

ORDINANCE NO. _____

AN ORDINANCE BY THE TOWNSHIP OF NORTH BRUNSWICK IN MIDDLESEX COUNTY, NEW JERSEY PERMITTING THE OPERATION OF CLASSES 1,2,3 AND 4 CANNABIS LICENSED BUSINESSES WITHIN CERTAIN DESIGNATED AREAS OF ITS GEOGRAPHICAL BOUNDARIES, BY AMENDING CHAPTER 205 LAND USE, OF THE NORTH BRUNSWICK TOWNSHIP CODE AND BY CREATING NEW CHAPTER 140 ENTITLED “CANNABIS, LICENSED BUSINESSES”AND NEW CHAPTER 308 ENTITLED “ESTABLISHMENT OF CANNABIS TRANSFER TAX AND USER TAX IN THE TOWNSHIP OF NORTH BRUNSWICK”

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 of 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, 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, pursuant to section 40 of the Act, a municipality may adopt an ordinance imposing a transfer tax and/or user tax on the sale of cannabis or cannabis items by cannabis establishments located in the municipality and which shall be in addition to any other tax imposed by law; and

WHEREAS, the Township Council of North Brunswick has determined that, due to present and potential future impacts that allowing cannabis business might have on New Jersey municipalities in general, and on North Brunswick Township in particular, it is at this time necessary and appropriate, to amend North Brunswick Township’s Land Use regulations to permit Class 1, 2, 3, and 4 Licensed Cannabis businesses in certain designated areas of the Township and establish a transfer tax and use tax on the sale of cannabis or cannabis items;

NOW THEREFORE, BE IT ORDAINED, by the Township Council of North Brunswick in the County of Middlesex, State of New Jersey, as follows:

Article III Word Usage; Definitions

§ 205-7 Definitions shall be amended to include the following revised or new definitions:

CANNABIS CONSUMPTION AREA

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 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 useable cannabis to cannabis manufacturers, cannabis wholesalers or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivators license.

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. This person or entity shall hold a Class 6 Cannabis Delivery license.

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 establishments 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. This person or entity shall hold a Class 4 Cannabis Distributors license.

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 the other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturers license.

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 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.

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.

BE IT FURTHER ORDAINED, by the Township Council of the Township of North Brunswick, County of Middlesex and State of New Jersey, that Chapter 205 Land Use, Article XXIIA “CANNABIS OVERLAY ZONES REGULATIONS”, be and is hereby supplemented by adding a new Section 205-92.11, “Cannabis Jersey Avenue Zone (CAN-JA) Licensed Cannabis Business Overlay”, as follows:

205-92.11 Licensed Cannabis Business Overlay.

A. Purpose

- (1) The intent and purpose of this overlay district is to create a zone where Class 1, 2, 3, and 4 Licensed Cannabis establishments can operate provided the property meets all of the underlying bulk standard requirements of the zone in which it is located and a legal Class 1, 2, 3, or 4 Cannabis license has been issued for the proposed establishment by the State of New Jersey in certain designated areas within the zone.

- (2) This overlay zone shall be comprised of warehouse buildings greater than 35,000 square feet and no more than 5% of the area of the building shall be within 250 feet of a residential zone or shall be separated by the Northeast Corridor rail line, as identified in Exhibit B, dated xx, 2021, which is hereby adopted by reference and made a part of this Chapter.

B. Permitted Uses.

- (1) All uses permitted under the underlying zone(s) will continue to be allowable per the same guidelines and standards of their zoning code and each establishment shall satisfy the requirement of the underlying bulk standards of the zone.

BE IT FURTHER ORDAINED, by the Township Council of the Township of North Brunswick, County of Middlesex and State of New Jersey, that a new Chapter 140, "Cannabis, Licensed Businesses" be and is hereby created as follows:

§ 140-1 Definitions.

For the purposes of this chapter, the terms used herein are defined as follows:

CANNABIS CONSUMPTION AREA

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 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 useable cannabis to cannabis manufacturers, cannabis wholesalers or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivators license.

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. This person or entity shall hold a Class 6 Cannabis Delivery license.

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 establishments 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. This person or entity shall hold a Class 4 Cannabis Distributors license.

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 the other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturers license.

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 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.

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.

§140-2 Limitations.

(A) Limitation on Number of Licenses.

Within the geographic boundaries of the Township, the maximum number of licensed Cannabis Businesses shall be no more than two (2) for each Class of Cannabis Licensed establishment (Classes 1, 2, 3, and 4). If two (2) licenses for the Class of license applied for have already been issued, then and in that event the Administrative Zoning Officer shall deny the application without the need for a determination on the License application by either of the Township's Land Use Boards (i.e. Planning Board or Zoning Board of Adjustment).

(B) Limitation on Location.

A Licensed Cannabis Business shall not be permitted within 500 feet of any existing Licensed Cannabis Business premises, or any primary or secondary educational institution or any house of

worship. The distance shall be measured in the same manner as that required by statute for the measuring of businesses between licensed retail sale of alcoholic premises, schools and churches.

§140-3 Prohibition of Certain Activities.

It is hereby established that no person shall smoke, vape or otherwise consume any cannabis products on a public street, highway, avenue, alley or road of the Township; or upon any public or quasi-public parking lots or garages or any other parking facilities in the Township; or on any public grounds, parks, sidewalks, promenade or quasi-public 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, promenade or quasi-public areas in the Township.

§140-4 Prohibition of Cannabis Consumption Areas.

Cannabis consumption areas shall be prohibited within the geographical boundaries of the Township of North Brunswick in conjunction with any Class 5 Cannabis Retail License establishment.

BE IT FURTHER ORDAINED, by the Township Council of the Township of North Brunswick, County of Middlesex and State of New Jersey, that a new Chapter 308, “Cannabis Transfer Tax and User Tax ” be and is hereby created as follows:

§308-1 Cannabis Transfer and User Tax.

A. The cannabis transfer tax in North Brunswick Township 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 Township. 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 Township.

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 Township to any of the other license holder’s establishments, whether located in the Township 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 regarding same.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, This Ordinance shall take effect upon passage and publication in accordance with applicable law.

TITLE

This Ordinance shall be known as may be cited as the Ordinance Amending and Supplementing Chapter 205, Land Use to create a new Chapter 140 entitled “Cannabis, Licensed Business” and a new Chapter 308 entitled “Establishment of Cannabis Transfer Tax and User Tax” in the Township of North Brunswick.

Michael C. Hritz
Director of Community Development

Justine Progebin
Business Administrator

Cavel Gallimore
Chief Financial Officer

Ronald H. Gordon, Township Attorney
(Approved as to legal form)

RECORDED VOTE FIRST READING

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MAYOR WOMACK				

RECORDED VOTE SECOND READING

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MAYOR WOMACK				

CERTIFICATION

I hereby certify that the above Ordinance was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on XXXXX, 2021.

Lisa Russo, Township Clerk

EFFECTIVE DATE

This Ordinance shall take effect on September 1, 2021, upon passage and publication in accordance with applicable law.

- APPROVED
- REJECTED

Francis M. Womack III, Mayor
Township of North Brunswick

Date Signed: _____, 2021