

# ORDINANCE WITHDRAWN ON DECEMBER 12, 2022

## ORDINANCE 2022-15

### BOROUGH OF NEPTUNE CITY COUNTY OF MONMOUTH

#### AMENDING CHAPTER 139, SECTION 53 OF THE BOROUGH CODE ENTITLED 'CLASS 5 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**, the Act establishes six marketplace classes of licensed businesses, including:

- 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 Distributor license, for businesses involved in transporting cannabis plants in bulk from one 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 purchases 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**, 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 operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, section 31b of the Act also stipulates that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 21, 2021); and

**WHEREAS**, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

**WHEREAS**, at the conclusion of the initial and any subsequent five-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

**WHEREAS**, the Borough Council of the Borough of Neptune City has determined that, due to present and potential future impacts that allowing cannabis business might have on New Jersey municipalities in general, and on the Borough of Neptune City in particular, it is at this time necessary and appropriate, to amend the Ordinances of the Borough of Neptune City, Chapter 139 Zoning to prohibit Class 1, 2, 3, 4, and 6 of cannabis licensed businesses in the Borough of Neptune City and to permit the operation of Class 5 retail licensed businesses without consumption areas only in the C and the HC Zones; amending Chapter 39 and 95 regarding the public consumption of Cannabis and to create a new Chapter 121 establishing a Cannabis Transfer and User tax.

**NOW THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Neptune City, in the County of Monmouth, State of New Jersey, as follows:

#### **RECITALS INCORPORATED**

The aforementioned recitals are incorporated herein as though fully set forth at length.

#### **GENERAL REQUIREMENTS**

Definitions: the definitions and other provisions of the Act and N.J.A.C. 17:30 are hereby incorporated herein. Any amendments to the Act and N.J.A.C. 17:30-1.2 are also incorporated herein without the need to revise this Chapter.

- a) State Licensure Required: In order to locate within the Borough, a cannabis business must first obtain a license from the State Cannabis Commission. Such license must be in good standing during the entirety of the term of that business's operation within the Borough.
- b) The Borough, in determining zoning approval of a proposed location of a license applicant's cannabis businesses premises shall consider whether a cannabis business's premises conforms to zoning requirements based on the nature of the cannabis business's primary business operations. If zoning approval is granted, the Borough shall provide a letter or affidavit stating that the location will conform to zoning requirements allowing for activities related to the operations of the proposed cannabis business to be conducted at that location.
- c) Municipal Preference: Pursuant to N.J.A.C. 17:30-6.3, within twenty-eight (28) days of a receipt of a license application from the Cannabis Regulatory Commission ("CRC"), the Borough shall inform the CRC of its preference for the issuance of licenses to cannabis business and whether such license application complies with this Chapter.
- d) Evidence of Borough Support: In order to obtain a license from the CRC, a prospective licensee must provide evidence of support from the Administration and Borough Council of the Borough of Neptune City with respect to such application. Pursuant to N.J.A.C. 17:30-5.1(g), the Borough shall demonstrate proof of local support for the suitability of the cannabis business's proposed location by indicating that the intended location is appropriately located and otherwise suitable for activities related to the operations of the proposed cannabis business by the adoption of a resolution by Borough Council.
- e) All cannabis businesses shall be subject to health and safety review, inspection, and enforcement, including but not limited to an annual health and safety review and inspection, by the Borough.

Deletions are noted by ~~strike-throughs~~

Additions are indicated in **bold underline**

Language that remains unchanged is not highlighted in any way

**SECTION I**

Chapter 139, "Zoning" is hereby amended by amending Article I, §Section 139-4 Definitions., by adding the following new definitions:

**CANNABIS RETAILER shall mean any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to the 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 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. This person or entity shall hold a Class 5 Cannabis Retail license.**

Chapter 139, "Zoning", Article III, General Regulations and Provisions, §Section 139-27 Prohibited Uses. is hereby amended to read as follows:

(A.-GG. No changes)

**HH.**

**Class1- Licensed Cannabis Cultivator**

**Class 2- Licensed Cannabis Manufacturer**

**Class 3- Licensed Cannabis Wholesaler**

**Class 4- Licensed Cannabis Distributor**

**Class 6- Licensed Cannabis Delivery Service**

**Cannabis Consumption Areas associated with Class 5 Cannabis Retailer licenses**

Chapter 139, "Zoning", Article IV, Zone Regulations, §Section 139-41 C Commercial Zone, is hereby amended to read as follows:

A. No premises shall be used and no structure shall be erected, altered or occupied for any purposes except the following:

(1-5 no changes)

**(6) Class 5 Licensed Retailer without a Cannabis Consumption Area<sup>1</sup>**

Chapter 139, "Zoning", Article IV, Zone Regulations, §Section 139-40 HC Commercial Zone, is hereby amended to read as follows:

A. No premises shall be used and no structure shall be erected, altered or occupied for any purposes except the following:

(1-3 no changes)

**(4) Class 5 Licensed Retailer without a Cannabis Consumption Area<sup>2</sup>**

Chapter 139, "Zoning", Article V, General Performance Standard, is hereby amended to create new **§ 139-53 Class 5 Licensed Cannabis Retailer.** To read as follows:

**§Section 139-53 Class 5 Licensed Cannabis Retailer.**

- A. All applications for licenses and permits, all licenses and permits issued and all proceedings under this Article shall be in accordance with all applicable laws of the state.**
- B. All licenses and permits required by this Article shall be approved by the Borough Council and issued by the Borough Administrator, whom shall also administer the provisions of this Article. Any business duly licensed by the State of New Jersey to conduct legal adult use cannabis operations, as defined by State law, may operate within the Specified Permitted Area so long as: (i) the entity maintains its State license in good standing; (ii) the entity maintains a Borough of Neptune City Business License in good standing;**

<sup>1</sup> Hours of operation for Class 5 Retailer License shall be limited to 9 A.M. to 10 P.M. in the C Commercial Zone

<sup>2</sup> Hours of operation for Class 5 Retailer License shall be limited to 9 A.M. to 10 P.M. in the C Commercial Zone

and (iii) the entity otherwise remains in full compliance with the laws and regulations established by the State of New Jersey and the Borough of Neptune City governing the licensed activity, as may be amended.

C. A Business License to operate within the Borough of Neptune City shall not be granted or renewed without such evidence as may be required by the Borough Administrator to determine that the entity maintains all valid State and/or CRC licenses and approvals, and that all such licenses and/or approvals remain in good standing from the time of registration.

D. Borough Cannabis Advisory Committee.

1. A Borough Cannabis Advisory Committee ("CAC") appointed by the Mayor will act as the body for local review for the Borough for all cannabis establishments. Under 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 establishments 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 exclusive authority for receiving such communications and granting such approvals shall be communicated through the Borough Clerk's Office upon recommendation by the sign-off by the Borough Cannabis Advisory Committee and authorized by the Borough's governing body.
2. Members of said CAC may include residents and business owners located within the Township. The appointees shall include, at a minimum, one (1) member from the following categories:
  - i. Mayor or designee.
  - ii. Borough Administrator or designee.
  - iii. Neptune City Chief of Police or designee.
  - iv. Borough Planning Board Chair or Designee.
  - v. Borough Clerk and/or Designee.
3. Duties of the CAC shall be to advise the Borough governing body as to the issuance of cannabis business permits within the Borough based on the issuance of request for proposals issued by the governing body and the establishment of the criteria presented herein.

E. Local licensing authority.

1. The governing body of the Borough of Neptune City is hereby designated to act as the local licensing authority for the Borough for all cannabis establishments. The Borough Council, in reviewing and rendering decisions on all cannabis licenses, shall be assisted by and act upon the recommendation of the CAC, and any other individual(s) designated by the Mayor.
2. Under 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 establishments 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 exclusive authority for receiving such communications and granting such approvals shall be exercised by the Borough Council.
3. Under no circumstances shall a local license for a cannabis establishment issued by the Borough Council be effective until or unless the State has issued the requisite permits or licenses to operate such a facility. No cannabis establishment may lawfully operate in the Borough of Neptune City without the issuance of a State permit or license and full regulatory oversight of the cannabis establishment by the Cannabis Regulatory Commission or other state licensing authority as well as oversight and issuance of a license by the Borough.
4. Any permit issued pursuant to this Chapter shall be valid for a period of one (1) year from the date of issuance and shall be renewed in accordance with the provisions of this Chapter.
5. The Borough Administrator may, at his or her discretion, adjust the renewal date of the local permit to correlate with an applicant's State licensing and renewal schedule.
6. Renewal of any permit shall be governed by any code amendments, additional restrictions or changes in the Act and N.J.A.C. 17:30 et seq., which haven been adopted since the previous permit was issued or renewed.
7. A licensee shall comply with N.J.A.C. 17:30-6.8 governing limitations on license-holders, owners, principals and passive investors, etc.

8. A licensee shall comply with the provisions of N.J.A.C. 17:30-9.3 governing transfers of ownership interest.
  9. Transfer of a license or change of location or modification to expand a permitted premise shall be subject to the approval of the Administration, the Planning Board, and Borough Council. A potential transfer of a license caused by the death of a spouse, domestic partner or adult child shall not be unreasonably denied.
  10. Except where the Borough 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 operate after the date of a license expiration.
- F. Limitation on Number of Licenses. Within the geographic boundaries of the Borough of Neptune City, the maximum number of Class 5 licensed Cannabis Retailers shall be two (2).
- G. Limitation on Location. An existing Class 5 licensed Cannabis Retailer shall not be permitted within six hundred (600) feet of any existing Class 5 licensed Cannabis Retailer premises within the C Commercial zone and HC Highway Commercial zone. The distance shall be measured in the same manner as that required by statute for the measuring of the distance businesses between licensed retail sale of alcohol premises, schools and churches.
- H. Hours of Sale. Hours of operation for Class 5 Cannabis Retailer License businesses shall be limited to 9 A.M. to 10 P.M. in the C Commercial zone.
- I. Prohibition of Certain Activities.  
It is hereby established that it is unlawful for any person, who is of legal age to consume cannabis products, to smoke, vape, aerosolize, ingest or otherwise consume in any public place any cannabis products on a public street, highway, avenue, alley or road of the Borough; or upon any public or quasi-public parking lots, or any other parking facilities in the Borough; or on any public grounds, parks, sidewalks, beaches, marine basins, promenade or quasi-public areas; or any shopping center common areas; or in any automobile, or other vehicle or in any other means of transportation on the public streets, highways, alleys, avenues, grounds, sidewalks, parks, marine basins, beachfronts or promenade or quasi-public areas in the Borough. Any unlawful consumption shall be a disorderly persons offense. Any person who is found to be in violation of this Section may be subject to a penalty as provided in Chapter 1, Art III Violations and Penalties §1-16 to 1-20.
- J. Application Process.
1. Any license conditionally issued by the Borough is contingent upon the locally licensed entity's or individual's subsequent receipt of a State permit or license of the same class or type of regulated cannabis activity.
  2. Persons wishing to obtain a Class 5 cannabis license shall file a license application with the CAC, on a standardized form established by the Borough Administrator and available in the Borough Clerk's office. The Borough 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 Borough Administrator, until all documents and application fees are submitted. To be deemed complete, all applications shall be accompanied by the following:
    - a. The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, 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.
    - b. The applicant shall submit an affidavit and documentary proof of compliance with all state and local laws regarding affirmative action, anti-discrimination and fair employment practices. The applicant shall also certify under oath that they shall not discriminate based on race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

- c. The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in this Code.
- d. The applicant shall submit, to the satisfaction of the Borough Administrator, proof of financial capability to open and operate the cannabis establishment for which the applicant is seeking a license. Standards for proof of financial capability shall be determined by the CAC.
- e. The applicant and the application shall otherwise comply with any, and all qualification standards set forth by the State of New Jersey and Borough of Neptune City laws, regulations or ordinances.
- f. In the event there are multiple applicants for a license, the Borough Administrator shall evaluate all applicants and issue a notification of award after consideration and evaluation of the following criteria:
  - i. Applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including cannabis, healthcare, pharmaceutical manufacturing, and retail pharmacies, with preference to experience operating such businesses within the State of New Jersey and where the value of owners' experience shall outweigh the experience of nonowner principals; and
  - ii. Applicant's qualifications and experience related to public safety and security, including any of the applicant's owners' or principals' experience in law enforcement and drug enforcement and a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management; and
  - iii. Applicant's or its owners' experience conducting or supporting or plans to conduct institutional review board-approved research involving human subjects that is related to medical cannabis or substance abuse, where the value of past or ongoing clinical research with IRB approval shall outweigh plans to conduct such research, whether the applicant has had any assurance accepted by the U.S. Department of Health & Human Services indicating the applicant's commitment to complying with 45 CFR Part 46, and whether the applicant has a research collaboration or partnership agreement in effect with an accredited U.S. school of medicine or osteopathic medicine with experience conducting cannabis-related research; and
  - iv. Applicant's brand and proposal for the physical presence of the business, including but not limited to: the site's ability to meet all land use regulations (parking, landscaping, signage, etc.), architectural treatments, customer experience; and
  - v. Applicant's or its owners' demonstrated commitment to the community and social responsibility; or sufficient evidence related to N.J.A.C. 17:30-30-7.10 (a)(13); and
  - vi. Summary of the applicant's environmental impact and sustainability plan; whether the applicant entity or its parent company has any recognitions from or registrations with federal or New Jersey state environmental regulators for innovation in sustainability; and whether the applicant entity or its parent company holds any certification under international standards demonstrating the applicant has an effective environmental management system or has a designated sustainability officer to conduct internal audits to assess the effective implementation of an environmental management system; and
  - vii. Applicant's demonstrated commitment or sufficient experience as responsible employers, defined as the applicant entity being committed to a local program in collaboration with organizations committed to the well-being of residents, including but not limited to the Borough and surrounding service area. This may be evidenced by letters in support and agreements, a local workforce hiring and development plan, community service, and/or collaborations with a university or specialized training facility; and
  - viii. Applicant's demonstrated commitment to diversity in its ownership composition and hiring practices.

3. A notification of award and conditional municipal license shall entitle the recipient applicant to pursue a State permit or license in the appropriate classification for up to twelve (12) months. 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 twelve (12) months from issuance, the Borough Administrator shall issue a new request for applications and evaluate all applicants for licensure under the above criteria.
4. In addition to complying with any State requirement related to good character and criminal background, 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 three (3) years.
5. Nothing in this Section shall prohibit the Borough from conducting a background check at the time of receipt of the application. Submission of an application shall constitute consent on behalf of the applicant and any persons proposed to have an ownership interest to such background check.

**K. Term of license and license renewals.**

1. Any local license issued pursuant to this Chapter shall be valid for a period of twelve (12) months from the date of issuance and shall be renewed yearly in accordance with the provisions of this Chapter.

The Borough 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.

Renewal of any license shall be governed by any amendments to state law, regulations and/or the Borough of Neptune City Code.

Except where the Borough 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

**L. Fees.**

1. The following fees shall apply to all cannabis businesses:
  - a. Application Fee - \$10,000.00
  - b. Annual Renewal Fee - \$10,000.00
2. The above fees shall be submitted to the Borough at the time the cannabis business submits its Initial Application or the Renewal Application to the Borough. If the cannabis business's application is denied, the Borough shall refund eighty percent (80%) of the Initial Application or Renewal Fee if the applicant is not approved for a cannabis license by the State of New Jersey and/or is not selected by the Borough for issuance of a Class 5 license.

**M. Disciplinary Actions; Sanctions; Penalties.**

1. Disciplinary actions. 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:
  - a. First Offense: Up to \$500 per violation per day;
  - b. Second Offense: Up to \$1000 per violation per day;
  - c. Third Offense: Up to \$2500 per violation per day;
  - d. Fourth violation shall result in a summary suspension.
2. Summary suspension. Notwithstanding the foregoing section, when the Borough has reasonable grounds to believe that a licensee has engaged in a willful violation of any applicable law, regulation or Borough of Neptune City Code provision, or that the public health, safety, and/or general welfare has been jeopardized and requires emergency action, the Borough Administrator may enter a summary suspension order for the immediate suspension of such license pending further investigation.
  - a. The summary suspension order shall be in writing and shall State the reasons therefore. The licensee shall be afforded an opportunity for a hearing as outlined herein.

- b. The Borough Administrator shall convene a review panel consisting of the Borough Administrator, a second administrative officer designated by the Mayor, and an officer designated by the Chief of Police. The hearing shall be scheduled within thirty (30) days of the date of the order.
- c. The review panel is authorized to impose any fines, conditions, restrictions, suspensions, or combination thereof authorized by the State of New Jersey. The Borough may issue fines up to, but not to exceed, \$2,500 per offense and/or suspension of license for a period not to exceed six (6) months.
3. Inactive licenses. Following the commencement of retail sales of cannabis or cannabis products, the Borough may suspend or revoke any license if the licensed premises have been inactive or unoccupied by the licensee for at least six (6) months.
4. Revocation of License. In addition to the foregoing, any cannabis mercantile registration shall be deemed null and void at the discretion of the Chief Law Enforcement Officer of the Borough or any authorized Borough representative for violation of any Borough Ordinance, unless but not limited to a Dormant License as determined by the CAC and or any violation of any New Jersey State regulation shall be a basis for non-renewal.
5. State license. The Borough may suspend or revoke any license if the corresponding State license or permit for the subject location is expired, surrendered, suspended, or revoked.

**N. Site Plan Review Requirements.**

1. The Borough's Zoning Officer will review and determine whether any proposed Cannabis establishment requires approval from the Zoning Board of Adjustment and or Planning Board through the Zoning permit approval process.

**O. Signage and Display of Products.**

1. Each business shall be permitted two (2) signs.
2. Signs shall be limited to location identification/name of business.
3. Signs shall not promote consumption of any cannabis product.
4. Signage design shall not include artistic or photographic renderings of cannabis plants or paraphernalia.
5. Neon signs shall be prohibited.
6. The following words shall be prohibited from appearing on any sign: "pot" and "weed."
7. Signage shall comply with the Borough's Signage Ordinance, as may be amended from time to time.
8. No cannabis products shall be displayed in any windows or doors.

**P. Requirements for Cannabis Businesses.**

1. All Cannabis Businesses
  - a. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, tobacco, or cannabis by patrons.
  - b. No outside storage of any cannabis, cannabis products, or cannabis paraphernalia shall be permitted.
  - c. All licensed cannabis facilities shall have a round-the-clock video surveillance system, 365 days a year.
  - d. Video surveillance shall be retained a minimum of seven (7) days or pursuant to State and Federal law, whichever is greater.
  - e. All licensed facilities must provide the Neptune City Police Department with access to security footage immediately upon request by the Department.
  - f. All licensed facilities must provide at least one licensed security guard (or more if required by the State) during all times the facility is open to the public. All patrons must be screened by said security employee and patrons must demonstrate proof of minimum age (21 years old).
  - g. As applicable and to the fullest extent possible, all licensed facilities must provide for adequate buffering as otherwise required by Borough of Neptune City Ordinance.
  - h. All cannabis establishments shall conduct business and operations indoors.



- i. No more than one (1) ounce of cannabis or cannabis product may be sold to a specific customer at a given time.
  - j. Use or consumption of cannabis or cannabis products in any manner shall not be permitted within the Cannabis Retailer's facility, whether in the building or on its grounds or parking lots. Cannabis Consumption Areas are not permitted.
  - k. All licensed facilities shall be enclosed in heated/air-conditioned permanent buildings, not trailers, outdoors, movable kiosks, etc.
  - l. Any cannabis retailer shall only have one (1) primary public access point, which shall be directly adjacent to the right-of-way or parking area of the building. Access should not be through common entrances with other uses.
  - m. Drive-through facilities are not permitted,
  - n. All licensed facilities' interiors shall provide a secure location for storage of products with minimum products in any customer service area.
  - o. People shall not be permitted to congregate outside of a Cannabis Retailer, loiter, or wait in line to access the Cannabis Retailer. The facility shall have a plan in place if interior capacity is exceeded, i.e., numbers are given and customers wait in their vehicles until called.
- Q. Odor Mitigation/Smoking.
- 1. All cannabis businesses must provide adequate HVAC air quality equipment.
  - 2. Cannabis odor must not permeate outside any cannabis business establishment.
  - 3. All cannabis businesses shall adhere to generally applicable Borough ordinances regulating odor emissions and environmental impacts.
  - 4. All retail cannabis businesses must follow the protocols set forth in the Clean Air Act.
  - 5. No smoking is permitted inside or outside of any cannabis business establishment.
- R. Noise Mitigation. All cannabis businesses shall adhere to all generally applicable noise ordinances, nuisance ordinances, other Neptune City Borough Code requirements and all other state and federal requirements.

## **SECTION II**

Chapter 95, "Parks and Playgrounds" is hereby amended by amending § 95-10 "No Smoking and Refuse" as follows:

- A. No Smoking. It is hereby established that no person shall smoke any cigarettes, cigars, or other tobacco products or smoke, vape, or aerosolize any cannabis products in any Borough of Neptune City Park, playground or park areas as herein defined at any time. ~~except in designated "smoking areas as indicated by signs posted in such park. The penalty for a violation of this section shall be \$25.~~ The penalty for a violation of this section shall be a disorderly persons offense. Any person who is found to be in violation of this Section shall be subject to a penalty as provided in Chapter 1, Art III Violations and Penalties §1-16 to 1-20.
- B. (no changes)

## **SECTION III**

Chapter 39, entitled "Alcoholic Beverages" is hereby amended to be titled, "Alcoholic Beverages and Cannabis Consumption"

Chapter 39, "Alcoholic Beverages and Cannabis Consumption", Article III Drinking in Public Places is hereby amended to be titled "Drinking or using Cannabis products in Public Places" and by creating a new § 39-27 "Smoking cannabis in public or quasi-public places prohibited"

**§ 39-27 (Reserved)-Smoking cannabis in public or quasi-public places prohibited.**

**It shall be unlawful for any person to smoke, vape, aerosolize or ingest cannabis on a public street, highway, avenue, alley or road of the Borough of Neptune City; or upon any public grounds, parks, sidewalks, beaches, marine basins, beachfronts, shopping center common area or public places in the Borough including within any Drug Free Zone, as established by Chapter 57 "Drug Free Zones" of the Code of the Borough of Neptune City. See**

also § 139-53 D. "Prohibition of Certain Activities". Any person who is found to be in violation of this Section shall be subject to a penalty as provided in Chapter 1, Art III Violations and Penalties §1-16 to 1-20.

**SECTION IV.**

**BE IT FURTHER ORDAINED THAT NEW CHAPTER 121 IS HEREBY CREATED ENTITLED "ESTABLISHMENT OF CANNABIS TRANSFER TAX AND USER TAX IN THE BOROUGH OF NEPTUNE CITY"**

**CHAPTER 121 Establishment of Cannabis Transfer Tax and User Tax in the Borough of Neptune City**

- A. The cannabis transfer tax in Borough of Neptune City shall be fixed at a uniform percentage rate of two percent ( 2%) on all sales or transfers of cannabis products from any of the cannabis establishments that are located within the geographical boundaries of the Borough. This tax shall be imposed on:**
  - 1. Receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator;**
  - 2. Receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment;**
  - 3. Receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof.**
- B. A two percent (2%) transfer tax shall be collected from receipts from each sale by a cannabis wholesaler located within the geographical boundaries of the Borough.**
- C. A user tax is hereby also established at the same rate of the transfer tax as contained herein and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to subsection A, 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.**
- D. The transfer tax or user tax imposed by this ordinance shall be in addition to any other tax imposed by law. Any transaction for which the transfer tax or user tax is imposed, or could be imposed pursuant to this section, other than those which generate receipts from the retail sales by cannabis retailers, shall be exempt from the tax imposed under the "Sales and Use Tax Act" (N.J.S.A. 54:32B-1 et seq). The transfer tax or user tax will be assessed and collected pursuant to established State law and Administrative rules and regulations adopted regarding same.**
- E. In accordance with the provisions of N.J.S.A. 40:48I-1, section 40, every cannabis establishment required to collect the transfer and user taxes imposed by this Chapter shall be personally liable for the transfer and user tax imposed, collected, or required by this Chapter and under N.J.S.A. 40:48I-1, section 40.**
- F. Any cannabis establishment collecting a transfer tax or user tax shall have the same right with respect to collecting the tax from another cannabis establishment or the consumer as if the tax was a part of the sale and payable at the same time or with respect to nonpayment of the transfer tax or user tax by the cannabis establishment or consumer, as if the tax was part of the purchase price of the cannabis or cannabis item and payable at the same time, provided that the Chief Financial Officer of the Borough of Neptune City which imposes the transfer tax and user tax is joined as a party in any action or proceeding brought to collect the transfer tax or user tax.**
- G. No cannabis establishment required to collect the transfer and user taxes imposed by this Chapter shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.**
- H. Each cannabis establishment collecting transfer and user taxes pursuant to this chapter shall be remitted to the Tax Collector of the Borough of Neptune City, on a basis to be determined by the Chief Financial Officer.**
- I. Delinquent taxes. If a Licensee is a Lessee of the parcel of the real property comprising the cannabis establishment premises, and the Licensee/Lessee becomes delinquent in submitting either the transfer or user taxes for more than thirty (30) days, the Borough may refer the Licensee/Lessee to the Borough**

Administrator to consider any actions to be taken, including but not limited to, penalties to be imposed, suspension of the license, disallowance of a license renewal or any other remedies allowed by law.

- J. If the Licensee is the owner of the parcel of real property comprising the cannabis establishment premises, and if the transfer tax or user tax is not paid when due, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises. The annual Borough license issued pursuant to this Chapter shall not be renewed for the cannabis establishment should any transfer or user tax pursuant to this Chapter be delinquent.
- K. 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.
- L. The Borough shall file with the Tax Collector, a statement showing the amount and due date of the unpaid balance of cannabis taxes and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

DATE INTRODUCED: November 14, 2022  
WITHDRAWN: December 12, 2022