances in conflict with or inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 4.** If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this ordinance but shall be confined in its effect to the provision directly involved in the controversy in which such judgment shall have been rendered.

**SECTION 5.** This ordinance shall become effective twenty (20) days after final passage and advertisement thereof as required by law.

\_\_\_\_\_  
Sharon R. Williams, Municipal Clerk

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LaDaena D. Thomas, Mayor

**INTRO: November \_\_, 2021**

COUNCIL	MOVED	SECONDED	Y	N	ABSTAIN	ABSENT
Carter						
Giordano						
Martin						
Mincey						
Rambo						
Scarpaci						

**Notice:** The above ordinance was introduced and passed on the first reading at the meeting of the Mayor and Council of the Borough of Penns Grove in the County of Salem held on November \_\_\_\_, 2021 and will be considered for final passage at a meeting to be held by the Mayor and Council at Borough Hall, Broad Street and State Street, Penns Grove, New Jersey at 6:30 p.m. on \_\_\_\_\_, 2021 at which time any interested person will be given an opportunity to be heard.

\_\_\_\_\_  
Sharon R. Williams, Municipal Clerk

**FINAL:** \_\_\_\_\_, 2021

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Sharon R. Williams, Municipal Clerk