

O-11-23

AN ORDINANCE BY THE BOROUGH OF WHARTON, COUNTY OF MORRIS, NEW JERSEY, TO AMEND CHAPTER 165, "LAND USE AND DEVELOPMENT," TO ALLOW THE OPERATION OF A MEDICAL CANNABIS DISPENSARY AND CANNABIS RETAILER

WHEREAS, in 2020, New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of 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 marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in section 3 of the Act as "a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler or a cannabis retailer"), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner and times of operation of such establishments, distributors or delivery services and establish civil penalties for the violation of any such regulations; and

WHEREAS, section 31b of the Act authorizes municipalities, by ordinance, to prohibit the operation of any one or more classes of cannabis establishments, distributors or delivery services, anywhere in the municipality; and

WHEREAS, the Borough enacted O-12-21 on June 28, 2021, which prohibited all classes of cannabis establishments, cannabis distributors, and cannabis delivery services, as said terms are defined in Section 3 of P.L. 2021, c. 16, from operating within the Borough; and

WHEREAS, the Borough was concerned about the potential effects of a new and untested industry; and

WHEREAS, the Borough has now had the opportunity to monitor the impacts cannabis businesses have had on the municipalities where they operate and finds it is no longer in the best interests of the health, safety, and welfare of the Borough's residents and members of the public who visit, travel, or conduct business in the Borough, to prohibit the operation of a cannabis retailer in the Borough; and

WHEREAS, N.J.S.A. 40:48I-1 permits a municipality to 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 on the receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older and to set its own tax

rate, but in no case, exceed two percent of the purchase price of the cannabis or cannabis item from each sale by the cannabis retailer; and

WHEREAS, Section 31a of the Act also authorizes municipalities to adopt by ordinance regulations governing the local licensing endorsement, location, manner and times of operation of Cannabis Retailers and establish civil penalties for the violation of any such regulations.

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Wharton, in the County of Morris, State of New Jersey, that Part II, General Legislation, Chapter 165, Land Use and Development, is hereby amended as follows:

1. The current text of Chapter 165, Land Use and Development, Subsection 165-90A, General provisions, is hereby amended as follows: “Prohibited uses. All uses not expressly permitted in each zone district are prohibited and all classes of license for cannabis establishments pertaining to Adult-Use Cannabis are hereby prohibited from operating anywhere in the Borough, except for the operation of a a cannabis retailer and the delivery of cannabis items and related supplies by a licensed cannabis delivery service.”

2. The current text of Chapter 165 (Schedule XI-1 Schedule of District Use Regulations in the Regional Business (B-2) Zoning District, shall hereby be amended to include the following Principal Permitted Uses:

Cannabis Retailer, East of West Union Turnpike

3. The current text of Chapter 165 is hereby amended and supplemented by the addition of a new Article XVIV as follows:

ARTICLE XVIV ZONING AND LICENSING REQUIREMENTS FOR REGULATED CANNABIS FACILITIES

§ 165-139 – Cannabis facilities prohibited

Pursuant to Section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis facilities are hereby prohibited from locating in Wharton, except as provided herein and subject to the number, time, manner and land use restrictions set forth herein, as may be amended from time to time.

§ 165-140– Amendment of Provisions.

If federal laws or state regulators change any current regulations, the Borough Council reserves the right to amend this chapter as appropriate for reasons of public safety and to realize revenue, its intended purpose.

§ 165-141 – Effect on federal law.

Nothing in this Chapter proposes or intends to require any individual or entity to engage in conduct that violates federal law, or exempts any individual or entity from any requirement of federal law, or poses any obstacle to federal enforcement of federal law.

§ 165-142 – Definitions

Certain words and phrases used in this chapter are defined for the purposes hereof as follows:

ALTERNATIVE TREATMENT CENTER or ATC

An organization issued a permit pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (N.J.S.A. 24:6I-1, et seq.) to operate as a medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary, or clinical registrant, as well as any alternative treatment center deemed pursuant to Section 7 of the Act (N.J.S.A. 24:6I-7) to concurrently hold a medical cannabis cultivator permit, a medical cannabis manufacturer permit and a medical cannabis dispensary permit or any alternative treatment center authorized by the CRC to sell personal use cannabis to retail consumers.

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 P.L. 2016, c. 16 for use in cannabis products as set forth in this Act, 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” does not include: medical cannabis dispensed to registered qualifying patients pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (N.J.S.A. 24:6I-1 et seq.) and P.L. 2015, c. 158 (N.J.S.A. 18A40-12.22 et seq.); marijuana as defined in N.J.S.A. 2C:35-2 and applied to any offense set forth in Chapters 35, 35A and 36 of Title 2C of the New Jersey Statutes, or P.L. 2001, c. 114 (N.J.S.A. 2C:35B-1 et seq.), or marijuana as defined in Section 2 of P.L. 1970, c. 226 (N.J.S.A. 24:21-2) and applied to any offense set forth in the New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226 (N.J.S.A. 24:21-1 et seq.); or hemp or a hemp product cultivated, handled, processed, transported or sold pursuant to the New Jersey Hemp Farming Act, P.L. 2019, c. 238 (N.J.S.A. 4:28-6 et seq.).

CANNABIS CULTIVATOR

Any licensed person or entity that grows, cultivates, or produces cannabis in this State and sells and transports this cannabis to other cannabis cultivators or usable cannabis to cannabis manufacturers, or cannabis wholesalers or cannabis retainers, but not to consumers.

CANNABIS DELIVERY SERVICE

Any licensed person or entity that provides courier services for consumer purchasers 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.

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.

CANNABIS ESTABLISHMENT

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer, or a medicinal cannabis dispensary.

CANNABIS FACILITY

Any business engaged in the business of cannabis, including, but not limited to, cultivating, manufacturing, wholesaling, distributing, retailing, or delivering cannabis or cannabis products.

CANNABIS ITEM

Any usable cannabis, cannabis product, cannabis extract, and any other cannabis resin

CANNABIS PRODUCT

Concentrated cannabis products and cannabis products that are composed of cannabis and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

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.

CANNABIS RETAILER

Any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators or 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 also includes an ATC authorized by the

CRC to sell personal use cannabis to consumers and/or a Medical Cannabis Dispensary. A cannabis retailer shall also accept personal use 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.

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.

MEDICAL CANNABIS DISPENSARY

A business licensed by the State of New Jersey to sell medical cannabis to registered qualifying patients and their authorized caregivers. This term shall include the organization's officers, directors, board members and employees.

§ 165-143 – Operational requirements.

A cannabis facility issued a permit or license by the State of New Jersey and operating in the Borough under this chapter shall at all times comply with the following operational requirements:

- A. A cannabis facility shall comply with all regulatory rules promulgated by the Cannabis Regulatory Commission, laws of the State of New Jersey, laws of Morris County, and laws or ordinances of the Borough of Wharton.**
- B. A cannabis facility shall comply with the Zoning Code, the Building Code, and the Property Maintenance Code at all times.**
- C. A cannabis facility shall not be located within 1,000 feet of a school or child-care center.**
- D. Prior to the operation of any cannabis facility, a permit or license must be obtained from the State of New Jersey and from the Borough of Wharton for the applicable type(s) of cannabis facility. No cannabis facility shall be permitted to operate without state and municipal permits or licenses.**
- E. The consumption of any cannabis items shall be prohibited on the cannabis facility's premises.**
- F. State and municipal permits or licenses shall be prominently displayed inside the permitted premises in a location where it can be easily viewed by law enforcement and administrative authorities.**
- G. No person under the age of 18 shall be permitted to enter the premises of a cannabis facility.**
- H. Cannabis facilities shall have equipment to mitigate odor.**

- I. **Outside generators and other mechanical equipment used for any kind of power supply, cooling, or ventilation shall be enclosed and have appropriate baffles, muffles, and/or other noise reduction systems to mitigate noise pollution.**
- J. **No cannabis facility may open to customers for business before 8:00 a.m. or remain open to customers for business after 10:00 p.m.**
- K. **All cannabis facilities shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock surveillance system, 365 days a year; shall have *uniformed local police presence* on site at all times during operating hours; and shall also include:**
 - (1) **Security surveillance cameras installed to monitor all entrances along with the interior and exterior of the permitted premises;**
 - (2) **Burglary alarm systems which are professionally monitored and operated 24 hours a day, seven days a week;**
 - (3) **All security recordings and documentation shall be preserved for at least 30 days and made available to law enforcement upon request for inspection.**
- L. **All cannabis in whatever form stored at the permitted premises shall be kept in a secure manner and shall not be visible from outside the permitted premises.**
- M. **The amount of cannabis on the permitted property and under the control of the permit holder, owner or operator of the cannabis facility shall not exceed the amount permitted by the state license.**
- N. **Cannabis offered for sale and distribution must be packaged and labeled in accordance with state law.**
- O. **No pictures, photographs, or drawings of cannabis or cannabis paraphernalia shall appear on the outside of any licensed premises nor be visible outside of the licensed premises on the licensed property.**
- P. **The words “marijuana,” “cannabis” or any similar or slang words shall not appear on the outside of the licensed premises nor be visible outside of the licensed premises on the licensed property.**
- Q. **Any signage must first be approved by the Building/Zoning Department.**
- R. **No person operating or employed by a cannabis facility shall provide or otherwise make available cannabis to any person who is not legally authorized to possess the same under state law.**
- S. **The owner and operator of a cannabis facility shall use lawful methods in controlling and disposing of waste or by-products from any activities allowed under the state license or permit.**

- T. Cannabis may be transported within the Borough under this chapter by a company licensed to do so by the state, and to effectuate its purpose, only:
 - (1) In a manner consistent with all applicable state laws and rules, as amended;**
 - (2) In a secure manner designed to prevent the loss of the cannabis;**
 - (3) Using vehicles that do not have exterior markings, including the words “marijuana,” “cannabis,” or any similar or slang words; pictures or other renderings of the cannabis plant; advertisements for cannabis or for its sale, transfer, cultivation, delivery, transportation or manufacture, or any other word, phrase or symbol indicating or tending to indicate that the vehicle is transporting cannabis.****
- U. No vehicle, trailer, or otherwise moveable structures may be used for the ongoing or continuous storage of cannabis but may only be used incidental to, and in furtherance of, the transportation of cannabis and cannabis products.**

§ 165-144 – Cannabis license applications.

Every application or renewal application for a license to operate a cannabis facility shall be submitted to the Governing Body of the Borough of Wharton, or such other Borough entity as may be determined by the Borough Council. Applicants shall submit five copies of an initial application to be forwarded to the Borough Council, Police Department, Fire Prevention, and Building Department.

- A. The Borough reserves the right to reject any and all applications to operate a cannabis facility.**
- B. Persons applying to operate a cannabis facility assume the risk that all or part of any particular category of license authorized under this chapter may be cancelled at any time prior to issuance.**
- C. The Borough may issue no more than one cannabis retailer license.**
- D. Every applicant shall specify the location where the cannabis facility will operate. A separate license shall be required for each location at which a cannabis facility operates within the Borough.**
- E. Cannabis facilities and the financial books and records necessary to determine applicable taxes maintained and created by cannabis facilities are subject to inspection by the Borough Council, its officials, and its related entities.**
- F. The Governing Body shall establish a reasonable application period and deadline for all applications, but applications that supply the required information and fees herein shall be permitted to be submitted on the effective date hereof.**

- G. The Borough shall provide a final determination within 30 days of an application being deemed complete. Upon denial of an application, the Borough shall notify the applicant, in writing, of the specific reason for its denial.**
- H. A cannabis facility license application shall be deemed incomplete and shall not be processed by the Borough until all documents and application fees are submitted. To be deemed complete, all applications shall be accompanied by the following:**
- (1) The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis facility, which proof may consist of: a deed, a lease, a real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises to the applicant contingent upon successful licensing.**
 - (2) The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in this chapter.**
 - (3) The applicant shall submit, to the satisfaction of the Borough and the Chief Financial Officer or his designee, proof of financial capability to open and operate the cannabis facility for which the applicant is seeking a license. Standards for proof of financial capability shall be determined by the Borough.**
 - (4) The applicant shall submit a \$5,000 nonrefundable application fee.**
 - (5) The applicant shall submit the required \$10,000 licensing and annual registration fee to the Borough, which shall be refunded in the event the applicant is denied a license by the state.**
 - (6) The applicant shall submit a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management.**
 - (8) The applicant shall submit a workforce development plan.**
 - (9) The applicant shall indicate whether the applicant entity or its parent company holds any certifications as a New Jersey minority-owned, women-owned, or veteran-owned businesses.**
 - (10) The applicant shall indicate whether the applicant entity is applying for state licensure with the Cannabis Regulatory Commission as a microbusiness applicant.**
 - (11) The applicant shall provide a graphic rendering of its proposed signage.**
 - (12) The applicant shall submit any other additional information requested by the Borough in its evaluation of their application.**

- I. The Borough may deny any application that is lacking any required element or exhibit or that is not organized in the required format.**
- J. The Borough may deny any application due to an applicant's nonresponsiveness to the Borough's request for additional information.**
- K. The applicant and the application shall otherwise comply with any and all qualification standards set forth in the state and municipal laws or regulations.**
- L. In the event there are multiple applications for the same cannabis facility license that are deemed complete before all available licenses are issued, the Borough shall evaluate such license applications deemed complete and issue a notification of award after consideration and evaluation of the applicants, giving preference to: (a) applicants that have qualifications and experience operating in cannabis, with greater preference to applicant's that have experience operating cannabis businesses within the State of New Jersey; and (b) the applicant's financial position and demonstrated ability to commence operations.**
- M. Notwithstanding the foregoing competitive application process, a notification of award and conditional municipal license shall entitle the recipient applicant to pursue a State permit, license, or other approvals in the appropriate classification for up to 12 months, which may be extended in the Governing Body's discretion for an additional 6 months for good cause. No license to operate shall issue until the applicant has received a State permit and satisfied other prerequisites of municipal licensure. If the recipient of a notice of award and conditional license has not received a State permit or license within 12 months from issuance, unless extended for good cause, the Governing Body shall issue a new request for applications and evaluate all applicants for licensure under the above criteria.**

§ 165-145 – License fees; renewal; late fees

- A. A cannabis facility shall pay to the Borough an annual license fee of \$10,000.**
- B. The licenses issued shall be effective for the calendar year, expiring on the 31st day of December of the year of issue and may be renewable for succeeding calendar years thereafter. For any license issued during a calendar year, the annual license fee shall be prorated for that year. The fee for license renewals shall be due and payable on or before the first day of February in the year of renewal.**
- C. Late fees. A late fee of \$50 shall be charged for licenses which are not paid on/or before February 1 of the license year. An additional \$75 shall be charged for each thirty-day period that the license fee is not paid after February 1 of the license year.**

§ 165-146 – Consumption in public spaces prohibited; effect on other regulations.

The consumption of cannabis in any form is prohibited in all public spaces within the Borough of Wharton.

- A. Nothing in this chapter shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of cannabis, marijuana, or hemp on or in that property.**
- B. Nothing in this chapter is intended to permit the transfer of cannabis, marijuana, or hemp, with or without remuneration, to a person under the age of 21.**
- C. Nothing in this chapter is intended to allow driving under the influence of cannabis or marijuana or to supersede laws related to driving under the influence of cannabis or marijuana.**
- D. Nothing in this chapter is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of cannabis, marijuana, or hemp in the workplace or to affect the ability of employers to have policies restricting the use of cannabis or marijuana by employees.**

§ 165-147 – Transfer and user taxes and fees imposed pursuant to N.J.S.A. § 40:48I-1.

- A. There is hereby imposed a transfer tax of 2% on receipts from the retail sales of personal use cannabis and personal use cannabis items by a cannabis retailer to consumers. There is hereby imposed a user tax of 2% on the value of each transfer or use of personal use cannabis or personal use cannabis items not otherwise subject to the transfer tax from the license holder's establishment that is located in the Borough to any of the other license holder's establishments, whether located in the Borough or another municipality, except that the user tax shall not be applicable to inventory transfers from one cannabis retailer facility to another cannabis retailer facility if those cannabis retailer facilities are owned and operated by the same licensed entity,**
- B. Such taxes and fees shall be collected or paid and remitted to the municipality by the cannabis facility from the consumer at the point of sale, on behalf of the municipality by the cannabis retailer selling the personal use cannabis item to that consumer. The transfer or user tax and fees 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 personal use cannabis or personal use cannabis item. No cannabis facility required to collect a transfer tax or fee imposed hereunder 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 fee or user tax or fee will not be separately charged and stated to another cannabis facility or the consumer or that the transfer tax or fee will be refunded to the cannabis facility or the consumer.

§ 165-148 – Tax Liability

Every cannabis facility required to collect a transfer tax imposed by ordinance pursuant to this chapter shall be personally liable for the transfer tax or user tax imposed, collected, or required to be collected under this chapter. Any cannabis facility shall have the same right with respect to collecting the transfer tax from another cannabis facility or the consumer as if the transfer tax was a part of the sale and payable at the same time, or with respect to nonpayment of the transfer tax or user tax by the cannabis facility or consumer, as if the transfer tax was a part of the purchase price of the personal use cannabis or personal use cannabis item, or equivalent value of the transfer of the personal use cannabis or personal use cannabis item, and payable at the same time.

§ 165-149 – Collection of taxes; liens

All revenues collected from a transfer tax imposed by ordinance pursuant to this chapter shall be remitted to the Chief Financial Officer or his designee in the manner prescribed herein. The Chief Financial Officer or his designee shall collect and administer any transfer tax imposed by ordinance pursuant to this chapter. The municipality may enforce the payment of delinquent taxes or transfer fees imposed by ordinance pursuant to this chapter in the same manner as provided for municipal real property taxes. In the event that the transfer tax imposed by ordinance pursuant to this chapter is not paid as and when due by a cannabis facility, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis facility'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 lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

§ 165-150 – Administration of tax.

The Chief Financial Officer is charged with the administration and enforcement of the provisions of this chapter and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this chapter. Should a cannabis facility fail or refuse to provide

adequate information to the Chief Financial Officer or his designee to determine the amount of tax due, the Chief Financial Officer or his designee may use information provided to the Chief Financial Officer or his designee from other sources (i.e., the Commission or Department of Treasury) to determine the amount of tax liability.

§ 165-151 – Quarterly statement and payments.

- A. Each cannabis retail facility shall send a statement by mail or electronically to the Borough on or before the last day of each annual quarter or such other term as required by the state. The statement must contain an account of the amount of personal use cannabis or personal use cannabis products sold or transferred to consumers and/or cannabis delivery facilities during the preceding quarter, setting out:**
- (1) The total number of sources, including fractional ounces, sold or transferred;**
 - (2) The quantity of personal use cannabis products sold or transferred;**
 - (3) If to a cannabis delivery service, the cannabis delivery facility’s licensing information;**
 - (4) Such other information as may be necessary for the Borough to determine and verify the tax or fee due to the Borough.**
- B. The cannabis facility shall pay quarterly, or at such term set by the Borough, all taxes or fees, computed at the rates prescribed in this chapter, on the respective total quantities of the personal use cannabis sold or transferred during the preceding quarter or applicable period. The quarterly return shall be filed and the tax paid on or before the 15th day of the month to cover the preceding quarter. Failure to file the quarterly tax return and pay the applicable taxes on or before the 15th day of the month shall constitute a violation of this chapter. The Chief Financial Officer or his designee is hereby authorized to examine the books, papers and records of any taxpayer to verify the accuracy of any declaration or return or, if no declaration or return was filed, to ascertain the tax due. Every taxpayer is hereby directed and required to give to the Chief Financial Officer, or to any agent designated by him/her, the means, facilities and opportunity for such examinations and investigations as are hereby authorized. Such information will be made available within three days of being requested.**

§ 165-152 – Recordkeeping.

Taxpayers liable for the transfer tax are required to keep such records as will enable the filing of true and accurate returns or the tax and such records shall be preserved for a period of not less than three years from the filing date or due date, whichever is later, in order to enable the Chief Financial Officer or his designee to verify the correctness of the declarations

or returns filed. If records are not available in the municipality to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the Chief Financial Officer or his designee either by producing them at a location in the municipality or by paying for the expenses incurred by the Chief Financial Officer or his designee in traveling to the place where the records are regularly kept.

§ 165-153 – Delinquent payments and unpaid tax.

Delinquent payments under this chapter shall be subject to the interest rate imposed upon unpaid taxes. If a cannabis facility fails to pay the tax to the Borough of Wharton, the cannabis facility's license may be revoked.

§ 165-154 – Confidentiality.

The returns filed by taxpayers, and the records and files of the Chief Financial Officer or his designee respecting the administration of the transfer tax, shall be considered confidential and privileged, and neither the municipality nor any employee or agent engaged in the administration thereof or charged with the custody of any such records or files, nor any former officer or employee, nor any person who may have secured information therefrom, shall divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the Chief Financial Officer nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of the State Uniform Tax Procedure Law or of the tax law affected or where the determination of the action or proceeding will affect the validity or amount of the claim of the municipality under the tax provisions of this chapter.

§ 165-155 – Audit and assessment.

The Chief Financial Officer may initiate an audit by means of an audit notice. If, as a result of an examination conducted by the Chief Financial Officer or his designee, a return has not been filed by a taxpayer or a return is found to be incorrect and transfer taxes are owed, the Chief Financial Officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.

§ 165-156 – Coordination of safety and security measures.

Any applicant for a cannabis facility license shall coordinate with the Chief of Police, or his or her designee, regarding the measures to be taken to ensure the security of the facility and the safety of the public and facility employees. Such measures may include, but are not limited to, facility access controls, surveillance systems, and site lighting consistent with the requirements of state law.

§ 165-157 – Inspection.

Subject to the requirements and limitations of state law, the municipality shall have the reasonable right to inspect the premises of any approved cannabis retail or cannabis delivery facility during its regular hours of operation to ensure compliance with local ordinances and regulations.

§ 165-158 – Prohibited operation declared public nuisance.

Operation of any prohibited or unpermitted cannabis facility within the Borough in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

§ 165-159 – Enforcement.

Violations of the provisions and requirements set forth or referenced herein may be enforced in any manner the municipality deems appropriate. In addition to any other remedies, the Borough may institute proceedings for injunction, mandamus, abatement or other appropriate remedies to prevent, enjoin, abate or remove any violations of this chapter. The rights and remedies provided herein are civil in nature. The imposition of a fine shall not exempt the violator from compliance with the provisions of this chapter.

§ 165-160 –Violations and penalties.

- A. Procedures for investigation of license violations and for suspension, revocation, or other licensing sanctions as a result of any such violation shall be as follows:
 - (1) First offense: up to \$500 per violation per day;**
 - (2) Second offense: up to \$1,000 per violation per day;**
 - (3) Third offense: summary suspension.****
- B. A first offense that is not cured within three days shall become a second offense. A second offense that is not cured within three days shall become a third offense.**

- C. **Summary suspension.** Notwithstanding the foregoing section, when the Borough has reasonable grounds to believe that a licensee has engaged in deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and/or general welfare has been jeopardized and requires emergency action, the Borough may enter a summary suspension order for the immediate suspension of such license pending further investigation.
- D. **Inactive licenses.** Following the commencement of retail sales of cannabis or cannabis products, the administrator may suspend or revoke any license if the licensed premises have been inactive or unoccupied by the licensee for at least six months.
- E. **State license.** The Governing Body may suspend or revoke any license if the corresponding state license or permit for the subject location is expired, surrendered, suspended, or revoked.

§ 165-161 –Terms defined; repealer.

Unless specifically defined otherwise herein, any term used herein shall incorporate the definition of that term in the Act. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Wharton Code inconsistent with the provisions of this chapter is hereby repealed to the extent of such inconsistency.

§ 165-162 – Conflict with other provisions.

No ordinance, regulation, or interpretation thereof shall conflict with the Act. If any section, paragraph, subsection, clause, or provision of this chapter shall be adjudged by a court of competent jurisdiction to conflict with the Act or otherwise be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this chapter shall be deemed valid and effective.

§ 165-163 – When effective.

After introduction of this ordinance, the Borough Clerk shall send a copy of this ordinance to the Borough of Wharton Planning Board for its review and comment. The Borough Clerk shall also send a copy of this ordinance, upon introduction and adoption, to the Morris County Planning Board, pursuant to N.J.S.A. 40:55D-16.

This ordinance shall take effect upon its passage and publication and filing with the Morris County Planning Board and as otherwise provided for by law.

First Reading: May 22, 2023
Second Reading: June 26, 2023

BOROUGH OF WHARTON

ATTEST:

Gabrielle Evangelista
Borough Clerk

WILLIAM J. CHEGWIDDEN
MAYOR