

TOWN OF NEWTON

ORDINANCE NO 2021-12

AN ORDINANCE AMENDING, REVISING, AND SUPPLEMENTING SECTIONS 320-2.C “PERMITTED USES”, 320-3 “DEFINITIONS” & 320-28 “CONDITIONAL USES” OF THE ZONING CODE OF THE TOWN OF NEWTON TO REGULATE THE CULTIVATION, PROCESSING, SALES, AND DISTRIBUTION OF LEGAL CANNABIS WITHIN THE TOWN OF NEWTON

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called “cannabis” for adults at least 21 years of age; and

WHEREAS, on February 22, 2021, Governor Phil Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use, and possession; and

WHEREAS, the Act establishes six (6) marketplace classes of licensed businesses, including:

- Class 1 Cannabis Cultivator License, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer License, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler License, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributer License, for businesses involved in transporting cannabis plants in bulk from one licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer License, for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery License, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchased items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

WHEREAS, section 31a of the Act authorizes municipalities, by ordinance, to adopt regulations governing the number of cannabis establishments (defined in section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors, or cannabis delivery services allowed to operate within their boundaries, as well as the location manner and times operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality; and

WHEREAS, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within one hundred eighty (180) days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five (5) years thereafter, the growing, cultivating, manufacturing, selling, and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

WHEREAS, at the conclusion of the initial and any subsequent five (5) year period following a failure to enact local regulations or prohibitions, the municipality shall again have one hundred eighty (180) days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

WHEREAS, the Mayor and Town Council of the Town of Newton find Cannabis Cultivation is a viable and valuable commercial enterprise that should be promoted within the Town of Newton; and

WHEREAS, the Town Council of the Town of Newton finds after having reviewed the various zoning districts within the Town of Newton, generally, zones which permit industrial uses are suitable locations for the Class 1, 2, 3, and 4 designated marketplaces as set forth above and below and Class 5 and 6 marketplaces should be permitted as a conditional use in the SD-3 Zone and T-4 Zone, as set forth above and below;

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Town Council of the Town of Newton, County of Sussex, and State of New Jersey as follows: Section 320 of the Town Zoning Code shall be amended, revised, and supplemented to add Article XVII entitled “Cannabis Cultivation and Processing” as follows:

SECTION 1.

Section 320-2.C “Permitted Uses Table - Transect Zones” shall be revised as follows:

Commercial Retail Services		Transect Zones					
		T-1	T-2	T-3	T-4	T-5	T-6
64	Cannabis Retailer	NP	NP	NP	C	NP	NP
65	Cannabis Delivery	NP	NP	NP	C	NP	NP

Light Industrial		Transect Zones					
		T-1	T-2	T-3	T-4	T-5	T-6
82	Cannabis Cultivator	NP	NP	NP	C	C	NP
83	Cannabis Manufacturer	NP	NP	NP	C	C	NP
84	Cannabis Wholesaler	NP	NP	NP	C	C	NP
85	Cannabis Distributor	NP	NP	NP	C	C	NP

Section 320-2.C “Permitted Uses Table – Special Districts” shall be revised as follows:

Commercial Retail Services		Districts					
		SD-1	SD-2	SD-3	SD-4	SD-5	SD-6
64	Cannabis Retailer	NP	NP	C	NP	NP	NP
65	Cannabis Delivery	NP	NP	C	NP	NP	NP

Note to codifier: Numbers listed before the uses should be removed from the permitted uses tables.

NP = Not Permitted

C = Conditional Uses

P = Permitted Use

SECTION 2.

Section 320-3 “Definitions” shall be amended, revised, and supplemented as follows:

Cannabis

All parts of the plant *Cannabis sativa* L., whether growing or no, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L. 2016, c. 16 for use in cannabis products as set forth in the Act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. “Cannabis” does not include: medical cannabis dispensed to registered qualifying patients pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L. 2009, c. 307 (C. 24:6I-1 et al.) and P.L. 2015, c. 158 (C. 18A:40-12.22 et al.); marijuana as defined in N.J.S. 2C:35-2 and applied to any offense set forth in Chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L. 2001, c. 114 (C. 2C:35B-1 et seq.), or marijuana, as defined in Section 2 of P.L. 1970, c. 226 (C. 24:21-2) and applied to any offense set forth in the “New Jersey Controlled Dangerous Substances Act,” P.L. 1970, c. 226 (C. 24:21-1 et. al.); or, hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the New Jersey Hemp Farming Act,” P.L. 2019, c. 238 (C. 4:28-6 et. al.)

Cannabis Cultivator

Any licensed business or entity that grows, cultivates, or produces cannabis in this State, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivator License.

Cannabis Delivery

Any licensed business or entity involved in providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchased items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer. This person or entity shall hold a Class 6 Cannabis Delivery License.

Cannabis Distributor

Any licensed business or entity involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another. This person or entity shall hold a Class 4 Cannabis Distributor License.

Cannabis Establishment

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer, or a cannabis distributor.

Cannabis Manufacturer

Any licensed business or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturer License.

Cannabis Retailer

Any licensed business or entity that is involved in the sale of cannabis items and related supplies are sold to consumers. This person or entity shall hold a Class 5 Cannabis Retailer License.

Cannabis Wholesaler

Any licensed business or entity that is involved in obtaining and selling cannabis items for later resale by other licensees. This person or entity shall hold a Class 3 Cannabis Wholesaler License.

License

A license issued under relevant State law including a license that is designated as either:

- A. Class 1 Cannabis Cultivator License
- B. Class 2 Cannabis Manufacturer License
- C. Class 3 Cannabis Wholesaler License
- D. Class 4 Cannabis Distributor License
- E. Class 5 Cannabis Retailer License
- F. Class 6 Cannabis Delivery License

The term includes a conditional license for a designated class, except when the context of the provisions of relevant State law otherwise intend to only apply for a license and not a conditional license.

Manufacture

The drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" does not include packaging or labeling.

Microbusiness

A person or entity license by the Cannabis Regulatory Commission as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service that may only, with respect to its business operations, and capacity and quantity of product:

1. Employ no more than ten (10) employees;
2. Operate a cannabis establishment occupying an area of no more than two thousand five hundred (2,500) square feet, and in the case of a cannabis [grower] cultivator, grow cannabis on an area no more than two thousand five hundred (2,500) square feet measured on a horizontal plane and grow above that plane not higher than twenty-four (24) feet;
3. Possess no more than one thousand (1,000) cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation shall not be subject to this limit;
4. Acquire and process each month, in the case of a cannabis manufacturer, no more than one thousand (1,000) pounds of usable cannabis;
5. Acquire for resale each month, in the case of a cannabis wholesaler, no more than one thousand (1,000) pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof; and
6. Acquire for retail sale each month, in the case of a cannabis retailer, no more than one thousand (1,000) pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof.

Wholesale Trade

Shall mean establishments or places of business primarily engaged in selling merchandise to other businesses, including retailers, industrial, commercial, institutional, or professional business users, other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

SECTION 3.

Section 320-28 "Conditional Uses" shall be revised as follows:

M – Cannabis Retailer. Cannabis Retailers shall meet the following conditions and standards when permitted as a conditional use:

- (1) **Application.** The Cannabis Retailer facility shall have frontage on Water Street or Mill Street, except when located in the SD-3 Zone.
- (2) **Location:** Cannabis Retailers shall be separate and distinct from growing operations.
- (3) **Buildings:** All Cannabis Retailers shall be enclosed in heated/air-conditioned permanent buildings, not trailers, outdoors, movable kiosks, etc.

(4) Signage: Signs shall be limited to location identification/name of business. Signage shall not promote consumption of any cannabis products.

(5) Site Plan Approval: When seeking site plan approval, the Applicant for Cannabis Retailers shall submit a safety and security plan and emergency services access plan.

(6) Accessibility: Any Cannabis Retailer shall only have one (1) primary public access point, which shall be directly adjacent to the right-of-way or parking area of the building. Access should not be through common entrances with other uses.

(7) Hours of Operation: Hours of operation for Cannabis Retailers shall be limited generally to daytime and early evening hours. No earlier than 9:00am, no later than 9:00pm.

(8) Interior Security: Cannabis Retailers interiors shall provide a secure location for storage of products with minimum products in any customer service area.

(9) Exterior Loitering and Security: People shall not be permitted to congregate outside of a Cannabis Retailer, loiter or wait in line to access the Cannabis Retailer. The facility shall have a plan in place if interior capacity is exceeded, i.e., numbers are given and customers wait in their vehicles until called.

(10) Product Consumption. No products shall be permitted to be consumed on-site.

N – Cannabis Delivery. Cannabis Delivery services shall meet the following conditions and standards when permitted as a conditional use:

(1) Application. The Cannabis Delivery facility shall have frontage on Water Street or Mill Street, except when located in the SD-3 Zone.

(2) Location: Cannabis Delivery shall be separate and distinct from growing operations.

(3) Buildings: All Cannabis Delivery services shall be enclosed in heated/air-conditioned permanent buildings, not trailers, outdoors, movable kiosks, etc.

(4) Signage: Signs shall be limited to location identification/name of business. Signage shall not promote consumption of any cannabis products.

(5) Site Plan Approval: When seeking site plan approval, the Applicant for Cannabis Delivery services shall submit a safety and security plan and emergency services access plan.

(6) Interior Security: Cannabis Delivery services interiors shall provide a secure location for storage of products.

(7) Exterior Loitering and Security: Customers shall not be permitted to pick up products from a Cannabis Delivery service.

(8) Product Consumption. No products shall be permitted to be consumed on-site.

O – Cannabis Cultivator, Manufacturer, Wholesaler or Distributor. Cannabis Cultivator, Manufacturer, Wholesaler, or Distributor shall meet the following conditions and standards when permitted as a conditional use:

(1) Location: Facilities shall be at least 500 feet from the property line of a school or State-licensed childcare or daycare facility.

(2) Buildings: All facilities shall be enclosed in heated/air-conditioned permanent buildings, not hoop houses or greenhouses.

(3) Signage: Signs shall be limited to location identification/name of business. Signage shall not promote consumption of any cannabis products.

(4) Site Plan Approval: When seeking site plan approval, the Applicant shall submit a safety and security plan and emergency services access plan.

(5) Odor Control: The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that and odor generated inside the facility is not detectable by a person of reasonable sensitivity at the property line of the subject property. Odor from the facility shall be monitored on an annual basis at the discretion of the Town by a licensed, qualified contractor chosen by the Town.

SECTION 4.

SEVERABILITY AND REPEALER

Should any part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof other than the part held invalid.

SECTION 5.

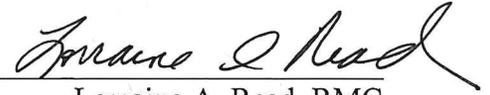
NOTICE

The Town Clerk is directed to give notice at least ten (10) calendar days prior to the hearing on the adoption of this Ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this Ordinance, after public hearing, the Town Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

SECTION 6.

EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption and publication in accordance with law. **TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, June 14, 2021 via video conferencing. It was adopted, after final reading and public hearing thereon, at a regular meeting of the Newton Governing Body to be conducted at 7:00pm on Monday, June 28, 2021 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, or via electronic means via Zoom as permitted by law, whichever way the Town is conducting its meetings and shall take effect according to law.



Lorraine A. Read, RMC
Municipal Clerk