

**Pennington Borough Council
Regular Meeting – August 9, 2021**

Mayor Davy called the Regular Meeting of the Borough Council to order at 7:01 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, Marcianite, Mills and Semple in attendance.

Also present were Borough Administrator Eileen Heinzl, Public Works Superintendent Rick Smith, Chief Financial Officer, Sandra Webb, Police Chief Doug Pinelli and Borough Attorney Walter Bliss.

Mayor 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

Mayor 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 PUBLIC HEARING AND ADOPTION

Mayor Davy read Ordinance 2021-7 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2021-7**

**AN ORDINANCE IMPLEMENTING AUTOMATED TRASH
COLLECTION AND AMENDING CHAPTER 172 OF THE CODE
OF THE BOROUGH OF PENNINGTON**

WHEREAS, Borough Council has determined that automated trash collection, using an automated garbage truck and standardized trash containers, is an efficient means for collecting residential solid waste that is likely to produce significant cost savings for the Borough over the present system;

WHEREAS, this method of trash collection will improve the safety of working conditions for the Borough employees responsible for performing this function;

WHEREAS, requiring affected property owners to use trash containers supplied by the Borough with standardized sizes and features, as required for automated trash collection, will give a uniform appearance and help keep our neighborhoods clean;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Article II of Chapter 172 of the Code of the Borough of Pennington is hereby amended with new language underlined and deleted language crossed out, as follows:

1. Section 172-8, setting forth findings concerning the system of waste collection as it existed before adoption of the 1998 ordinance, is hereby deleted.
2. In Section 172-9, definitions of the following terms are amended and one new defined term is added, all to be inserted in proper alphabetic order:

“ADJACENT PROPERTY OWNER – A person who holds legal title to real property partially within the Borough and partially within Hopewell Township and ~~which property has more than 44%~~ of the dwelling footprint on the property is located in Hopewell Township.”

“APPROVED TRASH CONTAINER -- ~~A watertight container and integral lid with a capacity of no more than 32 gallons and when full, it shall not weigh more than 40 pounds. The container shall be kept clean, covered and free from liquids and recyclable materials.~~ A trash container on wheels supplied and owned by the Borough to every property owner without charge or an identical additional container supplied by the Borough to the property owner for an annual fee as provided in Chapter 98 of this Code. Only one container per property shall be provided without charge to the property owner and no more than one additional container shall be provided to a property owner for a fee. No other container or rolling cart may be used for trash collected by the Borough. Each container shall have a capacity of 95 gallons unless before the deadline advertised by the

Department of Public Works the property owner notified the Department that it prefers a 65-gallon container.”

“BULK TRASH – ~~Includes s~~ Source-separated, non-putrescible and non-deleterious waste items, such as concrete, asphalt, brick, block, asphalt-based roofing scrap, wood waste, tires, appliances and all other solid waste not disposed of in an approved trash container identified as acceptable bulk trash on a list made available by the Department of Public Works. Examples of bulk trash include concrete, asphalt, brick, block, asphalt-based roofing scrap, wood waste, tires, sofas and other furniture, mattresses and appliances. Bulk trash shall not include bulk items that can fit into the approved trash container or non-bulk items that merely exceed the capacity of the approved trash container for a particular collection. Bulk trash collection shall be scheduled in accordance with the Trash Calendar published on the Borough website.”

“ELIGIBLE PROPERTY (new) – A property owned by a property owner as defined herein or, if owned by an adjacent property owner as defined, the adjacent property owner has requested trash collection service and paid the required fee as set forth in Section 172-13 and Chapter 98.”

“PROPERTY OWNER – A person who holds legal title to real property for which an individual or separate tax bill is issued by the Borough. This term shall not include owners of real property where less than 60% of the dwelling floor space footprint is located within the Borough.”

TRASH STICKER OR STICKER -- A sticker obtained from the Borough Clerk ~~Public Works Department~~ which sticker must be attached to the bulk trash or additional nonbulk trash item which is to be collected by the Borough. The number of stickers required by the Borough for the collection by the Borough of each bulk item shall be calculated in accordance with weights for bulk items as set forth in the American Movers Conference Joint Military/Industry Table of Weights and Depreciation Guide official Department of Defense customer moving portal (Move.mil/resources/weight-estimator).”

3. Section 172-10, concerning “Basic” trash service, is amended as follows:

1. The Borough will collect trash once a week from every eligible property; on the day for collection days to be designated for each property by the Public Works Department, non-recyclable trash which has been placed at the curb in one or more approved trash containers; provided the trash has been put in an approved trash container and placed at the curb at the time and in the manner required by this ordinance. The trash collected each week shall not exceed the contents of the approved container or containers with lid closed.
2. ~~The basic trash service shall include the curbside collection of one up to two approved trash containers on collection days from every property owner on the Borough’s tax records for which an individual or separate tax bill is issued by the Borough, as well as from every adjacent property owner who has requested the service and paid the required fee as set forth in Section 172-13 herein. Property owners and adjacent property owners may supplement this basic service by the purchase of an annual license from the Borough authorizing use of one or more additional approved trash containers. The license shall be effective for one year, beginning on July 1 and ending on June 30 of the following calendar year, regardless of the date of purchase. The fee for the license per container shall be determined by the Department of Public Works on an annual basis and approved by Borough Council as part of its budget process.~~
 - B. (formerly C). The A approved trash containers or containers shall be placed at the curb for collection no later than 7:00 a.m. on the collection day and removed from the curb no later than 9:00 p.m. on the day of collection.
3. (formerly D) If a designated collection day falls on a holiday recognized by the Borough as a holiday for trash collection purposes, then the collection will be done on the next scheduled collection day scheduled in accordance with the calendar published on the Borough website. If on a designated collection day trash collection has to be cancelled on account of weather or other emergency, updates also will be posted to the Borough website. Residents can subscribe on the website for E-Alerts to receive notifications.
4. (new) Trash should be bagged before being placed in an approved trash container. The container must be placed next to the curb on the street in front of the curb line with the lid completely closed. The handle and wheels of the container should face the house with the lid opening facing the street.
5. (new) Items not permitted to be placed in an approved trash container include:
 - a. Recyclable materials
 - b. Bulk trash too large to fit in the approved container
 - c. Yard waste, such as leaves, grass or brush
 - d. Hot ash from fireplaces or fire pits
 - e. Any other hazardous, flammable, combustible materials, such as oil-based paints, solvents,

asbestos or commercial medical waste.

6. (new) Trash permitted to be placed in an approved trash container that cannot fit in the container or containers in any given week shall be retained for a future collection date.
7. (new) All approved trash containers, including the containers for which the property owner pays an additional fee, shall be issued and owned by the Borough and remain at the property address to which they are assigned.
4. Section 172-11, concerning Bulk trash service, is amended as follows:
 1. The Public Works Department will prepare and make available a list of common acceptable bulk trash, which ~~list~~ shall include the number of bulk stickers required for ~~cost of the~~ collection of the most common bulk trash items.
 2. All items of bulk trash must have affixed to them ~~thereto~~ a sticker or stickers purchased from the Borough ~~Clerk Public Works Department to which will~~ indicate to the actual trash collector that the fee for the said item has been paid. A bulk trash item which does not have affixed thereto a sticker or stickers will not be collected by the Borough.
 3. ~~Non bulk trash in excess of two approved trash containers on any one collection day shall be considered bulk trash for which a collection sticker will be required for each additional container.~~

C (formerly D). In computing the cost of collection of bulk trash ~~and additional non-bulk trash~~ the cost shall be based upon the weight of the item, which ~~weight~~ shall be calculated in forty-pound increments. All fractional weights shall be calculated to the next weight increment. By way of example: a fifty-pound item of bulk trash shall be calculated as weighing 80 pounds, and the cost for disposal shall be calculated accordingly.
 4. (formerly E) Persons disposing of bulk trash ~~or additional non-bulk trash~~ must affix the proper number of stickers to the item to be collected at the time it is placed at the curb for collection. "The sticker should be visible to the collector."
 5. (formerly F) The collection fee for bulk household trash ~~or additional non-bulk trash~~ (i.e., sticker prices) shall be as set forth in Chapter 98 of this Code.
 6. (new) Bulk trash shall be collected at the curb on the dates specified in the Trash and Recycling Calendar. Bulk trash shall be collected at the same time as non-bulk trash unless otherwise scheduled by the Department of Public Works. Bulk trash must be placed at the curb by 7:00 am on the collection day."
5. Section 172-13 shall be amended as follows:
 1. The Borough shall if requested by an adjacent property owner, provide the adjacent property owner with solid waste disposal under the applicable provisions of this ~~Section 172-13~~ Chapter.
 2. The adjacent property owner shall pay the Borough for the collection of their ~~his/her~~ solid waste. The fee for said collection is set forth in Chapter 98 of this Code.
 3. The Borough shall calculate the fee and shall bill the adjacent property owner at the same time as it bills customers for water and sewer charges. The payment shall be due from the adjacent property owner within 30 days of the billing. If the bill to the adjacent property owner is not paid within 90 days of the date billed, the Borough may suspend the solid waste collection until the fee is paid.
6. Provisions of this Chapter 172 not expressly amended by this ordinance shall remain unchanged and in full effect.
7. Chapter 98 of the Borough Code, concerning fees, shall be amended at Sec. 98-34, pertaining to trash pickup, as follows:

"Fees for additional approved trash containers as provided by Sec. 172-9 and 10 and for bulk household trash ~~and additional non-bulk trash~~ as required by Sec. 172-11 of this Code shall be:

 - A. Annual fee for one additional approved trash container pursuant to Sec. 172-9 and 10: \$400.
 - B. (formerly A) Bulk trash stickers: one sticker per 40 pounds/\$4 each.
 - C. ~~(formerly B) Non bulk trash pickup in excess of two thirty-gallon trash containers on any one~~

~~collection day: one sticker per container/\$4 each. No container may exceed 40 pounds.~~

C. Truck rental, if Borough truck is parked at the property overnight or for a weekend: \$200.”

8. Chapter 98 of the Code is further amended at Sec. 98-35, concerning adjacent properties, as follows:

“Fees for trash pickup for non-taxpayers who are adjacent property owners pursuant to Sec. 172-9 and 13 of this Code shall be:

A. Per year for ~~two thirty-gallon~~ one 95-gallon approved containers ~~once~~ twice/week: \$400. ~~No container may exceed 40 pounds.~~

B. Per year for one additional approved container collected once/week: an additional \$400. Bulk trash stickers and stickers for pickup in excess of two thirty-gallon containers on any one collection day: one sticker per 40 pounds of bulk items and one sticker per excess container/\$4 each. No container may exceed 40 pounds.”

9. This Ordinance No. 2021-7 shall be adopted and become effective upon passage and publication as required by law.

10.

Mayor Davy stated that the public hearing on this ordinance was opened at the August 2, 2021 meeting and will continue at this time. Mayor Davy asked for comments from the public.

Ms. Cara Laitusis of East Welling Avenue thanked Borough Council for carrying the public hearing so that residents could have a chance to view the ordinance on the website. Ms. Laitusis stated that she attended the June meeting to express concerns for large families in Pennington with regard to this ordinance. Ms. Laitusis stated that there is currently no overflow solution for large families who generally have more than three cans of garbage in a given week. Ms. Laitusis asked that there is currently no solution for times when for instance a party is thrown and there are 20 pizza boxes that need to be disposed of. Ms. Laitusis stated that an option was discussed for adding another can at a cost of \$400 but for families who are already paying high taxes for larger homes to accommodate larger families. Ms. Laitusis stated that the \$400 cost does not seem fair when it will only be used maybe once a month. Ms. Laitusis asked that Council consider tabling this ordinance for consideration at the September meeting so that a solution can be figured out for how to dispose of extra trash.

There were no further comments from the public.

Council Member Chandler made a motion to close the Public Hearing on Ordinance 2021-7, second by Council Member Gross with all members present voting in favor. Mayor Davy asked for comments from Council. Mr. Marciante stated that this will begin as a trial period and after 90 days if major problems are identified then the Ordinance will be tweaked at a later date. Ms. Semple stated that Rick Smith and the public works department have been very accommodating with regard to special circumstances. Mayor Davy stated that when all is said and done he feels the residents will find that the 95 gallon trash can will work for most everyone. Mayor Davy stated that the Borough is committed to making this work for all residents in Pennington. Mr. Smith stated that there will not be a change to special circumstances much as it is now. Council Member Marciante made a motion to adopt Ordinance 2021-7, second by Council Member Gross with all members present voting in favor.

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.

Mayor Davy stated that the public hearing on this ordinance was opened at the August 2, 2021 meeting and will continue at this time. Mayor Davy asked for comments from the public.

Mr. Steve Papenberg, Chair of the Board of Health and resident of 210 North Main Street, stated that the Board of Health convened last night and identified their concerns. Mr. Papenberg stated that the Board of Health is recommending that Borough Council not adopt this Ordinance for the following reasons: the United States Center for Disease Control notes that marijuana use directly affects brain functions such as memory, decision making, coordination, emotions and reactions, marijuana also affects heart, lung and mental health, causing anxiety and suicide. Mr. Papenberg stated that there are approximately nine schools in Pennington Borough and the surrounding area and the youth of the Borough are particularly at risk according to the CDC. Mr. Papenberg stated that youth are particularly at risk of dependency. Mr. Papenberg stated that studies from the Insurance Institute for Highway safety show that the impact of legalization and retail sales in five states that have legalized marijuana have increased injury crash rates. Mr. Papenberg stated that it is not clear if retail sales will be banned in Pennington but there is language about on-site consumption. Mr. Papenberg stated that there is not a reliable field sobriety test to enforce and deter impaired drivers. Mr. Papenberg stated that the Borough has developed this ordinance tasking the Board of Health with approving a ventilation system without having prior consultation with the Board. Mr. Papenberg stated that given that the State of New Jersey has not established rules regarding this act it is not clear how this program will unfold in the State of New Jersey and how any potential consumption in the Borough will be enforced. Mr. Papenberg stated that it would be prudent to understand how implementation will unfold in the State of New Jersey and therefore the Board of Health recommends opting out prior to the August 21st deadline and wait for the regulations to come out.

Ms. Fran McManimon of 31 Abey Drive stated that she has three concerns with Ordinance 2021-9. Ms. McManimon stated that permitting up to three retail and/or consumption businesses in such a small area and close to the High School and Middle School and residential areas is a problem. Ms. McManimon stated that she did not see a cap on the number of consumption rooms in the ordinance or specified hours for these consumption rooms and once again she is concerned that these consumption areas would be

permitted within a mile of the High School, Middle School and residential areas. Ms. McManimon stated that she is concerned that the impact of unlimited delivery services within the Borough is problematic given that if approved Pennington Borough would be one of four municipalities in Mercer County to allow these services. Ms. McManimon stated that it is a given that these circumstances would have a direct impact on traffic in the Borough.

Mr. Dan Pace of 9 Railroad Place thanked Borough Council, the Planning Board and Borough Staff for their diligence on this Ordinance. Mr. Pace stated that Pennington Borough residents overwhelmingly voted to legalize marijuana and he is glad that the Borough is moving forward with this.

Ms. Carmen Carnicero of 604 Scotch Road stated that she is the parent of a teenager and young children, she is concerned that there is already a drug problem and bringing this to the forefront is not a good idea. Ms. Carnicero asked general questions about what would be allowed in terms of consumption and if law enforcement has been consulted on this and how do they feel about this idea.

Ms. Toni Lewis of East Welling Avenue thanked Borough Council for their service. Ms. Lewis stated that there are so many unknowns that she would encourage Council to hit the pause button on this. Ms. Lewis stated that she thinks that there are so many unknowns that the Borough is not even aware of that could cause problems down the road. Ms. Lewis stated that she does not feel that the economic impact will be that great for the residents individually. Ms. Lewis stated that she has experience entering a retail facility in Colorado and the friends she was with did partake and they became impaired. Ms. Lewis stated that Montgomery Township has opted out and she wishes that the Board of Health was brought in sooner as she has direct experience with the effects of marijuana on youth and she highly recommends that the Borough pause on this and opt in later.

Ms. Heidi Kahme of Tanglewood Drive stated that she is here representing herself and not the Municipal Alliance. Ms. Kahme stated that she recently attended a cannabis conference and talked to representatives from States that have legalized marijuana. Ms. Kahme stated that this is not that same marijuana is the 1970's. Ms. Kahme stated that the levels of THC are much higher, some levels at 80 to 90 percent. Ms. Kahme stated that these high concentration products are finding their way to the youth and there will be underage use. Ms. Kahme stated that she has spoken to various groups who have done studies in areas where marijuana use has been legalized and cannabis use has been directly associated with mood disorder, high mortality and emergency room visit increases due to edibles as they are not labeled with serving size and potency.

Ms. Kahme stated that 70 percent of the State Tax must be used in cities and towns disproportionately affected by the war on drugs. Ms. Kahme stated that she does not believe that Pennington will qualify for any of these funds but she would like to suggest that if dispensaries are allowed in Pennington that a portion of the 2 percent municipal tax be used on youth education and prevention efforts.

Mr. David Knowlton of 324 S. Main Street stated that he has a Public Health Background and currently Chair of the Cannabis Education and Research Institute which is a not for profit group looking at the issues of Cannabis in New Jersey and elsewhere. Mr. Knowlton stated that prior to that he was involved with a compassionate care organization. Mr. Knowlton stated that he would like to praise Pennington Borough for getting on top of this and making rational decisions. Mr. Knowlton stated that New Jersey has some of the strictest regulations regarding medicinal marijuana. Mr. Knowlton stated that he visited Colorado and he went to dispensaries and he understands the problems that were expressed by a previous speaker. Mr. Knowlton stated that Pennington's approach is reasonable and rational. Mr. Knowlton stated that he would like to call attention to the National Academy of Sciences, Engineering and Medicine who issued a report regarding the health effects of cannabis and in that report they clearly outlined the incredible benefits of marijuana in dealing with induced nausea and vomiting, in chemotherapy, chronic pain, and conditions related to multiple sclerosis and Parkinson's disease. Mr. Knowlton stated that they also caution that people should not be using if pregnant, operating machinery and driving, if they are adolescents as chronic use can impair academic performance. Mr. Knowlton stated that he appreciates what other studies have been referenced, but this is the premier research. Mr. Knowlton stated that he is happy that Pennington is ahead of this and can control what comes into Pennington and Council should be applauded for the reasonable and rational approach that is being taken. Mr. Knowlton stated that he is equally concerned about someone driving on prescribed drugs by a physician. Mr. Knowlton stated that he is a strong supporter of medicinal marijuana.

Mr. Vytas Laitusis of East Welling Avenue stated that he supports the concerns raised by his neighbors. Mr. Laitusis stated that there are a few things that have come up that he would like to bring up and first is that though 70 percent of Pennington residents voted in favor of legalized marijuana that does not necessarily mean that it is appropriate for Pennington Borough. Mr. Laitusis stated that many people are still in the dark about this. Mr. Laitusis stated that the medicinal benefits are not in question, the issue here is the sale of recreational marijuana and consumption rooms in Pennington. Mr. Laitusis stated that he would argue that all drugs are different and affect people differently. Mr. Laitusis was glad that someone brought up law enforcement because there are no regulations yet as to what it means to be impaired from consumption of marijuana.

Ms. Bronwyn Haley of 309 Hale Street stated that she recently moved to Pennington after 31 years in Federal Law Enforcement specifically Drug Enforcement and she would encourage Pennington to hit the

pause button on this ordinance. Ms. Haley stated that without getting into the legalization debate she would like to share some thoughts on why the Borough should hit pause on this. Ms. Haley stated that from years of working in areas both domestic and foreign where dispensaries and smoke rooms are legal, there is a host of problems that those areas experienced that New Jersey has no idea about because they are just entering into this. Ms. Haley stated that there are some areas that once had legalized marijuana that are now going back to criminalizing it. Ms. Haley stated that regarding the tax benefit, the costs of policing will likely go up which would more than offset the benefit. Ms. Haley stated that this is not a federally regulated product and dispensaries are not federally regulated. Ms. Haley stated that the speaker from earlier who quoted THC levels was spot on. Ms. Haley stated that she would be interested in hearing from law enforcement on this. Ms. Haley stated that she would also be available for further discussion of her specific experience. Ms. Haley stated that as a new homeowner in Pennington if they had driven through town and seen signs for cannabis retail or dispensaries they would not have purchased here and she is concerned about the property values in Pennington.

Mrs. Susan Perris of 41 East Welling Avenue stated that her first concern is regarding consumption locations and she is concerned about impaired driving. Mrs. Perris stated that there is a lot of foot traffic and bike traffic in Pennington. Mrs. Perris stated that she is concerned about normalizing marijuana usage by allowing these businesses. Mrs. Perris stated so many schools so close to marijuana will make it too easy for underage usage. Mrs. Perris stated that one of the mixed use zones is right across the street from Penn Brook Swim Club and in close proximity to a park frequented by children. Mrs. Perris stated that many of the proposed locations appear to be within 1,000 feet of a school. Mrs. Perris stated that she agrees that medical marijuana has a place but there are locations less than 10 miles from Pennington.

Mr. Elias Perris of 41 East Welling Avenue stated that he has lived here for the last eighteen years and he is adamantly opposed to a marijuana dispensary in Pennington. Mr. Perris stated that whatever tax revenue that is realized will be negated by the depreciation of property values. Mr. Perris stated that realtors advertise properties close to schools and close to parks, but never close to marijuana dispensaries. Mr. Perris stated that a dispensary would make Pennington a destination for procurement and use and will greatly decrease the quality of life in our town. Mr. Perris stated that just this past Saturday while walking his dogs, he came upon three young ladies smoking marijuana and though he does not know if they were of legal age to use marijuana, but the open use of it was troubling. Mr. Perris stated that while open use is illegal, the Borough would be naïve to think it would not occur especially if there were a dispensary here in town. Mr. Perris stated that there is a very high risk to this and a very low need for it. Mr. Perris stated that the best option for Pennington is to opt out and then ask residents, families, police, EMT's and business owners for their input before allowing dispensaries.

Mr. Joe Lawver of 304 Burd Street thanked everyone for their comments and stated that he hears what people are saying that just because Pennington residents voted 70 percent in favor of legalized marijuana, they may not have been voting to allow this in Pennington. Mr. Lawver stated that Cannabis will be here whether we want it or not. Mr. Lawver stated that there will be deliveries to Pennington. Mr. Lawver stated that this ordinance allows Pennington to regulate how and where dispensaries operate in town and he believes that the professionals and Borough Council will make sure that they do.

Dave Weiss of 11 East Delaware stated that he is in support of bringing marijuana into the Borough. Mr. Weiss stated that it is here and it is in the best interest of Pennington to regulate how it is brought in. Mr. Weiss stated that concerns about unsafe driving are overblown as you can't consume at a dispensary. Mr. Weiss stated that the concern about these locations being close to areas that children frequent are about as legitimate as bars and their locations because these businesses will get their business at night and there will be regulations in place and consumers will need to show photo id's. Mr. Weiss stated that he does not think there will be wildfire explosion of underage usage and currently kids already have access and allowing dispensaries and/or consumption areas will not change that. Mr. Weiss stated that as far as the belief that this is unnecessary for Pennington Borough is untrue as it makes sense for Pennington to get the tax revenue and also to get control over how marijuana is distributed.

Mr. Nick Angarone of 12 Park Avenue credited his friends and neighbors who have spoken tonight for participating in their government. Mr. Angarone stated that two-thirds of the State and seventy percent of Pennington approved this legislation. Mr. Angarone stated that the arguments are not compelling and arguing that the overwhelming vote did not equate to allowing dispensaries in Pennington. Mr. Angarone stated that while he does not partake he believes that Pennington should approve this ordinance.

Melissa Arnold of 18 Hopatcong Drive in Ewing and she is a County Prevention Educator and Specialist. Ms. Arnold commended Pennington for taking this into consideration and not just opting in. Ms. Arnold stated that as she looked at the ordinance there is no provision for the clean air act adoption. Ms. Arnold stated that as a parent and educator it is more likely that use will occur when things become available and there will be an increase in underage use. Ms. Arnold stated that THC levels are increasing. Ms. Arnold stated that funds should be allocated for prevention and Pennington should take into account that law enforcement and emergency services costs will increase as use expands. Ms. Arnold stated that teenage use is linked to mental health issues and this will also increase in this area.

Ms. Haley added to her comments that Council should consider that though marijuana is legal in New Jersey it is still federally which means these businesses cannot avail themselves of federal funds for

businesses. Ms. Haley stated that the vast majority of these businesses in New Jersey will be cash based which often attracts a criminal element.

Council Member Marciante made a motion to close the Public Hearing on Ordinance 2021-9, second by Council Member Mills with all members present voting in favor.

Mayor Davy asked for comments from Council.

Mr. Marciante stated that he would like to remove consumption from the ordinance which would address some of the concerns raised tonight. Mr. Bliss stated that the ordinance can be amended tonight but it would be a substantial amendment which would require advertisement on Friday and adoption on August 16th. Mr. Marciante asked if the ordinance were adopted tonight could it be amended at the September meeting. Mr. Bliss explained that is a gray area as to whether it is part of the use which is what needs to be acted on by August 21st or whether it is a regulation of the manner of operation which will continue to be a Municipal prerogative. Mr. Bliss stated that the ordinance can be amended later with respect to the manner of operation but we cannot prohibit uses once we have permitted them. Mr. Bliss stated that under the current ordinance consumption is allowed and the safest thing would be to amend the ordinance now. Mayor Davy stated that he would suggest that Council make any amendments tonight.

Mrs. Chandler stated that based on some of the discussion tonight it seems like it will be prohibitively expensive to open a consumption room and Pennington will most likely get retail businesses. Mrs. Chandler stated that she would recommended passing the ordinance as is understanding that after August 21st we can't change the ordinance.

Mr. Bliss stated that to be safe it would be better for Council to change the ordinance in ways they want tonight and not wait until after the August 21st deadline.

Mrs. Semple stated that she would agree that the ordinance should be amended tonight to remove consumption and she questioned if Pennington really needs three locations. Mrs. Chandler stated that one is reserved for medical so it would be at the most two retail businesses and that is contingent on there being an available space. Mr. Marciante stated that the ordinance should be amended to two allowed retail with one being medical only. Mr. Marciante stated that there have been some good arguments tonight but the one that sticks out is that the people voted for marijuana. Mr. Marciante stated that marijuana is here in the schools already and if people think it is not they are fooling themselves, it is here and it is not going away, so Pennington should get control of this legislation and maybe rectify some of the problems.

Mr. Gross stated that as Chair of the Finance Committee he has seen what is involved in trying to ensure that the funds are in place to run the town. Mr. Gross stated that there are not many opportunities for revenue increases and even small amounts of revenue help in balancing the budget. Mr. Gross stated that the Borough will have the ability to rescind someone's ability to sell cannabis in town for non-compliance. Mr. Gross stated that he thinks there is no benefit to allowing consumption and we should remove it.

Mrs. Chandler stated that since changes are being made she would like to increase the application fee to \$2,500 as she has looked at other towns and the proposed \$1,000 is low.

Mayor Davy stated that there are three proposed amendments to the ordinance: Remove Consumption, Increase application fee to \$2,500 and change number of locations from 3 to 2 with one being medical only.

Mrs. Chandler stated that there is no limit on delivery business and the State of New Jersey does not allow Municipalities to prohibit delivery in town. Mrs. Chandler stated that with regard to the Clean Air Act, the State of New Jersey does prohibit public consumption of cannabis however Municipalities can pass their own ordinance prohibiting public consumption which can be done at a later date. Mrs. Chandler stated that this ordinance also prohibits any products to be visible from the street or from the public right-of-way and it also prohibits entering a cannabis store if you are under the age of 21 which is different from liquor stores.

Mayor Davy stated that the next steps will be to vote on the amendments and then the ordinance will be carried to a meeting on August 16th. Mr. Bliss stated that Council should vote on each amendment separately and each amendment will require alteration of the text of the ordinance and if Council will bear with him he would like to read in the language changes that will appear in the amended ordinance for next week.

At 8:00 pm, Ms. Gnatt excused herself from the meeting.

Ms. Semple asked if Council could hear from Chief Pinelli on concerns that were raised. Chief Pinelli stated that right now this is not a huge impact on the Police Department. Chief Pinelli stated that as to the impaired driving concerns, currently there is no test for marijuana like there is for alcohol. Chief Pinelli stated that there is something called a DRE which we do not have and requires training. Chief Pinelli stated that it is an extremely long and expensive course and currently Pennington does not have

the manpower to send someone for the training. Chief Pinelli stated that Mercer County is working on this. Chief Pinelli stated that marijuana is here, it is in the schools and it is not going away. Chief Pinelli stated that these stores will be monitored and regulated and in his opinion it is not going to have a huge impact on the police department.

Mr. Bliss read into the record amendments regarding elimination of cannabis consumption areas. Council Member Marciante made a motion to approve Amendment 1, second by Council Member Mills with all members present voting in favor.

Mr. Bliss read into the record an amendment changing the application fee from \$1,000 to \$2,500. Council Member Marciante made a motion to approve Amendment 2, second by Council Member Chandler with all members present voting in favor.

Mr. Bliss read in to the record an amendment limiting conditional uses to no more than two cannabis retail and medical cannabis dispensaries with at least one being for medical cannabis. Council Member Mills made a motion to approve Amendment 3, second by Council Member Gross with all members present voting in favor.

Mayor Davy stated that the hearing on Ordinance 2021-9 will be carried to August 16th, 2021 at 7:00 pm. Mrs. Chandler stated that she will be away but she will try to join the meeting. Ms. Semple stated that she will be away and will likely not be able to attend.

NEW BUSINESS

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2021 – 8.3**

**RESOLUTION APPOINTING ALAINA WYSOCKE TAX ASSESSOR FOR UNEXPIRED TERM
EFFECTIVE AUGUST 2, 2021**

Mayor Davy stated that this resolution will be held. Mr. Bliss stated that he has issued an opinion on a conflict question that was raised but he is waiting on some answers related to the State Statute.

**BOROUGH OF PENNINGTON
RESOLUTION 2020 - 8.12**

**RESOLUTION AUTHORIZING CONTRACT WITH EXCEL ENVIRONMENTAL FOR
PRELIMINARY ASSESSMENT AND SOIL SAMPLING ON 417B SOUTH MAIN STREET
(BLOCK 1002/LOT 12.02)**

WHEREAS, Ordinance 2021-6 authorizes the purchase of the property known as 417B South Main Street, Lot 12.02 in Block 1002 in the Borough of Pennington, consisting of .57 acres of vacant land adjacent to the Pennington African Cemetery (“the Property”);

WHEREAS, the Property is intended to be preserved as open space and provide an undeveloped buffer between the historic African Cemetery and the historic Toll Gate House to the west, while also offering opportunities for partnership with the Pennington African Cemetery Association (PACA) not only in preserving the land and restoring its natural resources but also in the conduct of educational programs related to the significance of the Cemetery in American history;

WHEREAS, the historic space will also provide habitat for birds and foxes and can potentially be included in a future walking route;

WHEREAS, inspection of the site in connection with the sale has identified the need for an environmental assessment of part of the site containing several overgrown mounds of material believed to have been deposited over the years in the woods to the rear of the Property;

WHEREAS, in order to ensure the environmental integrity of this public place, Borough Council now seeks conduct of a Preliminary Assessment (PA), including a review of all available historic documentation for the site, site inspection and soil sampling as needed;

WHEREAS, Excel Environmental Resources, Inc. of North Brunswick, New Jersey, has provided the attached proposal (“Proposal”) for the needed work, which will be conducted to meet the minimum requirements for a PA as specified in N.J.A.C. 7:26E, the Technical Requirements for Site Remediation, in order to satisfy the minimum due diligence requirements of the innocent purchaser defense as defined by N.J.S.A. 58:10-23.11g and as required by the State of New Jersey Green Acres Program for grant consideration;

WHEREAS, the work will be conducted on a time and materials basis and will not exceed the maximum cost of \$7,494.00, of which a substantial part depends on whether soil sampling will be required

and its extent;

WHEREAS, the Proposal contains a detailed breakdown of costs by phase of the work;

WHEREAS, the Chief Financial Officer of the Borough certifies that there are sufficient funds in the Borough Opens Space Fund for this purpose;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the Mayor with the attestation of the Borough Clerk is hereby authorized to enter into a contract on behalf of the Borough with Excel Environmental Resources, Inc. for performance of the work in accordance with the Proposal, including such soil sampling as may be required, for a total sum not to exceed \$7,494.000 payable from the Open Space Fund, subject only to approval of the Borough Attorney as to form.

Record of Council Vote on Passage

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

Mayor Davy asked Mr. Bliss to explain for Council what this resolution is about. Mr. Bliss stated that Council approved an ordinance to purchase the property known as 417B South Main Street. Mr. Bliss stated that in the process of the acquisition an issue has arisen as to environmental testing and this resolution would authorize Excel to conduct a preliminary assessment including any soil testing that is needed prior to the acquisition. Mr. Bliss stated that this property will be open space and subject to use for educational programs on the property and as a walking area. Mr. Bliss stated that at the rear of the property were three overgrown mounds that indicate a prior history of dumping. Mr. Bliss stated that there is a good chance that this is residential waste but for safety reasons it needs to be tested. Mrs. Chandler stated that there may be State funds available. Mr. Bliss stated that if the testing shows no environmental issue and soil samples are not needed, the cost could be less. Mr. Bliss stated that any remediation would be the owner’s responsibility. Council Member Marciante made a motion to approve Resolution 2021-8.12, second by Council Member Semple with all members present voting in favor.

Council Discussion

Block Party Request – Reading Street – September 12, 2021. Mayor Davy asked if there were any concerns regarding this request. There were no concerns. All members voted in favor by voice vote.

Public Comment

Mayor Davy asked anyone wishing to address Council to please raise your hand so the Borough Administrator can acknowledge you. Please state your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.

Ms. Melissa Arnold stated that she has heard that Council listened to concerns however there is still the option to opt out and there is no penalty. Ms. Arnold stated that once Pennington opts in they are locked in for five years.

At 8:39 P.M. with no further business to address Council Member Mills made a motion to adjourn, second by Council Member Chandler.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk