

A REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ANDOVER, COUNTY OF SUSSEX, STATE OF NEW JERSEY WAS HELD ON MONDAY, SEPTEMBER 13th, 2021 AT THE BOROUGH HALL BEGINNING AT 7:00 P.M.

PRESENT: Council Members: Hoag, Smith, Pearson, Walter and Delfing.

ABSENT: Dennison and Morgan.

Council President, Robert Smith, called the meeting to order with a salute to the flag and in accordance with the Open Public Meetings Act by advertising notice of meeting in the N.J. Herald and posting copy of notice in the Borough Hall.

MINUTES:

A MOTION was made by Mr. Hoag, seconded by Mrs. Delfing to approve the minutes of the meeting held on June 14, 2021. Upon roll call the following votes were cast: AYES: Hoag, Smith, Walter, Delfing. NAYS: None. ABSTAIN: Pearson. Motion carried.

A MOTION was made by Mr. Hoag, seconded by Mrs. Delfing to approve the minutes of the meeting held on April 12, 2021. Upon roll call the following votes were cast: AYES: Smith, Pearson, Walter. NAYS: None. ABSTAIN: Hoag and Delfing. Motion carried.

A MOTION was made by Mr. Hoag, seconded by Mrs. Delfing to approve the minutes of the meeting held on March 8, 2021. Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

OFFICIALS REPORTS:

A Motion was made by Mr. Hoag, seconded by Mrs. Delfing to approve the Treasurer's Report for August as presented and waive the reading. Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

A MOTION was made by Mrs. Delfing, seconded by Mr. Hoag to accept the following reports and place on file: Lakeland Emergency Squad corrected June, July and August reports, ABFD report for August. Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

CORRESPONDENCE: The following was presented to the governing body and placed on file:

JCPL re: Public Hearing Notice – Notice of Proposed Recovery through its Basic Generation Service Charges of Costs Resulting from Statewide Auction for Basic Generation Service

AUDIENCE PARTICIPATION: None.

REPORTS OF SPECIAL COMMITTEES:

SWAC & SC Water Quality Management: Mr. Landrith was absent.

Borough Land Report:

The Council reviewed a memo from Frank McGovern regarding abandoned vehicles. Mr. Hoag reported he needed to get out there to check the VIN #'s.

REPORTS OF STANDING COMMITTEES:

Administrative & Executive:

Mr. Pearson asked about a job description for CFO. There is no recommendation at this time. Mr. Pearson reported that all other job descriptions are finished. He was told by the Municipal Clerk to

expect codification fees by end of year or beginning of next. Advertisement for CFO position could be sent through NJLM or GMFO if no one has responded.

Celebration of Public Events: Mrs. Walter reported that she is still working on the Halloween plans. The community breakfast will be the 1st Saturday in December and we are still trying to get a hold of Santa.

Finance: Mr. Dennison had no report.

Parks & Playgrounds: Mr. Hoag reported that the new flags are on order and there is no new graffiti. The Mayor reported that he did remove two attack dog trainers in the park and took a look at the tractor which needs a new belt.

Public Bldgs. & Grounds: Mr. Smith reported that the interiors are set for the winter with the new split units in each.

Public Safety: Mrs. Delfing congratulated the ABFD on their celebration held 8/14/21.

Streets & Roads: Mr. Hoag reported that a catch basin needs to be repaired on Railroad Avenue. He is preparing for winter and would like to schedule it to be done this week.

Water Utility: Mr. Smith reported on the water tower project. He stated that the repair will leave the tower down for up to 3 to 4 weeks. Contract states that the project needs to be done by 10/31/21. They will be here on the 20th to set up, begin repair and fabrication on the 24th and empty/drain the tank on the 27th. Mr. Hoag, OEM, will find info on a water buffalo.

OLD BUSINESS: None.

NEW BUSINESS: There was some discussion regarding the use of the American Rescue Plan Act funds and use of it for the water tower project.

ANY OTHER BUSINESS:

The Council reviewed the Municipal Aid Grant - **Proposed Resurfacing of Railroad Avenue** Payment Voucher.

A MOTION was made by Mrs. Delfing, seconded by Mr. Hoag to authorize signature and payment. Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

ORDINANCE:

Water Tower:

A MOTION was made by Mr. Hoag, seconded by Mr. Pearson to approve the second reading and adoption of "AN ORDINANCE APPROPRIATING THE SUM OF \$50,000.00 FOR IMPROVEMENTS TO WATER TOWER". Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

**Ordinance replaced with ARPA Water Tower Ordinance introduced 9/22/21.*

Cannabis Tax:

A MOTION was made by Mr. Pearson, seconded by Mrs. Delfing to approve the first reading and publication of "AN ORDINANCE AMENDING CHAPTER 66, ENTITLED "FEES" OF THE CODE OF THE BOROUGH OF ANDOVER, SUSSEX COUNTY, NEW JERSEY, TO ADD A NEW SECTION ESTABLISHING TRANSFER AND USER TAXES APPLICABLE TO CANNABIS ESTABLISHMENTS AND TRANSACTIONS".

AN ORDINANCE AMENDING CHAPTER 66, ENTITLED "FEES" OF THE CODE OF THE BOROUGH OF ANDOVER, SUSSEX COUNTY, NEW JERSEY, TO ADD A NEW SECTION ESTABLISHING TRANSFER AND USER TAXES APPLICABLE TO CANNABIS ESTABLISHMENTS AND TRANSACTIONS

BE IT ORDAINED by the Mayor and Council of the Borough of Andover, County of Sussex and State of New Jersey as follows:

SECTION 1. Chapter 66, entitled "Fees" of the Code of the Borough of Andover be and is hereby amended to add new Section 66-5, entitled "Cannabis Tax", which reads as follows:

Section 66-5. Cannabis tax.

A. Purpose. It is the purpose of this section to impose a transfer tax and user tax as permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon such property/facility.

B. Definitions. As used in this section:

- (i) "Cannabis" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (ii) "Cannabis establishment" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (iii) "Cannabis items" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (iv) "Cannabis retailer" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (v) "Cannabis wholesaler" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (vi) "Consumer" means the same as that term is defined in N.J.S.A. 24:6I-33.
- (vii) "Premises" means the same as that term is defined in N.J.S.A. 24:6I-33.

C. Transfer Tax.

- (i) A transfer tax is imposed on each sale of: (a) cannabis items from one cannabis establishment to another cannabis establishment, (b) cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; and/or (c) any combination thereof.
- (ii) The following rates apply to the transfer tax: (a) one percent of the receipts from each sale by a cannabis wholesaler; and (b) two percent of the receipts from each sale by a cannabis retailer.

D. User Tax.

(i) A user tax on any concurrent license holder operating more than one cannabis establishment is imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph C of Section 66-5, from the license holder's establishment located in the Borough of Andover to any of the other license holder's establishments, whether located in the Borough of Andover or another municipality.

(ii) The following user tax rates shall apply to all transfers by a concurrent license holder of cannabis or cannabis items to any of the other license holder's establishments:

(a) One percent on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph C of Section 66-5 by a cannabis wholesaler; and

(b) Two percent on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph C of Section 66-5 by a cannabis retailer.

E. Collection of tax by cannabis establishments.

(i) The transfer tax or user tax shall be collected or paid, and remitted to the Borough of Andover by the cannabis establishment from the cannabis establishment 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. The transfer tax or 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.

(ii) Every cannabis establishment required to collect a transfer tax or user tax shall be personally liable for the transfer tax or user tax imposed, collected or required to be collected. Any

cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment or the consumer as if the transfer tax or user tax were a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax were 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 the transfer tax or user tax.

(iii) No cannabis establishment required to collect a transfer tax or user tax 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.

F. Remittance of tax revenue; Enforcement.

(i) All revenues collected from a transfer tax or user shall be remitted to the chief financial officer of the Borough of Andover. The chief financial officer shall collect and administer any transfer tax or user tax, and the Borough shall enforce the payment of delinquent taxes or transfer fees in the same manner as provided for municipal real property taxes.

(ii) In the event that the transfer tax or user tax 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 on the parcel for unpaid property taxes due and owing in the same year.

(iii) The Borough shall file in the office of its 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.

G. This section shall be interpreted and administered in accordance with N.J.S.A. 40:48I-1, as the same may be amended, revised and/or supplemented from time to time.

SECTION 2.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected thereby but shall remain in full force and effect.

SECTION 3.

All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this Ordinance are hereby repealed to the extent of such inconsistency or contrariness.

SECTION 4.

This Ordinance shall take effect immediately after final passage and publication.

RESOLUTIONS:

Refund of Overpayment

A MOTION was made by Mr. Pearson, seconded by Mrs. Delfing to approve a Resolution approving a refund for payment made in error on block 2.02 lot 1 in the amount of \$3.01 and \$2.81 to Corelogic. Upon roll call the following votes were cast: AYES: Hoag, Smith, Pearson, Walter, Delfing. NAYS: None. ABSTAIN: None. Motion carried.

AUDIENCE PARTICIPATION:

Dick Mooney asked if the transactions between Code Enforcement and the Luchetti property have been resolved. Mr. Smith asked that the Clerk look into the matter and provide report if available. Mr. Mooney continued to report that there were Ash trees next to the pump house that need to be taken down. Lastly, Mr. Mooney stated that he would need a pressure relief valve before he could continue with shutting down the water tower for repair.

Mr. Joseph Ficcaro of 23 West High Street asked if there would be a Halloween Decorating Contest this year. There will be.

MOTION TO PAY THE BILLS:

A MOTION was made by Mr. Hoag, seconded by Mrs. Walter to pass the following Resolution: **BE IT RESOLVED** by the Governing Body to approve the payment of all vouchers on the bill listed September 13, 2021, submitted by the Chief Financial Officer for payment. Upon roll call the following votes were cast: **AYES:** Hoag, Smith, Pearson, Walter, Delfing. **NAYS:** None. **ABSTAIN:** None. Motion carried.

MOTION TO ADJOURN:

A MOTION was made by Mr. Pearson, seconded by Mrs. Delfing to adjourn the meeting. **AYES:** Hoag, Smith, Walter. **ABSTAIN:** Pearson. **NAYS:** Mrs. Delfing. Motion carried.

Beth Brothman
Municipal Clerk