

**BOROUGH OF PENNINGTON
ORDINANCE 2021 - 8**

**AN 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:

1. The above recitals are repeated and incorporated herein by reference.

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

2. In accordance with the authority granted to municipalities by 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 215-72, 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.

7. 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.

8. 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

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

9. Chapter 215-79, Article VIII, concerning Conditional Uses, is hereby amended 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 only 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 to the extent not inconsistent with the general and specific requirements of this Article, as same may be amended from time to time.

H. Approval of an application by a cannabis retailer or medical cannabis dispensary for issuance or renewal of licensure or permitting shall require a resolution of Borough Council

supporting 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.

- I. Application for approval or endorsement of a cannabis consumption area shall also require a resolution of Borough Council supporting the application and confirming that the cannabis consumption area complies with Borough restrictions.

Penalty for Violations

10. (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. Each day the violation continues shall be deemed a separate and distinct offense. Ongoing or repeat offenses may result in suspension of the certificate of occupancy for a period to be determined by the Zoning Officer, and may be cause for Borough Council revocation of approval, support or endorsement for continued licensure. All violations will be reported to the State Cannabis Regulatory Commission or other appropriate state authority.

Applications and Fees

11. (New) Applications shall be submitted to the Borough Clerk, who shall present them to the Business Administrator and Borough Council for further action.
12. 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 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 registration fee of \$5,000.

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

Local Taxation

13. 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-__ 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-__ 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-__ 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

14. 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

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

Introduced: _____
Advertised: _____
Public Hearing: _____
Adopted: _____
Published: _____

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

James Davy, Mayor

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RECORD OF COUNCIL VOTE ON INTRODUCTION

| COUNCILMAN | AYE | NAY | N.V. | A.B. | COUNCILMAN | AYE | NAY | N.V. | A.B. |
|------------|-----|-----|------|------|------------|-----|-----|------|------|
| Chandler | | | | | Marciante | | | | |
| Gnatt | | | | | Mills | | | | |
| Gross | | | | | Semple | | | | |

RECORD OF COUNCIL VOTE ON ADOPTION

| COUNCILMAN | AYE | NAY | N.V. | A.B. | COUNCILMAN | AYE | NAY | N.V. | A.B. |
|------------|-----|-----|------|------|------------|-----|-----|------|------|
| Chandler | | | | | Marciante | | | | |
| Gnatt | | | | | Mills | | | | |
| Gross | | | | | Semple | | | | |