

**ORDINANCE NO. 18-2022**

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING AND SUPPLEMENTING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED LAND DEVELOPMENT, PERTAINING TO MEDICINAL CANNABIS DISPENSARIES**

**WHEREAS**, in 2020 New Jersey voters approved Public Question No. 1, which amended the State of 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 established six marketplace classes of licensed businesses, including:

1. Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
2. Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
3. Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
4. 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;
5. Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
6. 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 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”); and

**WHEREAS**, Section 31a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and

**WHEREAS**, Section 31a of the Act also authorizes municipalities to adopt by ordinance regulations governing the local licensing endorsement, location, manner and times of operation of cannabis establishments and cannabis distributors, and the location and manner of cannabis delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, Section 31b of the Act authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services

anywhere in the municipality, except for the delivery of cannabis items and related supplies by a delivery service based and initiated from outside of the municipality; and

**WHEREAS**, section 40 of the Act permits a municipality to adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality on receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; 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 and to set its own rate or rates, but in no case exceeding: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer; and

**WHEREAS**, on July 12, 2021, the Borough adopted Ordinance No. 30-2021, which prohibited, in all zone districts, all classes of cannabis establishments, cannabis distributors and cannabis delivery services as said terms are defined in section 3 of P.L. 2021, c. 16, but did not prohibit the delivery of cannabis items and related supplies by a delivery service from outside the Borough; and

**WHEREAS**, Ordinance No. 30-2021 stated that the Borough Council may wish to revisit the regulation of cannabis businesses within the Borough following the promulgation of regulations regarding the Act by the New Jersey Cannabis Regulatory Commission (the "CRC"), which regulates medicinal and personal-use cannabis industries in the State of New Jersey; and

**WHEREAS**, on or about August 19, 2021, the CRC promulgated regulations regarding the Act (the "CRC Regulations"); and

**WHEREAS**, the Borough Council of the Borough of Madison has determined that, following the release of the CRC Regulations, it is in the best interests of the Borough to permit medicinal cannabis dispensaries in certain zones within the Borough of Madison.

**NOW THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Madison, County of Morris, State of New Jersey, as follows:

Section 1. The aforementioned recitals are incorporated in their entirety, as if restated herein.

Section 2. Chapter 195 of the Borough Code, entitled "Land Development", subsection 195-5, entitled "Definitions", shall hereby be amended and supplemented to include the following:

**ALTERNATIVE TREATMENT CENTER or ATC**

An organization issued a permit pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.) to operate as a medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary, or clinical registrant, as well as any alternative treatment center deemed pursuant to section 7 of that act (C.24:6I-7) to concurrently hold a medical cannabis cultivator permit, a medical cannabis manufacturer permit, and a medical cannabis dispensary permit.

## 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.24:6I-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 marijuana 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, or a cannabis retailer.

## 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.

### MEDICINAL CANNABIS DISPENSARY

A business licensed by the State of New Jersey to sell medical cannabis to registered qualifying patients and their authorized care givers. This term shall include the organization's officers, directors, board members, and employees.

Section 3. Chapter 195 of the Borough Code, entitled "Land Development", subsection 195-5, entitled "Prohibited uses" shall hereby be amended and supplemented, as follows:

#### § 195-5 Prohibited uses.

- A. No change.
- B. No change.
- C. All classes of cannabis establishments, cannabis distributors and cannabis delivery services **\*\*pertaining to Adult-Use Cannabis\*\***, but not the delivery of cannabis items and related supplies by a delivery service from outside the Borough, shall be prohibited in all districts.

Section 4. Chapter 195 of the Borough Code, entitled "Land Development", subsection 195-31, entitled "Certain Permitted Uses" shall hereby be amended and supplemented, as follows:

#### § 195-31 Certain permitted uses.

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. **\*\*Medicinal Cannabis Dispensary**
  - 1. **No more than two (2) Medicinal Cannabis Dispensaries shall be permitted in the CC Community Commercial Zone and the Gateway Zone.**
  - 2. **Medicinal Cannabis Dispensaries shall not be located within seven-hundred and fifty (750) feet of a pre-existing primary or secondary school**

or other medicinal cannabis dispensary. The distance shall be measured from property line to property line.

3. For purposes of determining required parking, dispensaries shall be classified as “Retail uses not separately listed” pursuant to section 195-35(A).
4. Drive-throughs shall be prohibited at Medicinal Cannabis Dispensaries.
5. No medicinal cannabis or cannabis paraphernalia shall be displayed or kept at Medicinal Cannabis Dispensaries so as to be visible from outside the premises or from the public right of way. No medicinal cannabis or cannabis paraphernalia shall be stored outside.
6. No medicinal cannabis, or cannabis-infused product, shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Medicinal Cannabis Dispensary.
7. A Medicinal Cannabis Dispensary shall not be located in a home, apartment, or condominium.
8. A Medicinal Cannabis Dispensary shall be required to have an indoor waiting area of at least 200 square feet.
9. The hours of operation of such Medicinal Cannabis Dispensary shall be between 8:00 a.m. and 8:00 p.m. from Monday through Saturday and between 9:00 a.m. and 5:00 p.m. on Sundays and holidays.
10. **Signs.** All signage shall be compliant with State law and all applicable signage requirements in the Borough Code. A Medicinal Cannabis Dispensary shall not display on the exterior of the establishment, any advertisement for cannabis or a certain brand of cannabis product, except that a Medicinal Cannabis Dispensary may have external signage for purposes of identifying the building by the licensed name, pursuant to State law. Signs shall not contain any visual depictions of any part of the cannabis plant. A Medicinal Cannabis Dispensary may not advertise in a manner that would target, or is designed to appeal to, individuals under the legal age to purchase cannabis products.
11. **Permitting.** A Medicinal Cannabis Dispensary shall be subject to permitting, including but not limited to occupancy and building permits and licensing requirements. Requests for a License shall be submitted via an application to the Borough Council (herein “Dispensary Application”) as required by Chapter 193 of the Borough Code.

12. **Public Nuisance Declared.** Operation of any prohibited or unpermitted cannabis business establishment within the municipality in violation of the provisions of this Chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.
13. **Governing Body Approval of Applications.** Whenever the Cannabis Regulatory Commission established by the Act (the “Commission”) forwards to the municipality any application for initial licensing or renewal of an existing license for any cannabis establishment, Medicinal Cannabis Dispensary, distributor, or delivery service pursuant to section 19 of the Act or for a cannabis consumption area pursuant to section 28 of P.L.2019, c.153 (C.24:6I-21), or otherwise solicits the position of the municipality on any matter related to cannabis-related activities within the municipality, or upon the request of an applicant for or holder of such license, the governing body shall determine whether the application complies with the municipality’s restrictions on the number of Medicinal Cannabis Dispensaries, cannabis establishments, distributors, or delivery services, and on their location, manner, or times of operation, and promptly inform the Commission, and the applicant for or holder of a license whether the application complies with same and whether it either approves or denies each application or other request for municipal authorization forwarded to it. Notwithstanding the forgoing, nothing herein shall prohibit any elected or appointed official or employee from expressing their opinions or views on cannabis-related matters in their personal or individual capacity, provided that such official shall not represent that their opinions or views are those of the municipality unless based on a duly adopted ordinance or resolution of the municipality, or other action of a majority of the governing body.
14. **Definitions and Repealer.** Unless specifically defined otherwise herein, any term used herein shall incorporate the definition of that term in the Act. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Madison inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.
15. **Interpretation and Savings Provision.** If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.
16. **Violations and penalties.** Any person or business who violates any provision of this chapter shall, upon conviction, be subject to the penalties provided by Section 1-15 of the Borough Code.

Section 5. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Borough of Madison Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed Ordinance that are inconsistent with the Borough Master Plan and recommendations concerning any inconsistencies and any other matter as deemed appropriate.

Section 6. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be judged invalid, such adjudication shall apply only to that section, paragraph, subdivision, clause or provision, and the remainder of this Ordinance shall be deemed valid and effective.

Section 7. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 8. This Ordinance shall take effect according to law.