

BOROUGH OF ROCKAWAY

ORDINANCE #23-21

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ROCKAWAY IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF ROCKAWAY TO ESTABLISH LICENSING REQUIREMENTS AND MUNICIPAL TRANSFER AND USER TAXES FOR AUTHORIZED CANNABIS RETAILERS AND TO PROHIBIT THE OPERATION OF ALL OTHER CLASSES OF CANNABIS BUSINESSES WITHIN THE BOROUGH OF ROCKAWAY

WHEREAS, in the 2020 General Election, voters approved a ballot measure to amend the State Constitution to provide for the legalization of “cannabis”, a legal form of the same substance more commonly known as marijuana, for adults twenty-one (21) years or older; and

WHEREAS, in the Borough of Rockaway voters approved the ballot measure to legalize cannabis by a margin of 2,190 (66%) in favor and 1,128 (34%) opposed; 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”), legalizing the recreational use of marijuana by adults twenty-one (21) years of age or older, and establishing a regulatory and licensing scheme for commercial recreational cannabis operations, use and possession; and

WHEREAS, a state-wide administrative body known as the Cannabis Regulatory Commission is tasked with overseeing the licensing process for cannabis businesses and adopting rules and regulations concerning cannabis use and by which cannabis businesses are permitted to operate; and

WHEREAS, the Cannabis Regulatory Commission is presently constituted, but implementing regulations for cannabis related activities and licensing have yet to be adopted or even formally proposed; and

WHEREAS, the Act establishes six (6) different classes of licensed businesses:

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk from a licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchase items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

WHEREAS, the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis businesses permitted to operate within its boundaries as well as the “location, manner, and times of operation” of such businesses and to establish civil penalties for violations of any such regulations; and

WHEREAS, the Act also authorizes municipalities by ordinance to prohibit the operation of “any one or more classes” of cannabis businesses anywhere in the municipality, except that this prohibition cannot be extended to the delivery of cannabis items and related supplies by a delivery service, the regulation of which is outside the scope of municipal authority; and

WHEREAS, pursuant to the Act any such municipal ordinance must be adopted within one hundred and eighty (180) days of the effective date of the Act; and

WHEREAS, the failure to enact such an ordinance within one hundred and eighty (180) days of the effective date of the Act shall result in any class of cannabis business being deemed a permitted use in all industrial zones, and the retail sale of cannabis items to consumers by a cannabis retailer being deemed a conditional use in all commercial and retail zones for a period of five (5) years; and

WHEREAS, upon conclusion of the initial or any subsequent five (5) year period following a failure to enact any such ordinance regulating or prohibiting cannabis businesses, municipalities have another one-hundred eighty (180) day period to prohibit or regulate the operation of cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business existing in the municipality at the time of the enactment of any subsequent enactment; and

WHEREAS, the Act 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 receipts from the sale of cannabis 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 twenty-one (21) years of age or older; or any combination thereof and to set its own rate or rates, but in no case exceeding: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer; and

WHEREAS, the Mayor and Council have determined that the limited and measured allowance of only one (1) specific class of cannabis business within the Borough of Rockaway is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Borough residents and members of the public who visit, travel, or conduct business in Rockaway Borough to amend the Borough of Rockaway’s Code and ordinances to authorize such cannabis related businesses, to wit Cannabis Retailers, and to expressly prohibit all other forms of Cannabis related businesses and activities within the geographic boundaries of the Borough of Rockaway; and

WHEREAS, several prominent organizations, including the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys, established for the specific purpose of advising and assisting municipalities within New Jersey on legal matters, such as have been presented by the Act have endorsed, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extend cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action, whether or not generally in favor of cannabis legalization, business and land use, a limited, gradual and measured implementation of a specific class of cannabis business so as to facilitate a careful and thorough review of the law and its impact;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Rockaway, in the County of Morris, State of New Jersey that as follows:

Section 1. Chapter 111, Cannabis Businesses, is hereby created as follows:

§ 111-1 Definitions.

As used in this Chapter, the following words shall have the following meanings:

Cannabis Business shall mean any “Cannabis Cultivator”, “Cannabis Manufacturer”, “Cannabis Wholesaler”, “Cannabis Distributor”, “Cannabis Delivery Service” as defined in “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act”, as amended and supplemented, and any and all other forms, classes, kinds and types of commercial and non-commercial cannabis related business, activities, transactions, sales or operations subject to

regulation by municipal ordinance, except that “Cannabis Business” shall not mean “Cannabis Retailer.”

Cannabis Retailer shall mean any person or entity expressly authorized pursuant to a Class 5 Cannabis Retailer License issued by the State of New Jersey and a municipal license issued by the Borough of Rockaway to engage in the retail sale of legal forms of cannabis, including usable cannabis, cannabis items and other related lawful goods and products, to consumers from a retail store, purchases or otherwise obtains such forms of cannabis from cannabis cultivators and cannabis manufacturers or cannabis wholesalers and that shall also accept 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.

Except as otherwise provided, the terms and definitions used in this Chapter shall have the same meaning as delineated in the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.

§ 111-2 Prohibited Activity.

All Cannabis Businesses, including any “Cannabis Cultivator”, “Cannabis Manufacturer”, “Cannabis Wholesaler”, “Cannabis Distributor”, and “Cannabis Delivery Service”, are hereby prohibited from operating anywhere in the Borough of Rockaway, except as otherwise provided herein and that this shall not be construed to apply to Cannabis Retailer pursuant to this Chapter and Chapter 172 of the Borough Code, the transportation or delivery of cannabis items and related supplies by a delivery service to consumers within the municipality and any other form of cannabis business or cannabis related business activity that is exempt from, or not subject to, municipal regulation pursuant to State law.

§ 111-3 Operational Requirements.

The retail sale of cannabis by licensed Cannabis Retailers shall be permitted in the Borough, pursuant to this Chapter and in accordance with Chapter 172 of the Borough Code, to the extent not inconsistent with State law or regulation, subject at all times to the following operational requirements and conditions:

- A. The regulations of this Section are subject to the enabling authority of the State of New Jersey and are subject to compliance with all statutes and/or regulations adopted by the State of New Jersey, including by the Cannabis Regulatory Commission. If any provision of this Section is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail. Nothing in this Ordinance shall be construed to supersede federal or state laws governing the sale, distribution and possession of cannabis.
- B. Prior to the operation, and at all times thereafter, the Cannabis Retailer shall hold a valid license issued by the State of New Jersey and from the Borough of Rockaway to undertake cannabis retail activities at the permitted location. Any State issued license is valid only for the location identified on the license and until the date of expiration and may not be transferred to any other location within the Borough without filing and issuance of a new municipal license. Any State and Borough issued license shall be prominently displayed at the permitted location and available for inspection upon request by appropriate State, local and municipal officials.
- C. Cannabis Retailers shall, at all times, comply with the terms and conditions of license issued by the State and with all zoning, planning, land use, building code, property maintenance and other applicable provisions of the Borough Code.
- D. All authorized retail operations shall be conducted solely within the confines of the premises at the permitted location.
- E. All Cannabis Retailers shall at all times maintain security and surveillance systems in accordance with New Jersey State statutes and regulations and shall meet the following requirements:
 - (1) There shall be controlled access to the site;

- (2) There shall be security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, with 24/7 on-site video monitoring, which video shall be accessible, retained and stored for the period prescribed by State law, but in no case for less than 30 days;
 - (3) There shall be a burglary alarm system, which shall be professionally monitored and operated 24 hours a day, 7 days a week; and
 - (4) Properly trained security personnel onsite at all times during operating hours.
- F. 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, nor shall it be grown, processed, exchanged, displayed or dispensed outside the permitted premises.
 - G. The amount of cannabis on the permitted property and under the control of the licensee, owner or operator of the facility shall not exceed the amount permitted by the State license.
 - H. Cannabis offered for sale and distribution must be packaged and labeled in accordance with State law.
 - I. The public consumption, or use, of cannabis, alcohol, or other controlled substances on the permitted premises is prohibited.
 - J. The operation and design of the Cannabis Retail facility shall minimize any impact to adjacent uses, including the control of any odor such that no odor is detectable beyond the permitted property. No facility shall be operated in a manner creating noise, dust, vibration, glare, fumes, or odors beyond the boundaries of the property on which the facility is operated; or creating any other nuisance that hinders the public health, safety and welfare of the residents of the Borough of Rockaway.
 - K. No person operating or employed by a Cannabis Retail facility shall provide or otherwise make available cannabis to any person who is not legally authorized to possess same under state law.
 - L. Cannabis may be transported within the Borough under this ordinance by a person or entity 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; and
 - (2) In a secure manner designed to prevent the loss of the cannabis.
 - M. No vehicle 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.
 - N. No Cannabis Retailer may open to customers for business before 8:00 am or remain open to customers for business after 10:00 p.m.
 - O. No pictures, photographs, drawings, or other depictions of cannabis or cannabis paraphernalia shall appear on the outside of any permitted premises nor be visible outside of the permitted premises on the permitted property. The words "marijuana," "cannabis" and any other words used or intended to convey the presence or availability of marijuana shall not appear on the outside of the permitted premises nor be visible outside of the permitted premises on the permitted property.

§ 111-4 Coordination of Safety and Security Measures.

Any applicant for a Cannabis Retail facility 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.

§ 111-5 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 Retailer, during its regular hours of operation to ensure compliance with local ordinances and regulations.

§ 111-6 Licensing, Registration and Business Regulation.

A. Local Licensing Authority.

- (1) The Borough Administrator is hereby designated to act as the local licensing authority for the Borough for all Cannabis Retailers. Except as otherwise provided herein or in matters where the action of the Governing Body or other Borough officials may be necessary or appropriate, in all circumstances in which State law requires communication to the Borough by the Cannabis Regulatory Commission or any other State agency with regard to the licensing of Cannabis Retailers by the State, or in which State law requires any review or approval by the Borough of any action taken by the State licensing authority, the Borough Administrator will serve as the authority for receiving such communications and granting such approvals.
- (2) Under no circumstances shall a local license for a Cannabis Retailer issued by the Administrator be effective until or unless the State has issued the requisite licenses to operate such a facility. It is the intent of this Chapter that no Cannabis Retailer may lawfully operate in the Borough of Rockaway without the issuance of a State license and full regulatory oversight of the Cannabis Retailer by the Cannabis Regulatory Commission or other state licensing authority as well as oversight and issuance of a license by the Borough.

B. Classification of licenses. The Borough, subject to land use approval, strict compliance with the requirements of this Chapter and State licensure, may issue a municipal license for a Class 5 Cannabis Retailer.

C. Maximum number of licenses. The Borough may issue a maximum of two (2) municipal licenses for Class 5 Cannabis Retailer. No licensee shall hold more than one (1) municipal Cannabis Retailer License within the Borough of Rockaway. Any license issued by the Borough is conditional and contingent upon the locally licensed person or entity's receipt of a State license of the same class or type of regulated cannabis activity.

D. Application. Persons wishing to obtain a cannabis license shall file a license application with the Administrator, on a standardized form established by the Borough and available in the Administrator's office. The Administrator shall establish a reasonable application period and deadline for all applications. An application shall be deemed incomplete, and shall not be processed by the Administrator, 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 Retailer, 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 entrant contingent upon successful licensing.
- (2) The applicant shall submit an affidavit and documentary proof of compliance with all state and local laws regarding any of its activities or operations, including, but not limited to, pursuant to § 111-3 of this Chapter, as applicable.
- (3) The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in the Code of the Borough of Rockaway.
- (4) The applicant shall submit, to the reasonable satisfaction of the Administrator, proof of financial capability to open and operate the Cannabis Retailer for which the applicant is seeking a license.
- (5) The applicant shall submit all required nonrefundable application and conditional license fee in accordance with the following schedule:

\$5,000 Cannabis Retailer License

- (6) The applicant shall submit all annual registration fees required in accordance with the following fee schedule, which shall be refunded in the event the applicant does not receive a license:

\$2,500 per year Cannabis Retailer License

- (7) In addition to complying with any State requirement related to qualifications, credentials, financial capability, business operations and criminal history, any person proposed to have an ownership interest in the license shall not have had any cannabis license or permit revoked for a violation affecting public safety in the State of New Jersey or a subdivision thereof within the preceding five (5) years.
- (8) The applicant and the application shall otherwise comply with any, and all qualification standards set forth in the State and Borough laws or regulations.

E. Term of License and License Renewals.

- (1) Any municipal license issued pursuant to this Chapter shall be valid for a period of three (3) years from the date of issuance and shall be renewed in accordance with the provisions of this Chapter.
- (2) The Administrator may, at his/her discretion, adjust the renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.
- (3) Renewal of any license shall be governed by the Borough Code and any regulations promulgated in accordance with this Chapter, including any amendments, additional restrictions or changes thereto, by any amendments, adoptions, additional restrictions or changes adopted since the previous license was issued or renewed.
- (4) Transfer of ownership of any local license or change of location of any license or modification to expand a licensed premise shall be subject to planning, zoning and/or other land use review and approval by the Borough Land Use Board, as applicable.
- (5) Except where the Administrator has received a complete renewal application along with the requisite fees, and has issued a license renewal, it shall be unlawful for any person to manufacture, sell, distribute, transfer, transport, or otherwise remove cannabis or cannabis products from the premises of any license after the expiration date recorded on the face of the license.

- F. Denial of Licenses. In the event the Borough Administrator determines that the applicant does not qualify for issuance of a municipal license for a Class 5 Cannabis Retailer, or in some other manner has failed to satisfy the requirements or criteria pursuant to this Chapter or other applicable statutes or regulations for licensure, the Borough Administrator shall notify the applicant, in writing, of such decision, the basis for such decision and of the right of the applicant to request a hearing with respect to such decision and the denial of a license pursuant to § 111-7 of this Chapter.

§ 111-7 Violations and Suspension and Revocation of License.

- A. Any person found to be in violation of any provision of this Chapter shall, upon conviction, be subject to a civil penalty of not less than \$1000.00 nor more than \$2,000. Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense.
- B. In addition to any civil or other penalty which may be imposed for a violation of this Chapter or the Borough Code, any license issued under this Chapter may be suspended or revoked by the Borough for good cause upon determination of a violation of any of the provisions of this Chapter or any applicable provision of the Borough Code or State statute or regulation. Upon determination of a violation for which the licensee shall be subject to a suspension or revocation of the license issued under this Chapter, written notice, setting forth the basis for the proposed suspension or revocation and of the right to a hearing before the Borough

Administrator, shall be issued to the licensee who may, within ten (10) days of receipt of such notice, request a hearing by service of a written request on the Borough.

- C. Notwithstanding the foregoing Section, when the Administrator 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 Administrator may enter a summary suspension order for the immediate suspension of such license pending further investigation and a hearing.
 - (1) The summary suspension order shall be in writing and shall state the reasons therefore. The licensee shall be afforded an opportunity for a hearing in the manner provided in this Section, provided that any such hearing must be scheduled no later than thirty (30) days of the date of the suspension.
 - (2) Upon determination of a violation, the Borough may take appropriate action to suspend or revoke the license issued to the Cannabis Retailer by the municipality in the same manner as provided in this Section.
- 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 6 months.
- E. State license. The Administrator may suspend or revoke any municipal license issued if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked.
- F. Any person or entity aggrieved by the denial of an application for a license as provided in this Chapter or by the suspension or revocation of a license as provided in this Chapter may request a hearing thereon by service of a written request on the Borough Administrator within ten (10) days of the receipt of the decision by which the person or entity is aggrieved. Said hearing request shall contain a general statement of the decision by which the person or entity is aggrieved and reasonably describe the basis upon which the decision is being contested. Upon receipt of such request, the Borough Administrator shall fix a time and place for such a hearing, which shall be no later than thirty (30) days from the date of the receipt of the request, unless otherwise agreed. At the time of the hearing, the licensee may be represented by counsel and shall be afforded full opportunity to be heard, challenge the basis of any findings and reasons cited for denial, suspension or revocation of the license, present such evidence and testimony as licensee may deem appropriate and otherwise show cause as to why the proposed action should not be taken. Upon conclusion of the hearing, the Borough Administrator shall render a decision either on the record, if applicable, or, in writing, within thirty (30) days. In the event the licensee is aggrieved by the decision of the Borough Administrator, licensee seek an appeal to the Mayor and Council in the same manner and time as provided for a hearing under this Section. The Mayor and Council may, in their discretion, elect to consider, or not consider, such an appeal.

§ 111-8 Enforcement.

A summons for a violation of this Chapter may be issued by the Borough Police Department, Fire Official, Code Enforcement Officer, Health Officer, Construction Official, Zoning Officer or other authorized officer or employee of the municipality authorized to enforce the provisions of the Borough Code.

Violations of the provisions and requirements set forth or referenced herein may be enforced in any manner the municipality deems appropriate, including but not limited to in accordance with the provisions of this Chapter or by bringing an appropriate ordinance enforcement action. Notwithstanding and in addition to any penalties or violations authorized pursuant to this Chapter, any violation of this Chapter shall also be subject to enforcement under any other applicable provision of the Borough Code. 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 ordinance. 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 ordinance.

§ 111-9 Transfer Tax Imposed.

- A. As used in § 111-9 thru § 111-19 of this Chapter, the term “Cannabis Establishment” shall have the same meaning as defined in N.J.S.A. 24:6I-33 and shall include Cannabis Retailer.
- B. There is hereby imposed a transfer tax of two percent (2%) on receipts from the sale of cannabis items from one Cannabis Establishment to another Cannabis Establishment, receipts from retail sales of cannabis items by a Cannabis Retailer to retail consumers and any combination thereof, any on any and all other sales, transactions or receipts for which a municipality is authorized to impose a tax pursuant to State law. Such tax shall be collected or paid, and remitted to the Borough 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 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. No Cannabis Establishment required to collect a transfer tax 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 user tax will not be separately charged and stated to another Cannabis Establishment or the consumer, or that the transfer tax will be refunded to the Cannabis Establishment or the consumer.
- C. The imposition of any tax imposed pursuant to this Chapter shall be in accordance with the provisions of State law and shall be in addition to any and all other taxes, assessments and charges that may be imposed.

§ 111-10 Tax Liability.

Every Cannabis Establishment required to collect a transfer tax imposed 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 Establishment shall have the same right with respect to collecting the transfer tax from another Cannabis Establishment or the consumer as if the transfer tax was 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 was 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 fiscal officer of the Borough shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

§ 111-11 Collection of Taxes and Liens.

All revenues collected from a transfer tax imposed pursuant to this Chapter shall be remitted to the chief financial officer of the municipality in the manner prescribed herein. The chief financial officer shall collect and administer any transfer tax imposed pursuant to this Chapter. The Borough may enforce the payment of delinquent taxes or transfer fees imposed pursuant to this Chapter in the same manner as provided for municipal real property taxes. In the event that the transfer tax imposed pursuant to this Chapter 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. 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.

§ 111-12 Administration of Transfer Tax.

The chief financial officer is charged with the administration and enforcement of the provisions of this Chapter, and, subject to the approval of the Governing Body, 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 Establishment fail or refuse to provide adequate information to the chief financial officer to determine the amount of tax due, the chief financial officer may use information provided to the chief financial officer from other sources (i.e., the Commission or Department of Treasury) to determine the amount of tax liability.

- A. It shall be the duty of the chief financial officer to collect and receive the taxes, fines, and penalties imposed by this Chapter. It shall also be the duty of the chief financial officer to keep a record showing the date of such receipt. Subject to the approval of the Governing Body, the chief financial officer is authorized to enter agreements with the State of New Jersey to obtain information to facilitate administration of the tax. The chief financial officer is authorized to issue a ruling upon written request of a taxpayer or upon its own volition.
- B. The chief financial officer 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.

§ 111-13 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 (3) years from the filing date or due date, whichever is later, in order to enable the chief financial officer or any agent designated by him 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 either by producing them at a location in the municipality or by paying for the expenses incurred by the chief financial officer or his agent in traveling to the place where the records are regularly kept.

§ 111-14 Returns.

All cannabis establishments operating in the municipality are required to file a transfer tax return with the chief financial officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this Chapter. Returns shall be filed and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A taxpayer who has overpaid the transfer tax, or who believes it is not liable for the tax, may file a written request on an amended tax return with the chief financial officer for a refund or a credit of the tax. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the chief financial officer within two (2) years of the date of the payment.

§ 111-15 Confidentiality.

The returns filed by taxpayers, and the records and files of the chief financial officer 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.

§ 111-16 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, 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 (3) years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.

Upon proposing an assessment, the chief financial officer shall send the taxpayer an interim notice by certified mail, return receipt requested, which advises the taxpayer of additional taxes that are due. Should the taxpayer wish to dispute the assessment administratively by requesting a hearing with the chief financial officer, it must do so within thirty (30) days of the date of such interim notice. If, after the chief financial officer sends an interim notice, a taxpayer fails to timely request a hearing with the chief financial officer or requests a hearing and after conducting a hearing, the chief financial officer determines that the taxes are due, the chief financial officer shall send the taxpayer by certified mail, return receipt requested, a final notice. Should the taxpayer wish to dispute the assessment set forth in the final notice, he or she must initiate an appeal in the New Jersey Tax Court within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder.

§ 111-17 Times Limitations.

The following periods of limitations shall apply to suits for collection of taxes: When a return has been filed but no tax paid, any suit brought to recover the tax due and unpaid shall be filed within two (2) years after the return was due or filed, whichever is later. Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes. Where, before the expiration of the time prescribed in this Section for the filing a lawsuit against the taxpayer, both the chief financial officer and the taxpayer have consented in writing to its extension after such time, the suit may be filed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ 111-18 Hearings.

Any person who receives an interim notice from the chief financial officer may within thirty (30) days after the date of an interim notice, request a hearing with the chief financial officer. Any person who fails to request a chief financial officer's hearing in a timely manner waives the right to administratively contest any element of the assessment. The chief financial officer shall accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with this Section.

§ 111-19 Appeals.

Any aggrieved taxpayer may, within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder, or publication of any rule, regulation or policy of the chief financial officer, appeal to the Tax Court pursuant to the jurisdiction granted by N.J.S.A. 2B:13-2a(3) to review actions or regulations of municipal officials by filing a complaint in accordance with the New Jersey Court Rule 8:3-1. The appeal provided by this Section shall be the exclusive remedy available to any taxpayer for review of a final decision of the chief financial officer in respect to a determination of liability for the tax imposed by this Chapter.

Section 2. Chapter 95, "Alcoholic Beverages", Article IV, "Possession or Consumption by Underage Persons", of the Code of the Borough of Rockaway is hereby repealed, deleted and removed in its entirety.

Section 3. Chapter 95, "Alcoholic Beverages", Article II, "Minors", of the Code of the Borough of Rockaway is hereby repealed, deleted and removed in its entirety.

Section 4. Chapter 179, "Parks and Recreation", Article III, "Prohibition of Smoking in Parks and Recreational Facilities, § 179-13, "Definitions", of the Code of the Borough of Rockaway is hereby amended and supplemented as follows:

SMOKING

The burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, joint, blunt, pipe or any other matter or substance which contains tobacco, cannabis, marijuana or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

Section 5. Repealer. All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 6. Severability. Each section, subsection, paragraph, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, preempted, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

Section 7. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

Section 8. Prior actions. All actions of the Borough of Rockaway taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

Section 9. Codification. This Ordinance may be renumbered for codification purposes.

DATE: August 19, 2021

BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

CERTIFICATION

I, Kimberly Cuspilich, Acting Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at a meeting held on August 19, 2021.

Kimberly Cuspilich
Borough Clerk