

**TOWNSHIP OF ROCKAWAY  
COUNTY OF MORRIS, STATE OF NEW JERSEY**

**ORDINANCE NO. O-21-31**

**AN ORDINANCE TO AMEND, REVISE, AND SUPPLEMENT CHAPTER 5 OF THE  
ROCKAWAY TOWNSHIP LICENSING ORDINANCE TO ADD A NEW SECTION,  
SECTION 5-10, ET. SEQ. ENTITLED  
“RECREATIONAL CANNABIS LICENSES”**

**WHEREAS**, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

**WHEREAS**, on November 3, 2020, the citizens of New Jersey voted to approve Public Question No. 1, amending and supplementing Section VII of Article IV of the New Jersey Constitution to authorize the growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis for persons twenty-one (21) years or older in New Jersey, and further authorized municipalities to enact an additional municipal tax of up to two (2) percent on the receipts from each sale of cannabis or products created from or which include cannabis; and

**WHEREAS**, the Township of Rockaway has found, that given the Schedule I status of cannabis under the federal Controlled Substance Act, complexities with access to banking and the level of cash transactions in cannabis related businesses, and other concerns associated with cannabis-related businesses, that only qualified operators should be permitted to safely operate strictly regulated cannabis facilities in the municipality on a limited basis and subject to reasonable time, manner, and place restrictions, in order to balance patients' and consumers' interests and the creation of jobs and economic opportunity within the Township with public safety; and

**WHEREAS**, thereafter, on February 22, 2021, the State of New Jersey passed NJSA 24:61-31 et seq., New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act; and

**WHEREAS**, in light of the passage of New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, the Township Council amended O- 21- 23 to provide for the issuance of licenses permitting the growing, manufacturing, wholesaling, distribution, retail sales, and delivery of recreational cannabis as conditional uses in the Township of Rockaway; and

**WHEREAS**, in light of the Township Council's enactment and amendment of O-21-23 it is necessary to establish and enact licensing procedures and it is the Township's desire to further establish and enact the assessment of taxes for the transfer and use of cannabis products to the extent that they are allowable by law.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of Rockaway that a new section, entitled "Recreational Cannabis Licenses" be added to Chapter 5 as follows:

**Section 1:**

**§5-10 RECREATIONAL CANNABIS LICENSES**

**§5-10.1 DEFINITIONS**

(ORD. NO. O-21-23)

A. As used in this section:

1. "Cannabis" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
2. "Cannabis cultivator" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
3. "Cannabis establishment" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
4. "Cannabis items" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
5. "Cannabis manufacturer" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
6. "Cannabis retailer" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
7. "Cannabis wholesaler" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
8. "Consumer" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).
9. "Premises" means the same as that term is defined in section 3 of P.L.2021, c. 16 (N.J.S.A. 24:6I-33).

**§ 5-10.2 Licenses.**

[Ord. No. O-21-23]

A. License required.

1. The requirements 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 or its instrumentalities. 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 govern.
2. Prior to the operation of any operation of any cannabis cultivator, cannabis establishment, cannabis manufacturer, cannabis retailer or cannabis wholesaler, a license for such use must be obtained from the State of New Jersey and from the Township of Rockaway.
3. The Township of Rockaway Division of Health (the "Division") is hereby designated to act as the local licensing authority for the Township for all recreational cannabis operations/facilities set forth in §5-10.1. Under all circumstances in which state law requires communication to the Township by the state licensing authority or any other state agency with regard recreational cannabis facilities/operations by the state, or in which state law requires any review or approval by the Township 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 Division.
4. Under no circumstances shall the Division receive or act upon any application for local licensing of any recreational cannabis operation/facility if the state has failed to issue a license. No such use shall lawfully exist in the Township of Rockaway absent of the issuance of a state license and full regulatory oversight of the facility by the state licensing authority as well as that of the Township.
5. Under no circumstances shall the Division receive or act upon any application for local licensing of a recreational cannabis operation/facility unless or until the applicant has obtained site plan approval from the Township of Rockaway Planning Board or Zoning Board of Adjustment.

### **§ 5-10.3 Application.**

[Ord. No. O-21-23]

A. Persons or entities wishing to obtain a medical cannabis license shall file a license application with the Division, on a standardized form by the Division and available in the Township of Rockaway Municipal Building and on the Township's website.

B. An application shall be deemed incomplete, and shall not be processed by the Division, 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 of prior approval by the state licensing authority to run a recreational cannabis operation/facility.
2. The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the recreational cannabis operation/ facility, which proof may consist of the following: a deed, a lease, a real estate contract contingent upon successful

licensing, or a letter of intent from the owner of the premises indicating an intent to lease the premises to the applicant contingent upon approval of required licenses.

3. The applicant shall submit an affidavit and document proof of compliance with all state and local laws regarding affirmative action, antidiscrimination and fair employment practices. The applicant shall also certify under oath that they will not and 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. Violation of this statute shall be grounds for suspension or revocation of license at the sole discretion of the Township.
4. The applicant shall submit a resolution of approval from the Township Planning Board or Zoning Board of Adjustment for the facility.
5. The applicant shall submit annually, an application/renewal fee for a recreational cannabis license.
  - a. Upon initial passage of this section, an application/renewal fee shall be recommended by the Administration and fixed by a vote of the majority of the Council.
  - b. Thereafter, the administration shall review the application/renewal fee annually and recommend changes thereto, if any, with such recommended changes being fixed upon a vote of the majority of the Council.
6. The applicant and the contents of the application shall otherwise comply with any and all qualification standards set forth in the state and Township laws, regulations, or requirements.

#### **§ 5-10.4 Term of license and license renewal.**

[Ord. No. O-21-23]

A. Any Township recreational cannabis license issued pursuant to this chapter shall be valid for a period of one year from the date of issuance.

B. The Division may, at its discretion, adjust the annual renewal date of the local license to correlate with an applicant's state licensing and renewal schedule, and the annual license fee shall be increased or decreased to prorate the period, accordingly.

C. Upon renewal of a recreational cannabis license, the licensee shall be governed by any Code amendments, additional restrictions, or changes in requirements adopted since the previous license was issued or renewed.

D. Transfer of ownership of a recreational cannabis license shall be prohibited.

E. If the licensee has received notice of violation of any law or regulation relating to their recreational cannabis license, including disciplinary action against any past or current cannabis

license, the applicant for renewal shall include a copy of the notice of violation or disciplinary action with their application.

#### **§ 5-10.5 Disciplinary actions; sanctions; violations and penalties.**

[Ord. No. O-21-23]

A. Disciplinary actions. Procedures for investigation of recreational cannabis license violations and for suspension, revocation, or other licensing sanctions as a result of any such violation shall be as follows:

1. First offense: \$500 per violation per day;
2. Second offense: \$1,000 per violation per day;
3. Third violation shall result in summary suspension.

B. Summary suspension. When the Division has reasonable grounds to believe that a recreational cannabis 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 Director may enter a summary suspension order for the immediate suspension of such license pending further investigation.

1. The summary suspension order shall be in writing and shall state the reasons therefor.
2. The Division shall convene a review panel consisting of the Health Officer, another administrative officer and a representative from the Police Department designated by the Mayor, the Municipal Engineer or his or her designee, and the Chair of the Township of Rockaway Planning Board or his or her designee. To the extent practicable, the hearing shall be scheduled within 30 days of the date of the summary suspension order. The hearing shall be open to the public and shall be legally noticed as a public hearing in accordance with the Open Public Meetings Act.<sup>[1]</sup>

[1]

*Note: See N.J.S.A. 10:4-6 et seq.*

3. The review panel, by majority vote, is authorized to impose any fines, conditions, restrictions, suspensions, or combination thereof authorized by the State of New Jersey. In the absence of state-specified penalties, the Township may issue fines up to \$1,000 per offense and/or issue a suspension of the subject recreational cannabis license for a period up to, but not exceeding, six months.

C. Inactive licenses. The Division may suspend or revoke any recreational cannabis license if the licensed premises have been inactive or unoccupied by the licensee for six months or more.

D. State license. The Division shall suspend or revoke any license if the corresponding state license for the subject location is expired, surrendered, suspended, or revoked.

#### **§5-10.6 RECREATIONAL CANNABIS TAX**

A. A transfer tax on the sale of recreational cannabis and cannabis items is

hereby established on the following transactions.

1. Sale of cannabis by a cannabis cultivator to another cannabis cultivator.
2. Sale of cannabis items from one cannabis establishment to another cannabis establishment.
3. Retail sales of cannabis items by a cannabis retailer to retail consumers who are twenty-one (21) years of age or older; and/or,
4. Any combination thereof.

B. The following transfer tax rates shall apply to all sales of recreational cannabis and cannabis items:

1. Two percent (2%) of the receipts from each sale by a cannabis cultivator;
2. Two percent (2%) of the receipts from each sale by a cannabis manufacturer;
3. One percent (1%) of the receipts from each sale by a cannabis wholesaler;
4. Two percent (2%) of the receipts from each sale by a cannabis retailer.

C. A user tax on any license holder operating more than one (1) cannabis establishment is imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph A above of this Section, from the license holder's establishment that is located in the Township of Rockaway to any of the other license holder's establishments, whether located in this Township of Rockaway or another municipality.

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

1. Two percent (2%) on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph (B) above of this Section by a cannabis cultivator;
2. Two percent (2%) on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph (B) above of this Section by a cannabis manufacturer;
3. One percent (1%) on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph (B) above of this Section by a cannabis wholesaler;
4. Two percent (2%) on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph (B) above of this Section by a cannabis retailer.

E. The transfer and use tax Section of this Ordinance shall be interpreted and administered in accordance with N.J.S.A. 40:48I-1, as the same may be amended, revised, and/or supplemented from time to time.

F. In the event that the maximum allowable tax rates currently set forth in N.J.S.A. 40:48I-1 are subsequently amended by the State Legislature the transfer/user tax rates set forth in this



Ordinance shall be amended automatically to a rate equal to the highest rates allowable by State Law.

- G. The applicable transfer and/or user taxes shall be collected by cannabis businesses and forwarded directly to the chief financial officer of Rockaway Township with all verifying documentation required to collect the appropriate taxes assessable in accordance with this transfer and use tax section.
- H. On or before the thirtieth day after the end of each calendar quarter (March 31, June 30, September 30 and December 31) verifying transfer and/or user tax documentation in a form deemed acceptable by the Township Chief Financial Officer along with payment in full for all applicable transfer and/or user taxes shall be submitted to the Chief Financial Officer.

**Section 2.** All Ordinances of the Township of Rockaway which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 3.** If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

#### **CERTIFICATION**

I hereby certify the foregoing to be a true copy of an Ordinance introduced by the Township Council of the Township of Rockaway at a duly convened meeting held on September 14, 2021 and adopted at a duly convened meeting held on October 12, 2021.

  
Christina Clipperton, Township Clerk

  
Michael Puzio, Mayor

  
Joe Jackson, Council President

#### **Purpose**

The purpose of this ordinance is to codify the recreational cannabis ordinance licensing procedures and to secure a municipal transfer/user tax for the distribution of recreational cannabis products to the fullest extent allowable by applicable law.

	Motion	Second	Yes	No	Abstain	Absent
Kelley				X		
Quinn	X		X			
Friedlander			X			
Kritz		X	X			
Salberg			X			
Brookes				X		
Noon			X			
V.P. Sackett			X			
C.P. Jackson			X			