

ORDINANCE 2021-005

AN ORDINANCE OF THE BOROUGH OF SOUTH BOUND BROOK NEW JERSEY CREATING CHAPTER 18 OF THE BOROUGH CODE ENTITLED

“CHAPTER 18, CANABIS RELATED BUSINESSES”

WHEREAS, the Borough Council of the Borough of South Bound Brook, in the County of Somerset, New Jersey (the “Borough”), a public body corporate and politic of the State of New Jersey (the “State”), wishes to create regulations and licensing requirements for regulated cannabis establishments that also protect the health, safety and general welfare of the community; and

WHEREAS, on November 3, 2020, the citizens of New Jersey voted to approve Public Question No. 1, amending and supplementing Section VII of Article IV of the New Jersey Constitution to authorize the growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis for persons twenty-one (21) years or older in New Jersey, and further authorized municipalities to enact an additional municipal tax of up to two (2) percent on the receipts from each sale of cannabis or products created from or which include cannabis; and

WHEREAS, the Borough finds, given the Schedule I status of cannabis under the federal Controlled Substance Act, complexities with access to banking and the level of cash transactions in cannabis-related businesses, and other concerns associated with cannabis-related businesses, that only qualified operators should be permitted to safely operate strictly regulated cannabis facilities in the municipality on a limited basis and subject to reasonable time, manner, and place restrictions, so that residents’ and consumers’ interests as well as the creation of jobs and economic opportunity within the Borough can be upheld consistent with public safety; and

WHEREAS, in light of the expanding the New Jersey Medical Marijuana Program, and the passage of Public Question No. 1 on November 3, 2020, it is in the best interest of the Borough to proactively establish licensing requirements for regulated cannabis establishments and imposing a municipal tax to support enforcement activities;

NOW THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF SOUTH BOUND BROOK, NEW JERSEY That the Revised General Ordinances of the Borough of South Bound Brook, Chapter XVIII, entitled “RESERVED”, is hereby amended AS FOLLOWS:

CHAPTER 18 CANABIS RELATED BUSINESSES

ARTICLE I

18-1 Purpose

The purpose of this Article is to regulate the sale and distribution of Cannabis in the Borough and to provide for the issuance of licenses therefor and fix license fees and taxes, in accordance with the laws and regulations established by the State of New Jersey.

18-2 Definitions

Cannabis Retailer” shall mean any State-regulated cannabis retailer, who is a licensed person or entity that purchases or otherwise obtains usable cannabis from Cannabis Cultivators and Cannabis items from Cannabis Manufacturers or Cannabis Wholesalers, and sells these to consumers from a retail store, and may use a Cannabis Delivery Service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. A Cannabis Retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a Cannabis Delivery Service which will be delivered by the Cannabis Delivery Service to that consumer. This person or entity shall possess prior to commencing operations one of the classes of permit or permit endorsement issued by the State of New Jersey that authorizes the dispensation, sale, or distribution of cannabis or cannabis-derived or infused products and/or related clinical research, provided that such facility shall not cultivate, manufacture, process, or wholesale cannabis or cannabis products from such facility. This person or entity shall hold a Class 5 Cannabis Retailer license.

Cannabis Delivery Service shall mean any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a Cannabis Retailer in order to make deliveries of cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the Cannabis Delivery Service, which after presenting the purchase order to the Cannabis Retailer for fulfillment, is delivered to that consumer. This person or entity shall hold a Class 6 Cannabis Delivery license.

18-3 Establishments permitted.

Class 5 Retail and Class 6 Delivery establishments are allowed in the Borough of South Bound Brook in accordance with the South Bound Brook land use regulations and ordinances. In addition, these establishments shall be permitted, pursuant to this Chapter, only if the following requirements are complied with:

- a. The regulations of this Section are subject to the enabling authority of the State of New Jersey and are subject to compliance with all statutes and/or regulations adopted by the State of New Jersey or its instrumentalities. If any provision of this Section is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail.
- b. Prior to the operation of any cannabis establishment, a permit or license must be obtained from the State of New Jersey and from the Borough of South Bound Brook. No cannabis establishment shall be permitted to operate without State and municipal permits or licenses.
- c. Permitted uses shall, at all times, comply with the terms and conditions of the licensee’s cannabis establishment license for permits or licenses issued by the State of New Jersey and the Borough of South Bound Brook.
- d. No cannabis establishment shall be allowed as a Home Professional Occupation.
- e. No cannabis establishment shall be housed in a vehicle or any movable or mobile

structure.

- f. Noise. Outside generators and other mechanical equipment used for any kind of power supply, cooling, or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.
- g. Security. All cannabis establishments shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock video surveillance system, 365 days a year; and shall have trained security personnel onsite at all times during operating hours.
- h. Hours. No cannabis retailer may open to customers for business before 10:00 am or remain open to customers for business after 10:00 pm.
- i. Consumption. No smoking or inhaling of cannabis or cannabis related substances is permitted on the licensed premises. In addition to any other penalty imposed by state law, the licensee is responsible for enforcing this provision and may face penalties in accordance with the terms of this ordinance.
- j. No licensee shall allow or permit in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow or permit the licensed place of business to be conducted in such manner as to become a nuisance.
- k. During the hours in which sales of cannabis related products are hereinabove prohibited, the entire licensed premises shall also be closed and no person shall be admitted or permitted to remain therein except the licensee or bona fide employees of the licensee.
- l. No licensee shall sell, serve, deliver or allow, permit or suffer the sales, service or delivery of any cannabis related products to any person under the legal age to purchase cannabis related products. No licensee shall allow the consumption of any cannabis related products on the licensed premises by any person under the legal age to purchase cannabis related products.
- m. No person under the legal age for purchasing cannabis products shall enter any premises licensed for the retail sale of cannabis related products.
- n. No person shall enter any premises licensed for the retail sale of cannabis related products for the purpose of purchasing for another person who does not, because of their age, have the right to purchase cannabis related products.
- o. It is hereby unlawful for any person to smoke cannabis products in any public place, on a public street, highway, avenue, alley or road of the Borough; or upon any public or quasi-public parking lots, or other parking facilities in the Borough; or on any public grounds, parks, sidewalks, waterway or quasi-public areas; or any shopping center common areas; or in an automobile, or other vehicle or on any means of transportation on a public street, highway, alley, avenues, grounds or sidewalks. Any such unlawful smoking of cannabis products is a violation of this ordinance and subject to penalties provided herein.
- p. Violations of these provisions (a-o above) are punishable by a fine of up to \$2,000

and may subject a person or entity to cannabis license suspension or forfeiture as described in section 18-10 of this law.

18-4 Taxes In accordance with state law, the municipality hereby imposes a 2% tax on the retail sale of cannabis related products. The licensee shall remit this tax quarterly to the municipality. Failure of the licensee to comply with this provision shall subject the licensee to the penalty provisions of this ordinance.

1. The cannabis transfer tax in the Borough of South Bound Brook shall be fixed at a uniform percentage rate of two percent (2%) on all sales or transfers of cannabis products from any of the cannabis establishments that are located within the geographical boundaries of the Borough of South Bound Brook. This tax shall be imposed on: Receipts from the sale of cannabis by a cannabis retailer.
2. A user tax is hereby also established at the same rate of the transfer tax as contained herein and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to Section 1 above, from any licensed establishment that transfers cannabis products.
3. The transfer tax or user tax imposed by this ordinance shall be in addition to any other tax imposed or which could be imposed on the retail sales or transfers under the "Sales and Use Tax Act" (NJSA 54:32B-1 et seq.). The transfer tax or user tax will be assessed and collected pursuant to established State law and administrative rules and regulations.

18-5 Licensing

1. Local licensing authority. The Borough Clerk is hereby designated to act as the local licensing authority for the Borough for all cannabis establishments. Under all circumstances in which State law requires communication to the Borough by the Cannabis Regulatory Commission or any other State agency with regard to the licensing of cannabis establishments by the State, or in which State law requires any review or approval by the Borough of any action taken by the State licensing authority, the exclusive authority for receiving such communications and granting such approvals shall be exercised by the Clerk.
2. Under no circumstances shall a local license for a cannabis establishment be effective until or unless the State has issued the requisite permits or licenses to operate such a facility. It is the intent of this Chapter that no cannabis establishment may lawfully operate in the Borough of South Bound Brook without the issuance of a state permit or license and full regulatory oversight of the cannabis establishment by the Cannabis Regulatory Commission or other state licensing authority as well as oversight and issuance of a license by the Borough.
3. Classification of licenses. The Borough, subject to land use approval and State licensure, may issue the following municipal licenses to operate a cannabis establishment:
Class 5: Cannabis retailer license
Class 6: Cannabis delivery license

4. Maximum number of licenses. The Borough may issue a maximum of two (2) Cannabis licenses.
5. No person or entity may hold more than one cannabis retailer license. Any license conditionally issued by the Borough is contingent upon the locally licensed entity's or individual's subsequent receipt of a State permit or license of the same class or type of regulated cannabis activity.

18-6 Licensing Process

The Borough, subject to land use approval and State licensure, may issue the following annual municipal licenses to operate a cannabis establishment:

Class 5: Cannabis Retailer License

Class 6: Cannabis Delivery License

Application. Persons wishing to obtain any classification of cannabis license shall file a license application with the Clerk, on a standardized form established by the Clerk and available in the Clerk's office. The Clerk shall establish a reasonable application period and deadline for all applications. An application shall be deemed incomplete, and shall not be processed by the Clerk until all documents and application fees are submitted. To be deemed complete, all applications shall contain the following:

- a. The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, which proof may consist of: a deed, a lease, a real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises to the entrant contingent upon successful licensing.
- a. The applicant shall submit an affidavit and documentary proof of compliance with all state and local laws regarding affirmative action, anti-discrimination and fair employment practices. The applicant shall also certify under oath that they will not and shall not discriminate based on race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.
- b. The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in this Code.
- c. The applicant shall submit, to the satisfaction of the Clerk, proof of financial capability to open and operate the marijuana establishment for which the applicant is seeking a license. Standards for proof of financial capability shall be determined by the Clerk.
- d. The applicant shall submit a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management.
- e. The applicant shall submit all required nonrefundable fees for the application and

conditional license in accordance with the following fee schedule:

Class 5 and Class 6: \$5,000

- g. The applicant shall submit all annual registration fees required in accordance with the following fee schedule, which shall be refunded in the event the applicant does not receive a license:

Class 5 and Class 6: \$5,000 per year

- h. In addition to complying with any State requirement related to good character and criminal background, any person proposed to have an ownership interest in the license shall not have had any cannabis license or permit revoked for a violation affecting public safety in the State of New Jersey or a subdivision thereof within the preceding five (5) years.
- i. The applicant and the application shall otherwise comply with any, and all qualification standards set forth in the State and Borough laws or regulations.

18-7 Multiple Applicants

- a. In the event there are multiple applicants for a license, a Committee of the Governing Body, (selected by the Mayor) and the Clerk shall evaluate all applicants and issue a notification of award after consideration and evaluation of the following criteria:
 - i. Applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including cannabis, healthcare, pharmaceutical manufacturing, and retail pharmacies, with preference to experience operating such businesses within the State of New Jersey and where the value of owners' experience shall outweigh the experience of non-owner principals.
 - ii. Applicant's qualifications and experience related to public safety and security, including any of the applicant's owners' or principals' experience in law enforcement and drug enforcement.
 - iii. Applicant's or its owners' demonstrated commitment or sufficient experience as responsible employers, defined as the applicant entity being a party to a labor agreement or the applicant entity or its parent company being a party to a collective bargaining agreement in the regulated cannabis industry for at least one year prior to application for a Cannabis Establishment license, in an effort to create well-paying jobs with employee benefits in the municipality.
 - iv. Summary of the applicant's environmental impact and sustainability plan and whether the applicant entity or its parent company has any recognitions from or registrations with federal or New Jersey state environmental regulators for innovation in sustainability (three percent); and whether the applicant entity or its parent company holds any certification under international standards demonstrating the

applicant has an effective environmental management system or has a designated sustainability officer to conduct internal audits to assess the effective implementation of an environmental management system ;

- v. Applicant's ties to the host community, demonstrated by at least one shareholder's proof of residency in Somerset County for five or more years in the past ten years or at least one shareholder's continuous ownership of a business based in Somerset County for five or more years in the past ten years.
- vi. Applicant's demonstrated commitment to diversity in its ownership composition and hiring practices and whether the applicant entity or its parent company holds any certifications as a NJ minority-owned, women-owned, or veteran-owned business.

18-8 Notification of Award and conditional municipal license

- a. Notwithstanding the foregoing competitive application process, a notification of award and conditional municipal license shall entitle the recipient applicant to pursue a State permit or license in the appropriate classification for up to 12 months, which may be extended in the Clerk's discretion for an additional 6 months for good cause. No license to operate shall issue until the applicant has received a State permit and satisfied other prerequisites of municipal licensure. If the recipient of a notice of award and conditional license has not received a State permit or license within 12 months from issuance, unless extended for good cause, the Clerk shall issue a new request for applications and evaluate all applicants for licensure under the above criteria.

18-9 Term of license and license renewals.

- a. Any local license issued pursuant to this Chapter shall be valid for a period of one year from the date of issuance and shall be renewed in accordance with the provisions of this Chapter.
- b. The Clerk may, at his/her discretion, adjust the renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.
- c. Renewal of any license shall be governed by any code amendments, additional restrictions or changes in regulations adopted since the previous license was issued or renewed.
- d. Transfer of ownership of any local license or change of location of any license or modification to expand a licensed premise shall be subject to Borough planning review and zoning approval.
- e. Except where the Clerk has received a complete renewal application along with the requisite fees, and has issued a license renewal, it shall be unlawful for any person to manufacture, sell, distribute, transfer, transport, or otherwise remove cannabis or cannabis products from the premises of any license after the expiration date recorded on the face of the license.

18-10 Disciplinary Actions; Sanctions; Penalties

- a. Any license issued under this chapter may be suspended or revoked for violation of any of the provisions of this chapter or any provision of any applicable statute or any of the rules or regulations of the State Director of the Cannabis Regulatory Commission.
- b. Summary suspension. Notwithstanding the foregoing section, when the Clerk has reasonable grounds to believe that a licensee has engaged in deliberate and willful violation of any applicable law or regulation, or that the public health, safety, and/or general welfare has been jeopardized and requires emergency action, the Clerk may enter a summary suspension order for the immediate suspension of such license pending further investigation.
 1. The summary suspension order shall be in writing and shall State the reasons therefor. The licensee shall be afforded an opportunity for a hearing as outlined herein.
 2. The Clerk shall convene a review panel consisting of the Clerk, a second administrative officer designated by the Mayor, and the Chief of Police. The hearing shall be scheduled within 30 days of the date of the order.
 3. The review panel is authorized to impose any fines, conditions, restrictions, suspensions, or combination thereof authorized by the State of New Jersey. In the absence of State specified penalties, the Borough may issue fines up to, but not to exceed, \$2,000 per offense and/or suspension of license for a period not to exceed 6 months.
- c. Inactive licenses. Following the commencement of retail sales of cannabis or cannabis products, the Clerk may suspend or revoke any license if the licensed premises have been inactive or unoccupied by the licensee for at least 6 months.
- d. State license. The Clerk may suspend or revoke any license if the corresponding State license or permit for the subject location is expired, surrendered, suspended, or revoked

SECTION 1. Any and all ordinances or parts thereof in conflict or inconsistent with this ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION 2. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 3. This Ordinance shall take effect upon passage and publication as provided by law.