

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
O R D I N A N C E**

ORDINANCE NO. 003-2026

**RE: AN ORDINANCE AMENDING CHAPTER 27, TAXATION, OF THE CODE OF UPPER
TOWNSHIP, TO IMPOSE A TRANSFER TAX ON THE SALE OF CANNABIS BY LICENSED
BUSINESSES OPERATING WITHIN THE TOWNSHIP OF UPPER**

WHEREAS, on November 3, 2020, registered New Jersey voters approved, by a ratio of 67.08% voting in favor of legalizing cannabis and 32.92% against, Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of cannabis for adults at least twenty-one (21) years of age; and

WHEREAS, in the Township of Upper, a majority of registered voters voted in favor of legalizing cannabis in the State of New Jersey; and

WHEREAS, on February 22, 2021, New Jersey Governor Philip Murphy signed the ‘New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act’ (the “Act”), N.J.S.A. 24:6I-1 et seq., into law effectively legalizing cannabis throughout the State of New Jersey; and

WHEREAS, the Act legalized the recreational use of cannabis and established a comprehensive regulatory and licensing scheme for the creation of a commercial cannabis industry within the state of New Jersey and specifically created six (6) distinct classes of commercial cannabis licenses related to growing, processing, distributing, wholesale, delivery, and retail uses; and

WHEREAS, pursuant to Section 40 of the Act, N.J.S.A. 40:48I-1, a municipality is permitted to enact a local Ordinance levying a cannabis transfer tax and user tax on the retail sales of cannabis or cannabis items by a cannabis establishment that is limited to 1% of wholesale activities and 2% of cultivation, processing, and retail activities; and

WHEREAS, the Act further provides that any municipal ordinance imposing a transfer tax shall also include provisions for imposing a user tax, at the equivalent rates outlined above, on any concurrent license holder operating under more than one class of cannabis license; and

WHEREAS, the Township Committee of the Township of Upper has elected to enact a cannabis transfer tax and user tax as permitted under the Act in order to avail itself of the opportunity to enhance the Township’s revenue stream for the benefit and general welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Upper, County of Cape May, and State of New Jersey that Chapter 27, Taxation, of the Code of the Township of Upper, be and hereby is amended as follows:

SECTION 1. Chapter 27, Taxation, Article II, Cannabis Transfer and User Tax, is hereby enacted as follows:

§ 27-2.1 Purpose.

The purpose of this chapter is to impose a tax on the sale of cannabis or cannabis products by licensed commercial cannabis businesses operating in the Township of Upper pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act, to specify the type of tax and rate of tax to be levied and the method of collection, and to comply with all requirements for the imposition of a transfer or user tax pursuant to State law. This chapter is enacted solely to raise revenue and not for purposes of regulation. This chapter does not authorize the conduct of any business or activity in the Township of Upper but provides for the taxation of such businesses or activities as they occur.

§ 27-2.2 Definitions.

The terms and definitions enumerated in Chapter 20 of the Township Code and the definitions set forth within N.J.S.A. 24:6I-33 are hereby incorporated by reference as if more fully set forth at length herein. For the purpose of this Chapter, words and phrases herein shall have the same meanings as codified under state law, N.J.S.A. 40:481-1(d), and any amendments or supplements thereto, and the rules and regulations of the Cannabis Regulatory Commission. In the event of a conflict in the meaning of words or phrases as between the Township of Upper Municipal Code and the foregoing laws or regulations of the State of New Jersey concerning legal cannabis, State law or regulations shall govern and control.

§ 27-2.3 Imposition of Cannabis Transfer Tax and User Tax.

The Township of Upper hereby imposes and shall collect certain local option taxes on cannabis business activity as follows:

- A. A municipal transfer tax is hereby imposed on the receipts of each sale by a licensed cannabis business operating in the Township of Upper at the rate of two (2%) percent of the receipts from the sale of cannabis and/or cannabis-related items from one cannabis establishment to another cannabis establishment and two percent (2%) of the receipts from the sale of cannabis and/or cannabis-related items by a Cannabis Retailer to retail consumers who are twenty-one (21) years of age or older.
- B. A municipal user tax is hereby imposed, at the equivalent transfer tax rates, on any concurrent license holder operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis-related items not otherwise subject to the transfer tax imposed pursuant to this section, 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.

§ 27-2.4 Payment of Taxes.

All revenues collected pursuant to this section shall be remitted to the Chief Financial Officer of the Township of Upper in the manner provided by this Ordinance. The taxes imposed by this section shall be computed and paid for each calendar month. Said taxes are due and payable to the Chief Financial Officer on or before the twentieth (20th) day of the succeeding month.

§ 27-2.5 Disposition of Tax Proceeds

For all revenues collected by the Township of Upper pursuant to Section 2.3, above, the Township of Upper shall be required to disperse all such funds into the following accounts held by the Township of Upper in the following increments:

Township of Upper Reserve Fund for Beach Replenishment (33.33%)

Township of Upper General Fund (33.34%)

Township of Upper Recreation Trust Fund from Donations (33.33%)

§ 27-2.6 Administration.

- A. The Chief Financial Officer of the Township of Upper is hereby authorized and empowered to administer, regulate, and collect payment of all taxes imposed by this Ordinance.
- B. The Chief Financial Officer of the Township of Upper may order an audit of any taxpayer under this chapter for the purpose of ascertaining the correctness or completeness of any return or payment.

§ 27-2.7 Penalties.

- A. The payment of delinquent taxes or transfer fees imposed by this Ordinance shall be enforced in the same manner as provided for delinquent real property taxes.
- B. In the event that the transfer tax or user tax imposed by this Ordinance 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 the parcel for unpaid property taxes due and owing in the same year.
- C. In the event that a lien is imposed on a delinquent taxpayer pursuant to this section, the Township of Upper shall file in the office of the Upper Township 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.

SECTION 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

SECTION 4. This Ordinance shall become effective twenty (20) days after final passage and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 12TH DAY OF JANUARY, 2026 AT THE TOWNSHIP HALL, AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF FEBRUARY, 2026 AT 6:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER