

TOWN OF BOONTON

ORDINANCE 20-21

AN ORDINANCE OF THE TOWN OF BOONTON, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING THE TOWN CODE AT CHAPTER 300 ENTITLED “ZONING AND LAND USE” OF THE REVISED GENERAL ORDINANCES OF THE TOWN OF BOONTON TO CREATE A NEW SECTION 5, WHICH CREATES WHOLESALER AND RETAILER LICENSES OF CANNABIS ONLY, AND WITHIN THE TOWN OF BOONTON

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 Distributer license, for businesses involved in transporting cannabis plants in bulk from on 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 purchased 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 authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality; and

WHEREAS, the Town of Boonton specifically disallows Class 1, Class 2, Class 4 and Class 6 Licenses, based on a number of factors to include, but certainly not limited to the unique nature, composition, existing zoning and rich history of the Town of Boonton; and

WHEREAS, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 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 Mayor and Town Council of the Town of Boonton find that the operation of certain Cannabis businesses are a viable and valuable commercial enterprise that can be promoted within the Town of Boonton.

NOW THEREFORE BE IT ORDAINED by the Mayor and Town Council of the Town of Boonton, County of Morris, State of New Jersey, that Chapter 300, entitled “Zoning and Land Use” of the Revised General Ordinance of the Town of Boonton shall be amended in part create and add a new “Section 5”, entitled Cannabis, and as follows:

SECTION 1.

SECTION 5. Cannabis

Article XXV Cannabis Cultivation, Manufacturing, Wholesale, Distribution, Retail and Delivery

§ 300-122 Definitions.

Cannabis

All parts of the plant *Cannabis sativa* L., 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 P.L. 2016, c. 16 for use in cannabis products as set forth in this act, but 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 as defined in N.J.S.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 marihuana as defined in section 2 of P.L.1970, c.226 (C.24:21-2) and applied to any offense set forth in the “New Jersey Controlled Dangerous Substances 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.).

Cannabis Cultivator

Any licensed person or entity that grows, cultivates, or produces cannabis in this 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.

Cannabis Delivery Service

Any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis

items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer.

Cannabis Distributor

Any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

Cannabis Establishment

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer or a cannabis distributor.

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.

Cannabis Retailer

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 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.

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.

Cannabis Licensed Marketplace

A license issued under relevant State law including a license that is designated as either a:

- A. Class 1 Cannabis [Grower] Cultivator license
- B. Class 2 Cannabis [Processor] Manufacturer license
- C. Class 3 Cannabis Wholesaler license
- D. Class 4 Cannabis Distributor license
- E. Class 5 Cannabis Retailer license
- F. Class 6 Cannabis Delivery license

The term includes a conditional license for a designated class, except when the context of the provisions of relevant State law otherwise intend to only apply for a license and not a conditional license.

Manufacture

The drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" does not include packaging or labeling.

Microbusiness

A person or entity license by the Cannabis Regulatory Commission as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service that may only, with respect to its business operations, and capacity and quantity of product:

1. Employ no more than 10 employees;
2. Operate a cannabis establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis [grower] cultivator, grow cannabis on an area no more than 2,500 square feet measured on a horizontal plane and grow above that plane not higher than 24 feet;
3. Possess no more than 1,000 cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation shall not be subject to this limit;
4. Acquire and process each month, in the case of a cannabis [processor] manufacturer, no more than 1,000 pounds of usable cannabis [in dried form];
5. Acquire for resale each month, in the case of a cannabis wholesaler, no more than 1,000 pounds of usable cannabis [in dried form], or the equivalent amount in any [other] form of manufactured cannabis product or cannabis resin, or any combination thereof; and
6. Acquire for retail sale each month, in the case of a cannabis retailer, no more than 1,000 pounds of usable cannabis [in dried form], or the equivalent amount in any [other] form of manufactured cannabis product or cannabis resin, or any combination thereof.

Wholesale Trade

Shall mean establishments or places of business primarily engaged in selling merchandise to other businesses, including retailers, industrial, commercial, institutional, or professional business users, other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

§ 300-123 Cannabis Cultivator, Cannabis Manufacturer, Cannabis Distributor and Cannabis Delivery Licenses Specifically Disallowed

There shall be no Cannabis Cultivator License (Class 1), Cannabis Manufacturer License (Class 2), Cannabis Distributor License (Class 4) or Cannabis Delivery License (Class 6) within the Town of Boonton, and all such operations associated thereto are hereby specifically disallowed.

§ 300-124 Cannabis Wholesaler

A. Cannabis Wholesaler (Class 3) shall be a conditional use in the Commercial District C-2 Zone only, and subject to the following:

- (1) Eligible Locations: Facilities shall be at least 300 feet from any parks and 300 feet from any school.
- (2) Lot Area and Setbacks must comply with requirements of the C-2 zone.
- (3) Buildings: All facilities shall be enclosed in heated/air-conditioned buildings, not in greenhouses, hoop houses or outdoors.
- (4) Odor Control: The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that and odor generated inside the facility is not detectable by a person of reasonable sensitivity at the property line of the subject property. Odor from the facility

shall be monitored on an annual basis at the discretion of the Town by a licensed, qualified contractor chosen by the Town.

- (5) Signage: Signs shall be limited to the address, name of the company and emergency contact information located on one (1) ground sign not to exceed 24 square feet.
- (6) State License: The facility must have a valid license to operate from the State of New Jersey.
- (7) Any cannabis facility is subject to compliance with all State laws, regulations and guidelines with respect to cannabis licenses issued by the State of NJ.

§ 300-125 Cannabis Retailer

A. Cannabis Retailer (Class 5) shall be a conditional use in the Commercial District C1 Zone only, and shall be subject to the following:

- (1) Eligible Locations: Facilities shall be at least 500 feet from any parks and 1,000 feet from any school.
- (2) Location; Cannabis Retailers shall be separate and distinct from any Cannabis Wholesaler operation.
- (3) Buildings: All Cannabis Retailers shall be enclosed in heated/air-conditioned permanent buildings, not trailers, outdoors, movable kiosks, etc.
- (4) Signage: Signs shall be limited to location identification/name of business. Signage shall not promote consumption of any cannabis products.
- (5) Site Plan Approval: When seeking site plan approval, the Applicant for Cannabis Retailers shall submit a safety and security plan and emergency services access plan.
- (6) Accessibility: Any Cannabis Retailer shall only have one 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.
- (7) Hours of Operation: Hours of operation for Cannabis Retailers shall be limited generally to daytime and early evening hours.
- (8) Interior Security: Cannabis Retailers interiors shall provide a secure location for storage of products with minimum products in any customer service area.
- (9) Exterior Loitering and Security: 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.
- (10) Product Consumption. No products shall be permitted to be consumed on-site.
- (11) State License: The facility must have a valid license to operate from the State of New Jersey.
- (12) Any cannabis facility is subject to compliance with all State laws, regulations and guidelines with respect to cannabis licenses issued by the State of NJ.

SECTION 2.

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 3.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4.

The Town Clerk is directed to give notice at least ten (10) days prior to the hearing on the adoption of this Ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. The Town Clerk is further directed to refer this Ordinance to the Town Planning Board, pursuant to N.J.S.A. 40:55D-64. Upon the adoption of this Ordinance, after public hearing, the Town Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Morris County Planning Board, as required by N.J.S.A. 40:55D-16.

SECTION 5.

This Ordinance shall take effect after publication and passage according to law.

he foregoing ordinance having been introduced and passed on first reading by the Mayor and Town Council of the Town of Boonton, County of Morris, State of New Jersey, on June 21, 2021 and then ordered to be published according to the law, will be further considered for final passage and adoption at a public hearing to be held at a meeting beginning at 7:30 p.m. on July 19, 2021 at the Town hall, 100 Washington Street, Boonton, NJ 07005, when and where, or at such time and place to which said meeting may be adjourned. All persons interested will be given an opportunity to be heard concerning s

Cynthia A. Oravits, RMC
Town Clerk