BOROUGH OF NEPTUNE CITY

ORDINANCE NO 21-04

AN ORDINANCE PROHIBITING CLASSES 1, 2, 3, 4 AND 6 OF CANNABIS LICENSED BUSINESSES AND CONSUMPTION AREAS IN THE BOROUGH OF NEPTUNE CITY; PERMITTING THE OPERATION OF CLASS 5 CANNABIS RETAILER LICENSED BUSINESSES WITHOUT CONSUMPTION AREAS ONLY IN THE C (COMMERCIAL) ZONE WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF NEPTUNE CITY BYAMENDING CHAPTER 139 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF NEPTUNE CITY ENTITLED "ZONING"; BY AMENDING SECTIONS OF CHAPTERS 39 AND 95 REGARDING THE PUBLIC CONSUMPTION OF CANNABIS; AND BY CREATING A NEW CHAPTER 121 ENTITLED "ESTABLISHMENT OF CANNABIS TRANSFER AND USER TAX"

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 Commercial Zone; 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:

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 CONSUMPTION AREA shall mean a designated location either operated by a licensed retailer for adult use or a permit holder for dispensing medical cannabis for which both a State and local endorsement has been obtained, that is either (1) an indoor structurally enclosed area of the cannabis retailer for adult use or permit holder that is separate from the area in which retail sales of cannabis items for adult use or the dispensing of medical cannabis occurs; or (2) an exterior structure on the same premises as the cannabis retailer or permit holder, either separate from or connected to the cannabis retailer or permit holder, at which cannabis items or medical either obtained from the retailer or permit holder, or brought by a person to the consumption area may be consumed

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[1]

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. 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 2

B. Limitation on Location.

An existing Class 5 licensed Cannabis Retailer shall not be permitted within 600 feet of any existing Class 5 licensed Cannabis Retailer premises within the C 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.

C. 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.

D. 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.

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

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 one percent (1%) transfer tax shall be collected from receipts from each sale by a cannabis wholesaler located within the geographical boundaries of the Borough.

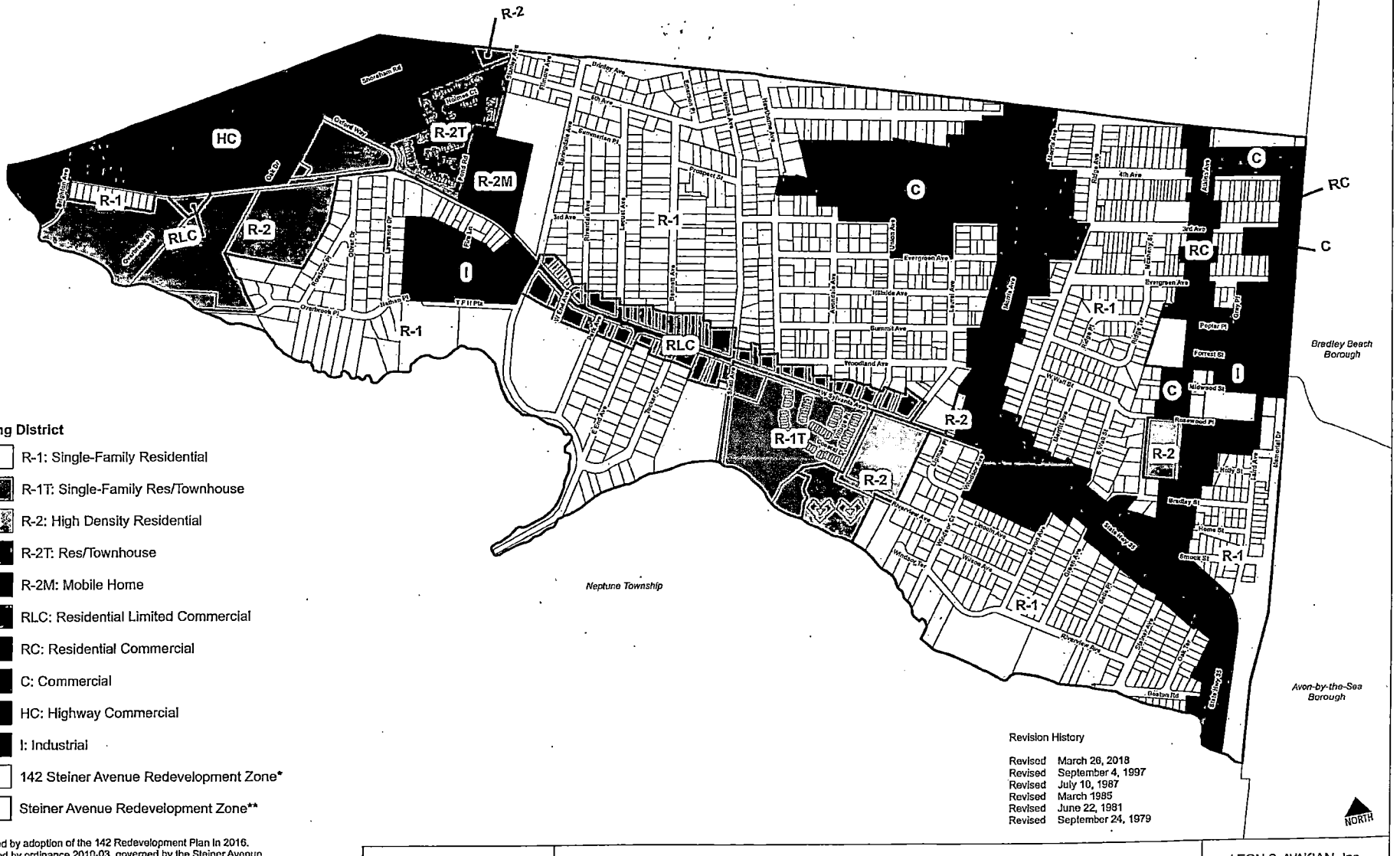
C. A user tax is hereby also established at the same rate of the transfer tax as contained herein and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to subsection A, from the license holder's establishment that is located in the Borough to any of the other license holder's establishments, whether located in the Borough or another municipality.

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.

SECTION V. Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION VI. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as the extent of such inconsistency.

SECTION VII. This ordinance shall take effect immediately upon adoption and publication according to law.



Borough of Neptune City
New Jersey

Zoning Map

LEON S. AVAKIAN, Inc.
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