

## ORDINANCE 20-2022

**AN ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, GLOUCESTER COUNTY, AMENDING AND SUPPLEMENTING ORDINANCE 11-2022 TO PERMIT THE OPERATION OF CERTAIN CLASSES OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING THE CODE OF THE BOROUGH OF WOODBURY HEIGHTS CHAPTER 70, LAND USE AND DEVELOPMENT AND CREATING NEW CHAPTER XXX ENTITLED, "ESTABLISHMENT OF CANNABIS TRANSFER TAX AND USER TAX IN BOROUGH OF WOODBURY HEIGHTS."**

**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 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 marketplace classes of licensed businesses, which are, as follows:

- 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 on 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 also stipulates, however, that any municipal regulation or prohibition must be adopted within 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 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-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 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**, pursuant to Section 40 of the Act, a municipality may adopt an ordinance imposing a transfer tax and/or user tax on the sale of cannabis or cannabis items by cannabis establishments located in the municipality and which shall be in addition to any other tax imposed by law; and

**WHEREAS**, the Borough Council of Woodbury Heights has determined that, due to present and potential future impacts that allowing cannabis business might have on New Jersey municipalities in general, and on Woodbury Heights in particular, it is at this time necessary and appropriate, to amend Ordinance 11-2022, as well as the Woodbury Heights Land Development regulations to permit only the retail and industrial uses of manufacturing classes of cannabis business licenses and establish a transfer tax and use tax on the sale of cannabis or cannabis items; and

**NOW THEREFORE, BE IT ORDAINED**, by Borough of Woodbury Heights, in the County of Gloucester, State of New Jersey, as follows:

### **SECTION I**

Chapter 70 Land Development Regulations is hereby amended by amending Section 70-8 "Definitions.", by adding the following new definitions:

**"Cannabis"** means all parts of the plant Cannabis Sativa L., whether growing or not, 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.2021, c.16 (C.24:6I-31 et al.) for use in cannabis products as set forth in this 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 marihuana 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”** shall mean any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells and may transport this cannabis to other cannabis cultivators or useable cannabis to cannabis manufacturers, cannabis wholesalers or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivators 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 the 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 establishments 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 Distributors license.

**“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 the other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturers license.

**“Cannabis Retailer”** shall mean any 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 the 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 hold a Class 5 Cannabis Retail 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.

**“Commission”** means the Cannabis Regulatory Commission established pursuant to section 31 of P.L.2019, c.153 (C.24:6I-24).

**“License”** means a license issued by the State, including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license. The term includes a conditional license for a designated class, except when the context of the provisions of the Public Laws of the State otherwise intend to only apply to a license and not a conditional license.

**“Licensee”** means a person or entity that holds a license issued by the State, including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license, and includes a person or entity that holds a conditional license for a designated class, except when the context of the provisions of the Public Laws of the State otherwise intend to only apply to a person or entity that holds a license and not a conditional license.

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

**“Medical cannabis”** means 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.). “Premises” or “licensed premises” includes the following areas of a location licensed under the Public Laws of the State: all public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms; all areas outside a building that the Cannabis Regulatory Commission has specifically licensed for the production, manufacturing, wholesaling, distributing, retail sale, or delivery of cannabis items; and, for a location that the commission has specifically licensed for the production of cannabis outside a building, the entire lot or parcel that the licensee owns, leases, or has a right to occupy.

## SECTION II

### **State Licensed Cannabis Manufacturing (Class 2) Facilities Are Permitted as a Conditional Use in the LI-Light Industrial Zoning District.**

1. Any business duly licensed by the State of New Jersey to conduct legal adult use cannabis operations, as defined by State law, may operate within the noted zones so long as: (i) the entity maintains its State license in good standing; and (ii) the entity otherwise remains in full compliance with the laws and regulations established by the State of New Jersey and the Cannabis Regulatory Commission, as may be amended.

2. Any licensed Cannabis Facility shall provide a copy of its license issued by the Commission to the Police Department no later than thirty (30) days prior to the commencement of any operations. A licensed Cannabis Facility shall insure that a current license is on file with the Police Department at all times. A copy of the current license issued by the Commission shall be posted within the licensed Cannabis Facility at all times at a location readily visible by any and all patrons of the facility.

3. No License to operate within the Borough shall be granted or renewed without such evidence as may be required by the Borough Clerk's Office to determine that the entity maintains all valid State and/or Departmental licenses and approvals, and that all such licenses and/or approvals remain in good standing at the time of registration.

4. Any Cannabis Facility must receive conditional use and site plan approval from the Planning Board.

### **SECTION III**

#### **State Licensed Retail (Class 5) Facilities Are Permitted as a Conditional Use in the HC-Highway Commercial Zoning District.**

1. Any business duly licensed by the State of New Jersey to conduct legal adult use cannabis operations, as defined by State law, may operate within the noted zones so long as: (i) the entity maintains its State license in good standing; and (ii) the entity otherwise remains in full compliance with the laws and regulations established by the State of New Jersey and the Cannabis Regulatory Commission, as may be amended.

2. Any licensed Cannabis Facility shall provide a copy of its license issued by the Commission to the Police Department no later than thirty (30) days prior to the commencement of any operations. A licensed Cannabis Facility shall insure that a current license is on file with the Police Department at all times. A copy of the current license issued by the Commission shall be posted within the licensed Cannabis Facility at all times at a location readily visible by any and all patrons of the facility.

3. No License to operate within the Borough shall be granted or renewed without such evidence as may be required by the Borough Clerk's Office to determine that the entity maintains all valid State and/or Departmental licenses and approvals, and that all such licenses and/or approvals remain in good standing at the time of registration.

4. Any Cannabis Facility must receive conditional use and site plan approval from the Planning Board.

### **SECTION IV**

Section 70-15 of the Code entitled "LI-Limited Industrial District" is amended and supplemented by the inclusion of the following Sections:

#### **A. Add the following under Article IV, Section 70-15 A(I)**

I. Cannabis Manufacturing (Class 2) Facility is a permitted conditional use in accordance with the Standards under Section 70-33.G, however, the total number of cannabis licenses permitted in the LI-Limited Industrial District shall be two (2).

#### **B. Add the following under Article IV, Section 70-14 A(1)**

I. Cannabis Retail (Class 5) Licensed Facility is a permitted conditional use in accordance with the Standards under Section 70-33.G, however, the total number of retail cannabis licenses permitted in the HC-Highway Commercial District shall be one (1).

**C. Add the following under Article VI, Section 70-33 Conditional Uses.**

**G. Conditional Use and Site Standards for Cannabis Facilities.** All Cannabis establishments located within the Borough shall meet all requirements for licensure and hold the appropriate license issued by the Cannabis Regulatory Commission, Department of the Treasury, State of New Jersey. Additionally, any cannabis use shall submit for conditional use approval and site plan approval to the Land Use Board and the following conditions shall be satisfied:

1. No Cannabis establishment shall permit on-site consumption of cannabis or cannabis related products, including no on-site sales and consumption of alcohol or tobacco products.
2. All cannabis establishment operations shall be conducted within a building and no operations shall be conducted outside. No outdoor storage of any cannabis, cannabis products or cannabis related materials shall be permitted.
3. All facilities shall be located within enclosed buildings and shall not be permitted outdoors.
4. Any licensed manufacturing facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odors generated inside the facility are not detectable by a person of reasonable sensitivity anywhere on adjacent property, within public rights of way, or within any other unit located within the same building as the licensed facility if the use only occupies a portion of a building. Retail facilities shall not produce any odors that are detectable by a person of reasonable sensitivity anywhere on adjacent property, within public rights of way, or within any other unit located within the same building as the licensed facility if the use only occupies a portion of a building. Odor from any Cannabis facility shall be monitored on an annual basis at the discretion of the Borough by a licensed, qualified contractor chosen by the Borough at a cost that shall be paid for by the licensed cannabis facility.
5. Any licensed retail or manufacturing facility shall provide for noise mitigation features designed to minimize disturbance from machinery, processing and/or packaging operations, loading, and other noise generating equipment or machinery. All licensed facilities must operate within applicable State decibel limitations.
6. To the extent not already required by the entity's State license, all sites must be equipped with security cameras covering all exterior parking and loading areas, points of entry, and interior spaces which are either open to the public or used for the storage or processing of cannabis products. Footage must be maintained for the duration required under State law.
7. All licensed facilities must provide the Borough Police Department with access to security footage immediately upon request by the Department.
8. To the extent not already required by the entity's State license, all licensed facilities must provide at least one security guard (or more if required by the State) during all times the facility is open to the public. At a minimum, the security guard shall be a State Certified Security Officer whose certification is in good standing.

9. All licensed facilities must mitigate lighting spillover into any residential neighborhoods and shall comply with all applicable State lighting limitations.
10. No Cannabis Establishment shall be located within the following distances from the specified land uses listed below:
  - a. 1,000 feet of any elementary school, middle school, high school, college or university either public or private;
  - b. 500 feet of another cannabis business.
  - c. 500 feet of a licensed childcare facility.
11. Cannabis waste shall be stored, secured, and managed in accordance with applicable state laws.
12. Each cannabis use shall provide the following number of parking spaces: Cannabis retailer- 1 space per every 200 square feet of gross floor area and Cannabis manufacturer- 1 space per every 1,000 square feet of gross floor area, plus one parking space for every delivery driver or fleet vehicle.
13. A traffic impact study is required, which includes estimated delivery vehicles, size of vehicles and number of employees. Additionally, a Class 5 Retail Cannabis establishment shall provide an on-site circulation plan for vehicles and pedestrians.
14. Hours of Operation for the Cannabis Manufacturing and Retail facilities shall not exceed 9 a.m. through 10 p.m.
15. The application shall include a statement of conformance, and indicate how conformance will be achieved if applicable, with Section 70-49.21 Performance Standards in the Land Management Code.
16. All applications proposing a cannabis use shall include a site plan which shall address lighting, parking, loading, landscaping, stormwater management and any other standard in the Borough Development Regulations, subject to the Planning Board's right to grant a submission waiver for any item required under the Borough Development Regulations in accordance with N.J.S.A. 40:55D-10.3.
17. Signage shall otherwise comply with the requirements of the Borough Land Use Regulations to the extent permissible by applicable State laws and regulations governing signage standards for licensed cannabis businesses. The following words, however, shall be prohibited from appearing on any sign: "marijuana", "pot", and "weed". No cannabis product shall be displayed in any windows or doors. No cannabis business shall place or cause to be placed any off-site advertising signage.
18. A planted buffer and fencing are required along any property line that abuts a residential district.
19. Cannabis waste shall be stored, secured, and managed in accordance with applicable State Laws.
20. The total number of licensed cannabis establishments permitted in the LI-Light Industrial District shall be two (2).
21. The total number of licensed cannabis establishments permitted in the HC-Highway Commercial District shall be one (1).
22. No Class 6 cannabis delivery establishment shall be permitted within the Borough.

## SECTION V

## **A. Enforcement**

1. Inspections: The Zoning Official; Police Department; and the Fire Department shall, from time to time, make an inspection of the Cannabis Establishment for the purpose of determining whether the provisions of this Section are complied with on a routine basis. It shall be unlawful for any Cannabis Establishment to refuse to allow such inspection or to hinder such an inspection.

2. Penalties. Any person violating any provision of this section shall, upon conviction be subject to the applicable disciplinary actions and penalties and be subject to a fine of not more than \$2,500 or imprisonment for a term not to exceed ninety (90) days, or both. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

## **B. Zoning Districts Where Cannabis Manufacturing and Retail Establishments Are Permitted.**

Cannabis Manufacturing Establishments are a permitted use in the Borough, in accordance with all applicable provisions set forth herein, state law, and all other applicable codes and regulations, including but not limited to the Building Code, in the following area: LI- Limited Industrial Zoning District

Cannabis Retail Establishments are a permitted use in the Borough, in accordance with all applicable provisions set forth herein, state law, and all other applicable codes and regulations, including but not limited to the Building Code, in the following area: HC- Highway Commercial Zoning District

## **C. Zoning Districts Where Cannabis Establishments Are Prohibited.**

Cannabis Establishments are a prohibited use in all other Borough Zoning Districts.

## **SECTION VI**

**BE IT FURTHER ORDAINED THAT NEW CHAPTER xx IS HEREBY CREATED ENTITLED "ESTABLISHMENT OF CANNABIS TRANSFER TAX AND USER CHAPTER XXX Establishment of Cannabis Transfer Tax and User Tax in Borough of Woodbury Heights**

A. The cannabis transfer tax in Woodbury Heights 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. This tax shall be imposed on:

1. Receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment;

B. 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 subsection A, from the license holder's establishment that is located in the Borough to any of the other license holder's establishments, whether located in the Borough or another municipality. The transfer tax or user tax imposed by this ordinance shall be in addition to any other tax imposed by law. Any transaction for which the transfer tax or user tax is imposed, or could be imposed pursuant to this section, other than those which generate receipts from the retail sales by cannabis retailers, shall be exempt from the tax imposed under the "Sales and Use Tax Act" (N.J.S.A. 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 regarding same.

**SECTION VII.** Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

**SECTION VIII.** All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as the extent of such inconsistency.

**SECTION IX.** This ordinance shall take effect immediately upon adoption and publication according to law.

**BOROUGH OF WOODBURY HEIGHTS**

By:   
**WILLIAM C. PACKER, MAYOR**

**ATTEST:**

  
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**SHANNON ELTON, BOROUGH CLERK**

**CERTIFICATION**

The foregoing Ordinance was introduced at a Regular Meeting of Borough Council of the Borough of Woodbury Heights held on the 21st day of September 2022 and will be considered for final passage and adoption at a Regular Meeting at which time any person interested therein will be given an opportunity to be heard. Said meeting to be held on 19<sup>th</sup> day of October 2022, at the Borough Hall, 500 Elm Ave, Woodbury Heights, New Jersey.

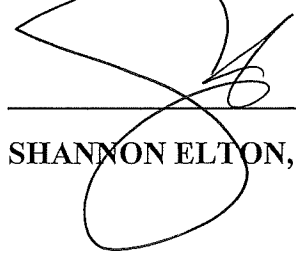
  
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**SHANNON ELTON, BOROUGH CLERK**

**NOTICE**

**ORDINANCE 20-2022**

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NOTICE is hereby given that the foregoing Ordinance 20-2022 was finally adopted at a meeting of the Borough of Woodbury Heights Council held on the 22nd day of November, 2022 at 7:30 p.m. in the Borough Hall, 500 Elm Avenue, Woodbury Heights, New Jersey.



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**SHANNON ELTON, BOROUGH CLERK**