First Reading

INTRODUCED BY: Councilwoman Sheedy				
SECONDED BY: Councilwoman Cavadas				
COUNCIL	AYE	NAY	ABSTAIN	ABSENT
FITZHENRY	X			
CAVADAS	X			
KARCIC	X			
SHEEDY	X			
DEL RUSSO	X			
BOCCHINO	X			
PRONTI				
TOTAL				

Second & Final Reading

INTRODUCED BY: Councilman Fitzhenry				
SECONDED BY: Councilman Del Russo				
COUNCIL	AYE	NAY	ABSTAIN	ABSENT
FITZHENRY	X			
CAVADAS	X			
KARCIC	X			
SHEEDY	X			
DEL RUSSO	X			
BOCCHINO	X			
PRONTI				
TOTAL				

ORDINANCE NO. 2330
BOROUGH OF NORTH ARLINGTON
BERGEN COUNTY, NEW JERSEY

AN ORDINANCE AMENDING THE BOROUGH CODE OF THE BOROUGH OF NORTH ARLINGTON TO CREATE A NEW SECTION ENTITLED "RECREATIONAL CANNABIS 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 Borough of North Arlington has taken action by amending the Borough Code of the Borough of North Arlington to create a new Chapter entitled, "Recreational Cannabis Establishments" which regulates the legalized marijuana market and industry by prohibiting the retail sale or delivery of cannabis within the Borough of North Arlington (Class 5 Cannabis Retailer and/or Class 6 Cannabis Delivery) and permitting the growing and cultivation of cannabis (Class 1 Cannabis Cultivator), manufacturing, preparation and packaging of cannabis items (Class 2 Cannabis Manufacturer), obtaining and selling cannabis items for later resale to other licensed businesses (Class 3 Cannabis Wholesaler) and transporting cannabis from one licensed business to another licensed business (Class 4 Cannabis Distributor); and

NOW THEREFORE BE IT ORDAINED by the Borough Council of the Borough of North Arlington that the Borough Code of the Borough of North Arlington is hereby amended as follows to add a New Section entitled, "Recreational Cannabis Tax":

§ 1 **Purpose.**

It is the purpose of this Chapter to implement the provisions of P.L. 2021, c. 16, known as the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (the "Act") which authorizes a municipality to impose Cannabis Transfer and User Taxes.

§ 2 **Definitions**

The following terms shall have the same meanings as defined in section 3 of the Act as well as the following meanings:

A. **"Cannabis"** - All parts of the plant Cannabis Sativa Linnaeus, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with the Act for use in cannabis products as set forth in the Act. "Cannabis" shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307 (C.24:61-1 et al.) and P.L.2015, c.158 (C. 18A:40-12.22 et al.); marijuana defined in NJSA 2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L. 2001, c. 114 (C. 2C:35B-1 et seq.), or marijuana as defined in P.L. 1970, c.226 (C. 24:21-2 et al) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substance Act." P.L. 1970 c. 226 (C. 24:21-1 et al); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al).

B. **"Cannabis Cultivator"**- Any licensed person or entity that grows, cultivates, or produces cannabis in the State and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivator license.

C. **"Cannabis Establishment"** - A cannabis cultivator, a cannabis manufacturer or a cannabis wholesaler.

D. **"Cannabis items"** - Any usable cannabis, cannabis product, cannabis extract, and any other cannabis resin. "Cannabis item" does not include: any form of medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act." P.L. 2009, c.307 (C.24:61-1 et al.) and P.L. 2015, c.158 (C.18A:40-12.22 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L. 2019, c.238 (C.4:28-6 et al.).

E. **"Cannabis Manufacturer"** - Any licensed person or entity that processes cannabis items in this state by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturer license.

F. **"Cannabis Wholesaler"** - Any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers. This person or entity shall hold a Class 3 Cannabis Wholesaler license.

G. **"Consumer"** - A person 21 years of age or older who purchases, directly or through a cannabis delivery service, acquires, owns, holds, or uses cannabis items for personal use by a person 21 years of age or older, but not for resale to others.

H. **"Premises"** - Includes the following areas of a location licensed under the Act: all public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms; all areas outside a building that the Cannabis Regulatory Commission has specifically licensed for the production, manufacturing, wholesaling, distributing, retail sale, or delivery of cannabis items; and, for a location that the commission has specifically licensed for the production of cannabis outside a building, the entire lot or parcel that the licensee owns, leases, or has a right to occupy.

§ 3 **Transfer Tax**

A. There shall be a transfer tax imposed on the receipts from the sale of cannabis and cannabis items from the following licensed person or entity located in this municipality:

   i. From a cannabis cultivator to another cannabis cultivator; and
   ii. From one cannabis establishment to another cannabis establishment; and
   iii. By any combination thereof.

B. The transfer tax rate shall be assessed at 2% of gross receipts from each sale by a cannabis cultivator and a cannabis manufacturer. The tax rate shall be assessed at 1% of gross receipts for each sale by a cannabis wholesaler.

C. The transfer tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

D. Any transaction for which the transfer tax is imposed is exempt from the tax imposed under the "Sales and Use Tax Act."

E. 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.

§4 **User Tax**

A. There shall be a user tax imposed on any concurrent license holder operating more than one cannabis establishment.

B. The user tax rate shall be the same rate as the transfer tax above assessed at 2% of gross receipts from each sale by a cannabis cultivator and a cannabis manufacturer. The tax rate shall be assessed at 1% of gross receipts each sale by a cannabis wholesaler.

C. The use tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed on the license holder's establishment that is located in the municipality to any of the other license holder's establishments, whether located in this municipality or any other municipality.

D. The user tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

E. Any transaction for which the user tax is imposed is exempt from the tax imposed under the "Sales and Use Tax Act."

F. 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.

§5 **Collection of transfer and user tax**

In accordance with the provisions of the Act:

A. 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 the Act.

B. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment as if the transfer tax or user 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, as if the transfer tax or user 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. 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.

C. 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/or 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.

§ 6 **Remittance of Cannabis Taxes; Delinquencies**

A. Each cannabis establishment collecting transfer and user taxes pursuant to this chapter shall remit the collected taxes to the CFO of the municipality on a monthly basis.

B. Delinquent taxes. 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.

C. 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.

D. The municipality shall file in the office of its 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.

E. No cannabis establishment shall have its Cannabis Business Permit renewed under Section 12 of the Chapter entitled, "Recreational Cannabis Establishments" if such establishment is delinquent on any taxes due under this Chapter at the time the application for renewal is made.

F. Any land use application submitted to the Borough by a cannabis establishment shall be considered incomplete in the event that such establishment is delinquent on any taxes due under this Chapter at the time the application is submitted.

APPROVED: _____
Daniel H. Pronti, Mayor

ATTEST: _____
Kathleen Moore, Borough Clerk

DATED: July 8, 2021

PUBLIC NOTICE

PUBLIC NOTICE IS HEREBY GIVEN THAT AT A REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF NORTH ARLINGTON HELD ON THURSDAY, June 10, 2021 THE ABOVE ORDINANCE WAS INTRODUCED AND PASSED ON ITS FIRST READING. SAID ORDINANCE SHALL BE TAKEN UP FOR FURTHER CONSIDERATION FOR FINAL PASSAGE AT A REGULAR MEETING OF THE MAYOR AND COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, BOROUGH HALL, 214 RIDGE ROAD, NORTH ARLINGTON, BERGEN COUNTY, NEW JERSEY ON July 8, 2021, 7:00PM OR AS SOON THEREAFTER AS THE MATTER CAN BE REACHED, AT WHICH TIME AND PLACE ALL PERSONS WHO MAY BE INTERESTED THEREIN SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD CONCERNING SAME. DURING THE WEEK PRIOR TO AND UP TO AND INCLUDING THE DATE OF SUCH MEETING, COPIES OF SAID ORDINANCE WILL BE MADE AVAILABLE AT THE BOROUGH CLERK'S OFFICE TO THE MEMBERS OF THE GENERAL PUBLIC WHO SHALL REQUEST SAME.

Kathleen Moore, RMC
Borough Clerk