

ORDINANCE NO. 2021-006

AN ORDINANCE AMENDING AND SUPPLEMENTING THE GENERAL ORDINANCES OF THE BOROUGH OF SOUTH BOUND BROOK, CHAPTER XXXIV, ZONING, SECTION 34-5, ENTITLED “DEFINITIONS”; SECTION 34-9, ENTITLED “RESERVED”; SECTION 34-27.2, ENTITLED “BUSINESS DISTRICT, PROHIBITED USE”

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 land use regulations for regulated cannabis establishments that also protect the health, safety and general welfare of the community; and

WHEREAS, in accordance with the Municipal Land Use Law, pursuant to N.J.S.A. 40:55D-8, a municipal agency shall adopt and may amend reasonable rules and regulations, not inconsistent with the Municipal Land Use Law or with any applicable ordinance, for the administration of its functions, powers and duties; 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, the Borough Council has reviewed its General Ordinance, Chapter XXXIV, Zoning, and determined that it is in the best interests of the Borough and the public to update, amend and supplement its General Ordinance for Zoning to include regulated cannabis establishments.

WHEREAS, pursuant to N.J.S.A. 40:55D-26 et seq., Borough Council referred the proposed Ordinance amendments and supplements to the Planning Board for review and consideration on May 12, 2021, and thereafter, the Borough Council received, reviewed and adopted the majority of the Planning Board’s recommendations for the Ordinance amendments and supplements prior to final adoption of the same.

NOW THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF SOUTH BOUND BROOK, NEW JERSEY AS FOLLOWS:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. That the Revised General Ordinances of the Borough of South Bound Brook, **Chapter XXXIV, Zoning, Section 34-5, entitled “DEFINITIONS**, is hereby amended and supplemented, as follows (**Additions **between asterisks and/or in bold** and deletions {within brackets and/or struck through}**)

34-5 DEFINITIONS.

****“Cannabis Cultivator”** shall mean any licensed person or entity that grows, cultivates, or produces adult-use 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 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.

“Cannabis Distributor” shall mean any licensed person or entity that transports cannabis in bulk intrastate from one licensed Cannabis Cultivator to another licensed Cannabis Cultivator, or transports cannabis items in bulk intrastate from any one class of licensed Cannabis Establishment to another class of licensed Cannabis Establishment and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities. This person or entity shall hold a Class 4 Cannabis Distributor license.

“Cannabis Establishment” shall mean a Cannabis Cultivator, Cannabis Manufacturer, Cannabis Wholesaler, or Cannabis Retailer.

“Cannabis Manufacturer” shall mean any licensed person 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” 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 Wholesaler” shall mean any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another Cannabis Wholesaler or to a Cannabis Retailer, but not to consumers. This person or entity shall hold a Class 3 Cannabis Wholesaler license.

“License” shall mean any license issued under relevant State law, including a license that is designated as either a:

- Class 1 Cannabis Cultivator license
- Class 2 Cannabis Manufacturer license
- Class 3 Cannabis Wholesaler license
- Class 4 Cannabis Distributor license
- Class 5 Cannabis Retailer license
- Class 6 Cannabis Delivery license

An entity that holds a License is a “Licensee.”

“Manufacture” shall mean “the drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. “Manufacture” does not include packaging or labeling.

“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. That the Revised General Ordinances of the Borough of South Bound Brook, **Chapter XXXIV, Zoning, Section 34-9, entitled “RESERVED”**, is hereby amended and

supplemented, as follows (**Additions **between asterisks and/or in bold** and deletions {within brackets and/or struck through}**)

****34-9 CANNABIS ESTABLISHMENTS.**

34-9.1 Enabling Authority

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.

34-9.2 Permitting Use.

Class 5 Cannabis – Retailers and Class 6 – Cannabis Delivery Service shall be permitted in all “B” Business District Zones, pursuant to this Chapter, only if the following requirements are complied with:

a. The number of Class 5 Cannabis – Retailers and/or Class 6 – Cannabis Delivery Service licenses that shall be permitted in the Borough of South Bound Brook is limited to two (2). At no time shall the total number of cannabis licenses (either Class 5, Class 6 or a combination of both classes) in the Borough be greater than two (2).

b. 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.

c. Buildings/Structures.

- i. All facilities shall be enclosed in heated/air-conditioned buildings.
- ii. No cannabis establishment shall be housed in a vehicle, any movable or mobile structure, any tent or outdoor selling facility.

d. **Sales to Certain Persons.** Class 5 Cannabis – Retailers and/or Class 6 – Cannabis Delivery Service establishments shall submit an identification plan for review to Borough of South Bound Brook detailing all measures taken to ensure compliance that patrons are at least twenty-one years of age.

e. **Identification Plan.** Class 5 Cannabis – Retailers and/or Class 6 – Cannabis Delivery Service establishments shall submit an identification plan for review to Borough of South Bound Brook detailing all measures taken to ensure compliance that patrons are at least twenty-one years of age.

f. **Odor Control.** The Class 5 Cannabis – Retailers and/or Class 6 – Cannabis Delivery Service facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any 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 Borough of South Bound Brook by a licensed, qualified contractor chosen by Borough of South Bound Brook at a cost that should be paid for by the property owner.

g. **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.

h. **Security.** Class 5 Cannabis – Retailers and/or Class 6 – Cannabis Delivery Service establishments shall submit a security plan for review to the Borough of South Bound Brook detailing all security measures taken to ensure community safety and to eliminate unauthorized access to the premises.

i. **Signage.** All signs shall comply with Chapter XXXIV, Section 34-14.2 and State law.

j. **State and Local Licenses:** The facility must have a valid License to operate from the State of New Jersey. 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 for the applicable type(s) of cannabis establishment. No cannabis establishment shall be permitted to operate without State and municipal permits or licenses.

k. The Borough of South Bound Brook may establish policies and procedures for the application process for a local license, including fees and evaluation criteria.

34-9.3 “Reserved”**

Section 4. That the Revised General Ordinances of the Borough of South Bound Brook, **Chapter XXXIV, Zoning, Section 34-27.2, entitled “BUSINESS DISTRICT, Prohibited Use”**, is hereby amended and supplemented, as follows (**Additions **between asterisks and/or in bold** and deletions {within brackets and/or struck through}**)

34-27.2 Prohibited Use.

Any use other than those permitted by ~~subsection~~ ****subsections 34-9.2 and**** 34-27.1 above is prohibited and more particularly none of the following uses shall be permitted: used car lots, unless an accessory use, junk yards, auction establishments, adult book stores, auto body shops, warehouses, storage buildings, trailer camps or tourist homes, roller skating rinks, residential uses of any kind, rooming or boarding houses, ~~and~~ any industrial use **** and any activity involved in the cultivation, manufacture, processing, testing, dispensation, distribution and/or sale of cannabis, marijuana or cannabis products. Class 1-4 cannabis businesses, as defined in Section 34-5, are expressly prohibited as land uses or otherwise in the Borough of South Bound Brook.**** In the event the Construction Official receives application for an intended use in the B Business District and he believes that the intended use is not a strictly retail sales and service nature or that it does not comply with all of the provisions of subsection 34-27.1 above, he shall refer the application to the Board of Adjustment for a decision

after a hearing, as to whether or not the intended use violates the spirit and intent of this section. The Construction Official shall act pursuant to the decision of the Board of Adjustment.

Section 5. 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 6. 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 7. A copy of this Ordinance shall be available for public inspection at the office of the Borough Clerk during regular business hours.

Section 8. This Ordinance shall take effect upon passage and publication as provided by law.

Section 9. This Ordinance shall be a part of the General Ordinances of the Borough of South Bound Brook, as though codified and fully set forth therein. The Borough Clerk shall have this Ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and the Borough Attorney are authorized and directed to change any Chapter, Article and/or Section number of the General Ordinances of the Borough of South Bound Brook in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repeal of existing provisions not intended to be repealed.