

**Pennington Borough Council  
Special Meeting – June 21, 2021**

Mayor Davy called the Special Meeting of the Borough Council to order at 7:13 pm. The meeting was held on Zoom due to the COVID19 pandemic. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Gross, Gnatt, Marciante and Semple in attendance. Mrs. Mills was absent.

Also present were Borough Administrator Eileen Heinzl, Police Chief Doug Pinelli and Borough Attorney Walter Bliss.

Mr. Davy announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the door at Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

**Open to the Public – Agenda Items Only**

Mr. Davy read the following statement.

The meeting is now open to the public for comments on items on the agenda for which no public discussion is provided. In an effort to provide everyone interested an opportunity to address his or her comments to the Governing Body, a public comment time limit has been instituted for each speaker. **Please raise your hand and when the Borough Administrator acknowledges your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.**

There were no comments from the public.

**Ordinances for Introduction**

Mayor Davy read Ordinance 2021-9 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2021 - 9**

**AMENDED ORDINANCE RESTRICTING THE NUMBER, LOCATION AND  
OPERATION OF CANNABIS RETAILERS, MEDICAL CANNABIS DISPENSARIES  
AND CANNABIS DELIVERY SERVICES AND PROHIBITING ALL OTHER  
CANNABIS BUSINESSES AND OPERATIONS IN THE BOROUGH, AMENDING THE  
CODE OF THE BOROUGH OF PENNINGTON**

**WHEREAS**, the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31, et seq. (the “Personal Use Act”) legalizes the recreational use of marijuana by adults 21 years of age or older and establishes a comprehensive regulatory and licensing scheme for commercial production, distribution and sale of cannabis items;

**WHEREAS**, the Personal Use Act establishes six marketplace classes of licensed cannabis businesses, including: Class 1, Cannabis Cultivator, involved in growing cannabis; Class 2, Cannabis Manufacturer, dedicated to the manufacture, preparation and packaging of cannabis items; Class 3, Cannabis Wholesaler, which obtains and sells cannabis items for later resale by others licensees; Class 4, Cannabis Distributor, involved in transporting cannabis plants in bulk from one licensed cultivator to another or cannabis items in bulk among licensed cannabis businesses; Class 5, Cannabis Retailer, licensed to sell cannabis items and related supplies to consumers; and Class 6, Cannabis Delivery Services, providing courier service for consumer purchases of cannabis items that are fulfilled by a cannabis retailer for delivery to the consumer, or taking orders from the consumer to be presented to a retailer for fulfillment and then delivered to the consumer;

**WHEREAS**, the Personal Use Act authorizes municipalities to adopt regulations by ordinance governing the number of cannabis establishments, distributors and delivery services allowed to operate within their borders, regulating the location, manner and times of operation of these establishments, distributors and delivery services, and establishing civil penalties for the violation of any such regulations, provided the time of operation of delivery services shall be subject only to regulation by the State Cannabis Regulatory Commission (N.J.S.A. 24:6I-45.a);

**WHEREAS**, the Personal Use Act further authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishment, cannabis distributor or cannabis delivery service anywhere in the municipality, provided the prohibitory ordinance be adopted by August 21, 2021, 180 days after the effective date of the Act (N.J.S.A. 24:6I-45.b);

**WHEREAS**, the failure of a municipality to enact an ordinance prohibiting the operation of one or more classes of cannabis establishment, cannabis distributor or cannabis delivery service within 180 days after the effective date of the Personal Use Act shall result in any class of cannabis establishment, cannabis distributor or cannabis delivery service not so prohibited being permitted as follows: the growing,

cultivating, manufacturing, and selling and reselling of cannabis and cannabis items, and operations to transport in bulk cannabis items by a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, or as a cannabis distributor or cannabis delivery service, shall be permitted uses in all industrial zones of the municipality, and the selling of cannabis items to consumers from a retail store by a cannabis retailer shall be a conditional use in all commercial zones or retail zones, subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance from one or more of those conditions in accordance with the Municipal Land Use Law, and the municipality shall be barred for at least five years thereafter from enacting an ordinance prohibiting these uses and any such prohibition may be prospective only;

**WHEREAS**, the Jake Honig Compassionate Use Medical Cannabis Act, N.J.S.A. 24:6I-1, et seq., (the “Medicinal Use Act”) permits the authorized cultivation, processing, manufacturing, preparing, packaging, transferring, sale, purchase, research, possession, use, and consumption of medical cannabis and products created from or which include cannabis;

**WHEREAS**, the Medicinal Use Act authorizes the licensed operation of medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries and clinical registrants as defined in the Medicinal Use Act, N.J.S.A. 24:6I-3;

**WHEREAS**, a medical cannabis dispensary as defined in the Medicinal Use Act, means an organization issued a permit by the State Cannabis Regulatory Commission authorizing the dispensary, among other things, to sell and dispense medical cannabis and medical cannabis products and related supplies to qualifying patients and caregivers, N.J.S.A. 24:6I-3;

**WHEREAS**, a clinical registrant as used in the Medicinal Use Act means an entity that has a written contractual relationship with an academic medical center in the region in which it has its principal place of business, which includes provisions whereby the parties will engage in clinical research related to the use of medical cannabis and the academic medical center or its affiliate will provide advice to the entity regarding patient health and safety, medical applications, and dispensing and managing controlled dangerous substances, among other areas, N.J.S.A. 24:6I-3;

**WHEREAS**, municipalities are authorized by the Personal Use Act and N.J.S.A. 40:481-1.a (1) to impose by ordinance a transfer tax of up to two percent (2%) on the sale of cannabis or cannabis items by a cannabis retailer located in the municipality;

**WHEREAS**, municipalities imposing a transfer tax are required by N.J.S.A. 40:481-1.b (1) to include in the ordinance a user tax, at the equivalent transfer tax rates, on any current license holder operating more than one cannabis establishment and transferring cannabis or cannabis items from the license holder’s establishment in the municipality to any of the other license holder’s establishment(s), whether located in the municipality or another municipality, based on the value of each such transfer or use not otherwise subject to the transfer tax;

**WHEREAS**, municipalities are authorized by the Medicinal Use Act, N.J.S.A. 24:6I-10i, to adopt an ordinance imposing a transfer tax not to exceed two percent (2%) on the purchase price of any medical cannabis dispensed by a medical cannabis dispensary located in the municipality;

**WHEREAS**, Borough Council determines that it is in the best interests of the Borough and the health, safety and welfare of its citizens that all cannabis establishments, cannabis distributors and cannabis delivery services, together with medical cannabis dispensaries, clinical registrants and other licensed medical cannabis entities, be prohibited from operating anywhere in the Borough except as expressly authorized and regulated by this ordinance;

**NOW, THEREFORE, BE IT ORDAINED**, by Borough Council of the Borough of Pennington, as follows:

General Prohibition of Cannabis- and Medical Cannabis-  
Related Enterprises, with Exceptions

1. The above recitals are repeated and incorporated herein by reference.
2. In accordance with the authority granted to municipalities by N.J.S.A. 24:6I-31, et seq. (the Personal Use Act), in particular N.J.S.A. 24:6I-45, all classes and types of cannabis establishments (Class 1 cannabis cultivators, Class 2 cannabis manufacturers, Class 3 cannabis wholesalers and Class 5 cannabis retailers), as well as Class 4 cannabis distributors and Class 6 cannabis delivery services, are hereby prohibited from operating anywhere in the Borough of Pennington except as expressly provided herein with respect to a limited number of Class 5 cannabis retailers permitted as conditional uses in the BH-Business Highway and OB-Office Business zoning districts and Class 6 delivery services permitted as conditional uses in the BH-Business Highway, OB-Office Business and MU-1 Mixed Use 1 zoning districts. As used herein, cannabis establishments, cannabis distributors and cannabis delivery services are as defined at N.J.S.A. 24:6I-33.
3. These prohibitions extend as well to all medical cannabis cultivators, medical

cannabis manufacturers, medical cannabis dispensaries, clinical registrants and other entities authorized to operate under N.J.S.A. 24:6I-1, et seq. (the Medicinal Use Act), except as further provided in this ordinance with respect to medical cannabis dispensaries as defined in the Medicinal Use Act, N.J.S.A. 24:6I-3 .

Amendments to Relevant Borough Zoning Provisions

4. Chapter 215 of the Code of the Borough of Pennington (“Code”), concerning Zoning, is hereby amended at Section 215-25, Prohibited Uses, to add to the list of Prohibited Uses in all zoning districts cannabis cultivators, cannabis manufacturers, cannabis wholesalers and cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants, as follows:

215-25. Prohibited Uses.

Any use not specifically permitted in a zoning district established by this chapter is hereby specifically prohibited from that district, and further provided that the following uses and activities shall be specifically prohibited in any zone of the Borough of Pennington:

\* \* \*

- Q. Cannabis cultivators, cannabis manufacturers, cannabis wholesalers and cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants.

5. Chapter 215 of the Code is hereby amended at section 215-71, TC Town Center Zone, to add cannabis and medical cannabis uses to Prohibited Uses, as follows:

215-71. TC – Town Center Zone.

\* \* \*

- D. Prohibited uses. Any use not hereby specifically permitted in the Town Center is prohibited. The following uses are hereby specifically prohibited:

\* \* \*

- (6) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis retailers, cannabis distributors, cannabis delivery services, medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries and clinical registrants

\* \* \*

6. Chapter 215 of the Code is hereby amended at section 215-71.1, TCB Town Center Buffer Zone, to add cannabis and medical cannabis uses to Prohibited Uses, as follows:

215-71.1 Town Center Buffer Zone

\* \* \*

- D. Prohibited uses. Any use not hereby specifically permitted in the Town Center Buffer Zone is prohibited. The following uses are hereby specifically prohibited:

\* \* \*

- (6) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis retailers, cannabis distributors, cannabis delivery services, medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries and clinical registrants

\* \* \*

7. Chapter 215 of the Code is hereby amended at section 215-72, B-H Highway Business Zone, to restrict permitted wholesale business establishments to other than cannabis wholesalers and to add cannabis retailers, cannabis delivery services and medical cannabis dispensaries to the list of Conditional Uses, subject to operating hours exclusively from 9:00 a.m. to 8:00 p.m. daily and the other provisions of Article VIII, and to insert Prohibited Uses, as follows:

215-72. B-H Highway Business Zone.

- A. Permitted primary uses. The permitted primary uses allowed in the B–H Highway Business Zone shall be as follows:

\* \* \*

- (4) Wholesale business establishments other than cannabis wholesalers.

\* \* \*

- C. Conditional uses. The conditional uses allowed in the B-H Highway Business Zone shall be as follows and shall be further subject to the provisions of Article VIII:

\* \* \*

- (5) cannabis retailers
- (6) cannabis delivery services
- (7) medical cannabis dispensaries.

- D. Prohibited uses. Any use not hereby specifically permitted in the BH-Business Highway zone is prohibited. The following uses are hereby specifically prohibited:

\* \* \*

- (6) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants

- E. ~~D.~~ Other Provisions and Requirements

\* \* \*

- (5) As further provided in Article VIII, the operating hours of cannabis retailers and medical cannabis dispensaries shall be exclusively from 9:00 a.m. to 8:00 p.m. daily.

8. Chapter 215 of the Code is hereby further amended at section 215-73, O-B Office Business Zone, to add to Conditional Uses cannabis retailers, cannabis delivery services and medical cannabis dispensaries, subject to the provisions of Article VIII, and to insert Prohibited Uses, as follows:

215-73. O-B Office (Building) Business Zone.

\* \* \*

- C. Conditional uses, subject to the provisions of Article VIII.

\* \* \*

- (5) cannabis retailers
- (6) cannabis delivery services
- (7) medical cannabis dispensaries

- D. Prohibited Uses. Any use not hereby specifically permitted in the OB-Office Business Zone is prohibited. The following uses are hereby specifically prohibited:

- (1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants

- E ~~D.~~ General Requirements \* \* \*

\* \* \*

- F ~~E.~~ Off-street parking requirements. \* \* \*

\* \* \*

- G F. Off-street loading requirements \* \* \*

\* \* \*

- H. As further provided in Article VIII, the operating hours of cannabis retailers and medical cannabis dispensaries shall be exclusively from 9:00 a.m. to 8:00 p.m. daily.

9. Chapter 215 of the Code is hereby amended at section 215-77, MU-1 Mixed Use Zone, to add a new subsection E for Conditional Uses and to include as conditional uses cannabis delivery services, subject to the provisions of Article VIII, and to add a new subsection F for Prohibited Uses as follows:

215-77. MU-1 Mixed Use Zone.

\* \* \*

- E. Conditional Uses, subject to the provisions of Article VIII.

- (1) cannabis delivery services.

F. Prohibited uses. Any use not hereby specifically permitted in the MU-1 Mixed Use zoning district is prohibited. The following uses are hereby specifically prohibited:

- (1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis retailers and cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries and clinical registrants

10. Chapter 215 of the Code is hereby amended at section 215-78, MU-2 Mixed Use Zone, to insert a new subsection D for Prohibited Uses, as follows:

215-78 MU-2 Mixed Use Zone

\* \* \*

D. Prohibited Uses. Any use not hereby specifically permitted in the MU-2 Mixed Use zoning district is prohibited. The following uses are hereby specifically prohibited:

- (1) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, cannabis retailers, cannabis distributors, cannabis delivery services, medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries and clinical registrants

E ~~D~~. Office and retail use restrictions.

\* \* \*

F ~~E~~. Bulk Standards.

\* \* \*

G ~~F~~. Parking, loading and screening.

\* \* \*

H ~~G~~. Building and site design.

\* \* \*

11. Chapter 215 of the Code is hereby amended at section 215-78.2, Route 31 Corridor Business Overlay Zone, to insert Prohibited Uses to the extent not permitted as Conditional Uses in the underlying B-H Business Highway or O-B Office Business Zones, and to insert as Conditional Uses the conditional uses provided in these two underlying zones, as follows:

215-78.2 Route 31 Corridor Business Overlay Zone.

\* \* \*

D. Conditional Uses, subject to the provisions of Article VIII.

\* \* \*

- (3) cannabis retailers, cannabis delivery services and medical cannabis dispensaries to the extent provided in section 215-7.2 (B-H Business Highway Zone) or section 215-7.3 (O-B Office Business Zone) as applicable

E. Prohibited uses. Any use not hereby specifically permitted in the Route 31 Corridor Business Overlay Zone is prohibited. The following uses are hereby specifically prohibited:

\* \* \*

- (5) Cannabis cultivators, cannabis manufacturers, cannabis wholesalers, and cannabis distributors, medical cannabis cultivators, medical cannabis manufacturers and clinical registrants

\* \* \*

Conditions of Conditional Use and Restrictions on Location, Manner and Times of Operation

12. Chapter 215 of the Code is hereby amended at section 215-79, Article VIII, concerning Conditional Uses, by the addition of a new Section 215-81 (previously reserved) to specify the conditions of approval for cannabis retailers, cannabis delivery services and medical cannabis dispensaries designated as conditional uses in the B H-Business Highway and OB-Office Business zoning districts, and cannabis delivery services designated as a conditional use in the MU-1 Mixed Use zoning district, as follows:

215-81 (New). Cannabis Retailers, Medical Cannabis Dispensaries and

Cannabis Delivery Services

- A. A total of no more than three (3) cannabis retailers and medical cannabis dispensaries may be permitted to operate in the BH-Business Highway and OB-Office Business zoning districts combined. At least one place in one of the two zones must be reserved for a medical cannabis dispensary. If no medical cannabis dispensary seeks to locate in one of the two zones, the total combined number of cannabis retailers in the two zones shall not exceed two, however distributed.
- B. Cannabis delivery services shall not be limited in number but shall be permitted only in the BH-Business Highway, OB-Office Business and MU-1 Mixed Use zoning districts.
- C. Cannabis consumption areas as defined in N.J.S.A. 24:6I-33 shall be permitted in the BH-Business Highway and OB-Office Business zoning districts if approved by Borough Council in accordance with N.J.S.A. 24:6I-21 and this ordinance, and if, in addition to complying with other applicable requirements of conditional use, any such cannabis consumption area is an indoor, structurally enclosed area of the cannabis retailer or medical cannabis dispensary. It may not be an exterior structure, whether separate from or connected to the retailer or dispensary.
- D. The floor area of a cannabis retailer or medical cannabis dispensary, inclusive of any cannabis consumption area, shall not exceed 2,500 square feet.
- E. The cannabis retailer and medical cannabis dispensary (hereafter referred to together as “licensed retail facility”) shall comply with the following restrictions and performance standards affecting the location, manner and times of operation:
- (1) The operating hours of the licensed retail facility shall be between 9 am and 8 pm daily. It shall be unlawful for any person to sell or dispense cannabis or cannabis products in any licensed retail facility at any time other than between these hours.
  - (2) The licensed retail facility shall be accessible directly from a right-of-way through a separate entrance independent from any other retail ingress.
  - (3) No cannabis product shall be visible from a public sidewalk, public street or right-of-way or any other public place.
  - (4) All cannabis products shall be stored securely indoors and onsite.
  - (5) Consumption of cannabis products, by any means of ingestion, shall not be permitted in the licensed facility or adjacent grounds unless within an approved cannabis consumption area.
  - (6) A licensed retail facility shall plan and implement odor control measures, including carbon-filtered ventilation, sufficient to mitigate cannabis-related odors emanating from the interior of the facility. The ventilation system must be approved by the Borough Board of Health.
  - (7) A licensed retail facility shall develop and implement security protocols sufficient to secure the facility and its contents and protect the safety of customers, employees and the public. These security protocols shall be reviewed by the Pennington Borough Police Department, which in its discretion may, after inspection of the location, recommend or require additional safety and security measures.
  - (8) At a minimum, the following security measures must be undertaken:
    - (a) A video recording security system shall be employed covering all areas of the facility and the exterior of the building with a 24/7 recording system that records for a minimum 30-day archive.
    - (b) The facility and adjacent right-of-way shall be monitored by staff and kept free of loitering, litter and other debris, and the sidewalks if applicable shall be swept and cleaned on a regular basis.

- F. A licensed cannabis delivery service shall comply with the following restrictions and performance standards affecting the location, manner and times of operation:
- (1) Time of operation shall be limited to such times as prescribed by the Cannabis Regulatory Commission.
  - (2) The cannabis delivery service shall comply with the restrictions and standards provided above for licensed retail facilities to the extent applicable to the operations and facilities of the delivery service.
  - (3) Cannabis items handled by or through a cannabis delivery service shall be securely packaged and properly labeled and tracked in accordance with regulations promulgated by the State Cannabis Regulatory Commission.
- G. Both licensed retail facilities and cannabis delivery services shall comply with the following requirements:
- (1) The design of any building or structure required by the licensed facility or service shall conform to the general character of the area in which it is located.
  - (2) The facility shall provide off-street parking adequate for the needs of its customers and employees, subject to the requirements for off-street parking facilities established by Article II General Regulations. In determining the total parking space requirement, the Planning Board may be guided by expert testimony and the plan of operation for the facility.
  - (3) Site access shall be located in order to direct primary traffic flow to nonresidential areas.
  - (4) The facility shall comply with all applicable zoning, signage and site plan requirements, and the specifications and standards prescribed by section 215-79 and this section, as same may be amended from time to time.
- H. Approval of an application by a cannabis retailer, cannabis delivery service or medical cannabis dispensary for issuance or renewal of licensure or permitting shall require a resolution of Borough Council approving the application and informing the Cannabis Regulatory Commission that the applicant complies with Borough restrictions on the number of such businesses and the location, manner and times of operation. Such resolution shall also be a requirement of conditional use approval under this Article VIII.
- I. Application for approval, renewal or reinstatement of a cannabis consumption area endorsement shall also require a resolution of Borough Council approving the application and confirming that the cannabis consumption area complies with Borough restrictions. Such resolution shall also be a requirement of conditional use approval as applicable.

#### Administration and Enforcement

13. (New) The Borough hereby establishes a separate local licensing requirement as part of restrictions on the number of cannabis retailers, cannabis delivery services and medical cannabis dispensaries and their location, manner and times of operation, to the full extent permitted by N.J.S.A. 24:6I-1, et seq. and N.J.S.A. 24:6I-31, et seq.. All such licenses must be renewed annually.

14. (New) All actions required or authorized to be taken by the Borough in connection with State or local licensure, permitting or endorsement of a cannabis or medical cannabis business or any aspect of it located or intending to locate in the Borough, in addition to any land use approvals within the jurisdiction of the Borough Planning Board, shall be the responsibility of Borough Council.

15. (New) The issuance or renewal of a local license shall require a resolution of Borough Council finding that the applicant complies with all applicable Borough restrictions on the number of cannabis and medical cannabis businesses and the location, manner and times of their operation, including continued compliance with all zoning and land use approvals and related conditions and standards. The adoption of such a resolution shall also be a basis for conditional use approvals under section 215-81 of the Borough Code.

16. (New) Borough Council may deny or revoke a local license or take other adverse action based on failure of compliance with restrictions, conditions and standards which are the basis for licensure. To the extent permitted by law, possession of a valid local license shall be a condition precedent to operation of a cannabis or medical cannabis business in the Borough.

17. (New) Borough Council shall notify the Commission in every case that it either approves or denies each application forwarded to it.

18. (New) Any violation of the provisions of this ordinance or the conditions of the zoning permit granted, inclusive of any agreements or conditions imposed by the Planning Board, shall be punishable by a civil fine of no less than \$1,000.00 and no more than \$2,500.00. Responsibility for enforcement of these provisions shall be shared as appropriate by the Zoning Officer, the Police Department and the Health Department of the Borough. In addition, any person may make complaint for any violation of the provisions of this ordinance or any provision or section thereof and upon conviction, the penalties provided herein shall be imposed. All violations will be reported to the State Cannabis Regulatory Commission or other appropriate state authority.

Applications and Fees

19. (New) The applicant shall complete and file such applications, produce such documents and provide such further information and testimony as shall be required by Borough Council to discharge its responsibilities under this ordinance. Applicant shall also ensure that copies of all applications for issuance or renewal of State licensing or permitting or endorsement for any cannabis consumption area shall be timely filed with the Borough Clerk for action by Borough Council. The required copies shall also include copies of all applications to the Borough Planning Board for applicable land use approvals, which shall be filed separately with the Planning Board as required by the Borough Code.

20. Chapter 98 of the Borough Code, concerning Fees, shall be amended by the addition of a new Article XVIII, Fees Affecting Cannabis Enterprises, which shall read as follows:

98-\_\_ Applicants for Borough approval as cannabis retailer, medical cannabis dispensary or cannabis delivery service, in addition to fees and other charges required in connection with applicable zoning and land use applications, shall pay to the Borough an Application Fee of \$1,000.

98-\_\_ A. Cannabis retailers and medical dispensaries shall pay to the Borough an annual renewal or registration fee of \$5,000.

B. Cannabis delivery services shall pay to the Borough an annual renewal or registration fee in the amount of \$2,500.00.

Local Taxation

21. Chapter 180 of the Borough Code, concerning taxation, shall be amended by the addition of a new Article III, Local Cannabis Transfer and User Tax, and shall provide as follows:

188-\_\_ (New) Sales of cannabis and cannabis items by a cannabis retailer located in the Borough shall be subject to a transfer tax payable to the Borough in the amount of two percent (2%) of gross receipts. The tax shall apply to receipts from the sale of cannabis and cannabis items to another cannabis establishment, cannabis distributor or cannabis delivery service as well as to retail customers who are 21 years of age or older, or any combination thereof.

188-\_\_ (New) A cannabis retailer operating one or more cannabis establishments shall pay a user tax at a rate equivalent to the transfer tax on the value of each transfer or use of cannabis or cannabis items from the license holder's establishment in the Borough to or by any other establishment of the license holder whether located in the Borough or another municipality.

188-\_\_ (New) All sales and transfers of cannabis products from a medical cannabis dispensary in the Borough shall be subject to a one percent (1%) transfer tax payable to the Borough. The tax shall be assessed on the purchase price of all medical cannabis dispensed by the dispensary, including medical cannabis that is furnished by the dispensary to a medical cannabis handler for delivery to a registered qualifying patient or the patient's caregiver.



188-\_\_ The transfer and user taxes provided for in this Chapter shall be in addition to any other taxes imposed by law and shall be collected and transmitted to the Borough as provided by law.

Severability

22. If any part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not impair or invalidate the remainder but shall be confined in its operation to the affected part.

Effective Date

23. This ordinance is intended to supersede and replace Ordinance No. 8 introduced for first reading by Borough Council on June 7, 2021.

24. This ordinance shall be effective upon its passage and publication as provided by law.

Mr. Bliss stated that this ordinance has been amended to incorporate changes that were approved at the June 6, 2021 Council Meeting. Mr. Bliss reviewed the key changes to the ordinance including removing of the Town Center, providing specific prohibitions in certain zones and inclusion of a section devoted to local enforcement. Mr. Bliss stated that once introduced this Ordinance will be referred to the Planning Board to supercede the prior Ordinance from the June 6<sup>th</sup> meeting. Mr. Bliss stated that the Planning Board will review the Ordinance to ensure compliance with the Master Plan. Mr. Bliss stated that the Ordinance will be on the August agenda for Public Hearing and Adoption which will meet the deadline of August 23<sup>rd</sup>.

Council Member Chandler made a motion to introduce Ordinance 2021-9, second by Council Member Gnatt with all members present voting in favor.

**ORDINANCES FOR PUBLIC HEARING AND ADOPTION**

Mayor Davy read Ordinance 2021-6 by title.

**BOROUGH OF PENNINGTON  
ORDINANCE NO. 2021-6**

**AN ORDINANCE PROVIDING FOR THE ACQUISITION OF THE PROPERTY KNOWN AS  
417B SOUTH MAIN STREET FOR PRESERVATION AS OPEN SPACE**

**WHEREAS**, the Pennington Open Space Committee has recommended to Borough Council that it acquire by purchase the property known as 417B South Main Street, Lot 12.02 in Block 1002 in the Borough of Pennington, consisting of .57 acre of vacant land adjacent to the Pennington African Cemetery (hereafter “the Property”);

**WHEREAS**, the Open Space Committee has advised that the Property would provide an important undeveloped buffer between the historic African Cemetery and the neighboring property to the west which is a historic house known as the “Toll Gate House,” protected by a historic preservation easement as described in the Resolution of Memorialization of the Borough Planning Board adopted June 8, 2016, approving application for the subdivision of the Toll House lot, Lot 12, creating the Property for development purposes;

**WHEREAS**, if this lot can instead be preserved it therefore will be bookended by the historic Toll Gate House and the Pennington African Cemetery creating a continuous block of historic and natural areas;

**WHEREAS**, the Pennington African Cemetery is the final resting place for Black Civil War veterans and keeping the Property undeveloped would pay appropriate respect to their memory and to their important contribution to our common heritage;

**WHEREAS**, this historic space also provides habitat for birds and foxes and can potentially be included in a future walking route from Main Street to Baldwin Court, using the existing 417 South Main Street driveway and Borough and Board of Education land;

**WHEREAS**, purchase of the Property will permit the pursuit of stewardship and development options in partnership with the Pennington African Cemetery Association (PACA) including the possibility of partnership with PACA not only in preserving the land and restoring its natural resources but also in the conduct of educational programs on the significance of the Cemetery in American history,

**WHEREAS**, purchase of the Property for open space is also consistent with the conservation

easement affecting the easterly end of the Property which serves to buffer the Cemetery;

**WHEREAS**, the Mayor and Borough Council have negotiated with the owners of the Property and secured their commitment to sell it for \$199,000.00 subject to the consent of PACA and Borough Council and negotiation of a mutually satisfactory contract of sale;

**WHEREAS**, PACA and the owners have agreed to adjust their respective obligations under a certain Driveway and Shed Easements Agreement dated November 1, 2019, relating to maintenance and improvement of the driveway owned by PACA leading to the cemetery, and on this basis PACA has consented to the purchase and sale of the Property as proposed;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, as follows:

1. The Mayor with the attestation of the Borough Clerk is hereby authorized to enter into a contract of sale and to purchase the Property on behalf of the Borough for the price of \$199,000.00, appropriating funds from the Borough Open Space Fund for this purpose.
2. This authorization is expressly contingent upon permanent preservation of the Property for open space.
3. This ordinance shall be effective upon its passage and publication as provided by law.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2021-6, second by Council Member Gross. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing, second by Council Member Gross. Upon a voice vote all members voted in favor of closing the Public Hearing. Council Member Chandler made a motion to adopt Ordinance 2021-6, second by Council Member Gross with all members present voting in favor with the exception of Ms. Gnatt who abstained.

**NEW BUSINESS**

**BOROUGH OF PENNINGTON  
RESOLUTION 2021 – 6.11**

**RESOLUTION AUTHORIZING ADDITIONAL PAYMENT TO VAN NOTE HARVEY ASSOCIATES FOR SETTING OF MONUMENTS AND PINS FOR SUBDIVISION AND PLAN REVISIONS TO MEET GREEN ACRES STANDARDS AND SUBMISSION TO GREEN ACRES**

**WHEREAS**, Resolution 2019-10.11 authorized a Professional Services Agreement with Van Note Harvey Associates for Preparation of Boundary Survey in Connection with Obtaining Property From Hopewell Valley Regional School District for the Arboretum Project; and

**WHEREAS**, Resolution 2019-10.12 authorized a Professional Services Agreement with Van Note Harvey Associates for Preparation of Minor Subdivision Plan and Green Acres Survey Plan in Connection with Obtaining Property From Hopewell Valley Regional School District for the Arboretum Project; and

**WHEREAS**, both Resolution 2019-10.11 and 2019-10.12 state that any work exceeding the scope of work described in the annexed memoranda with respect to Boundary Survey and Minor Subdivision Plan and Green Acres Plan respectively shall require written approval by Borough Council; and

**WHEREAS**, by e-mail dated March 9, 2021, Van Note Harvey Associates requested an additional \$3,000.00 to complete remaining work on the Arboretum Subdivision; and

**WHEREAS**, the additional work requires preparation of additional exhibits and documents for Green Acres pre-approval, including stream riparian zones and wetlands and associated environmental constraints, which were not included in the original proposal; and

**WHEREAS**, Van Note Harvey was asked to undertake the additional work with the understanding that a change order to the original contract would be required to complete the subdivision plans for Green Acres submission;

**WHEREAS**, the funds required for the additional work, amounting to \$3,000.00, are available in the Open Space Fund;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington as follows:

1. The request for additional funds for a total amount of \$3,000.00 for the Arboretum Project is hereby approved for the purposes and amounts as follows:
  - (a) Setting of monuments and pins for the subdivision, in the amount of

\$1,000.00.

- (b) Plan revision to meet Green Acres standards and submission to Green Acres, in the amount of \$2,000.00.

2. The Borough Administrator and the Clerk are hereby authorized to issue an amended purchase order to Van Note-Harvey Associates in an amount not to exceed an additional \$3,000.00, from the Borough’s Open Space Trust Fund.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	X				Mills				absent
Gross	S				Semple	X			

Council member Chandler made a motion to approve Resolution 2012-6.11, second by Council Member Gross with all members present voting in favor.

Mayor Davy stated that he would be recusing himself from the next two resolutions. Council President Chandler took over the meeting for Resolutions 2021-6.12 and 2021-6.13.

**BOROUGH OF PENNINGTON  
RESOLUTION 2021 – 6.12**

**RESOLUTION AUTHORIZING ADDITIONAL FUNDS FOR PROFESSIONAL SERVICES BY  
MASON GRIFFIN & PIERSON AS SPECIAL COUNSEL TO THE BOROUGH IN  
CONNECTION WITH MINOR SUBDIVISION AND RELATED ACQUISITION OF PROPERTY  
FROM HOPEWELL VALLEY REGIONAL SCHOOL DISTRICT FOR ARBORETUM PROJECT**

**WHEREAS**, Borough Council approved Resolution 2019-9.5 authorizing Professional Services in the amount of \$5,500.00 by Mason, Griffin & Pierson as Special Counsel to the Borough in connection with minor subdivision and related acquisition of approximately 2.8 acres of land from the Hopewell Valley Regional School District representing a portion of Block 1003, Lot 15 (Proposed Lot 15.01) behind the Toll Gate School in the Borough of Pennington (Ordinance No. 2019-10) for the creation of Howe’s Arboretum; and

**WHEREAS**, Edwin W. Schmierer, Esquire of Mason, Griffin & Pierson has submitted a memorandum dated June 10, 2021 requesting additional funds in the amount of \$1,048.50 to cover pending invoices and remaining closing costs for the acquisition of the above referenced property; and

**WHEREAS**, Borough Council by Resolution 2019-9.5 retained these services, with the understanding that Edwin W. Schmierer, Esquire would serve as lead attorney, for a total price not to exceed \$5,500.00, and that any work exceeding the scope of work would require prior written approval by Borough Council;

**WHEREAS**, funds are available for this purpose in the Borough Open Space Fund;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington that the Borough Administrator is hereby authorized to issue a purchase order to Mason Griffin & Pierson (Edwin W, Schmierer) for the aforesaid additional fees in the amount of \$1,048.50; and

**BE IT FURTHER RESOLVED**, that the funding for these services shall be drawn from the Borough Open Space Fund.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	X				Marciante	X			
Gnatt	M				Mills				absent
Gross	X				Semple	S			

Council Member Gnatt made a motion to approve Resolution 2021-6.12, second by Council Member Semple with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2021 – 6.13**

**RESOLUTION AUTHORIZING PROFESSIONAL SERVICES BY MASON GRIFFIN &  
PIERSON AS SPECIAL COUNSEL TO THE BOROUGH TO FACILITATE THE ACQUISITION  
AND CLOSING OF TITLE RELATED TO ACQUISITION OF PROPERTY KNOWN AS BLOCK  
1002, LOT 12.02 ON THE  
PENNINGTON BOROUGH TAX MAP**

**WHEREAS**, Pennington Borough is preparing to purchase the property known as Block 1002, Lot 12.02 on the Pennington Borough Tax Map for dedication as Open Space (“the Property”);

**WHEREAS**, the Borough seeks to retain the legal services of Mason Griffin & Pierson to facilitate the acquisition and closing of title on acquisition of the Property as described in the annexed Memorandum from Edwin W. Schmierer, Esq. to Elizabeth Sterling, Borough Clerk, dated June 16, 2021, Re: Borough of Pennington Acquisition of Block 1002, Lot 12.02 Pennington Borough Tax Map; and

**WHEREAS**, as described in the annexed Memorandum, the proposed services will entail an estimated cost of \$3,750;

**WHEREAS**, Borough Council proposes retaining the proposed services, with the understanding that Edwin W. Schmierer, Esquire will serve as lead attorney, for a total price not to exceed \$3,750.00;

**WHEREAS**, any work exceeding the scope of work described in the annexed Memorandum shall require prior written approval by Borough Council;

**WHEREAS**, funds are available for this purpose in the Borough Open Space Fund;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington that the Administrator is hereby authorized to issue a purchase order to Mason Griffin & Pierson (Edwin W, Schmierer) for the aforesaid professional services for a total cost not to exceed \$3,750.00 unless earlier approved in writing by Borough Council; and

**BE IT FURTHER RESOLVED**, that the funding for these services shall be drawn from the Borough Open Space Fund.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V	A.B.
Chandler	X				Marciante	X			
Gnatt	M				Mills				absent
Gross	S				Semple	X			

Council Member Gnatt made a motion to approve Resolution 2021-6.13, second by Council Member Gross with all members present voting in favor.

Mayor Davy stated that he distributed a notice to be included in the Water/Sewer Billing and asked that Council Member send him any comments or changes.

At 7:29pm with no further business to address, Council Member Chandler made a motion to adjourn, second by Council Member Marciante.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk