

CANNABIS ORDINANCE 2023-003 – PROPOSED CHANGES

ORDINANCE NO. 2023-

AN ORDINANCE BY BOROUGH OF MILLSTONE IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY AMENDING AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES, PROVIDING FOR THE REGULATION OF CANNABIS AND AMENDING ITS DEVELOPMENT ORDINANCE

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 Borough Council of the Borough of Millstone adopted on July 19, 2021 “AN ORDINANCE BY BOROUGH OF MILLSTONE IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING AND/OR DELETING PRIOR ORDINANCES” and

WHEREAS, after the passage of time, the Borough Council of the Borough of Millstone has now determined that it would be in best interest of the Borough to allow Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and

WHEREAS, the Borough Council of the Borough of Millstone desires to amend AN ORDINANCE BY BOROUGH OF MILLSTONE IN THE COUNTY OF SOMERSET, STATE OF NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING AND/OR DELETING PRIOR ORDINANCES and the DEVELOPMENT ORDINANCE as hereinafter set forth

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Millstone in the County of Somerset, State of New Jersey (hereafter referred to as the “Council”), as follows:

- 1. Preamble.** The findings set forth in the preamble to this ordinance are hereby incorporated as if fully restated.

2. **General prohibition on all cannabis businesses other than Class 5 cannabis retailers.** In accordance with the authority granted to municipalities by N.J.S.A. 24:61-45, only the following cannabis facilities shall be permitted to operate within the geographical boundaries of the Borough: Class V cannabis retailers, subject to the use, permitting, and taxation requirements set forth in this ordinance. All other marketplace classes of cannabis businesses shall be prohibited from operating anywhere within the geographical boundaries of the Borough.

3. **Development Ordinance amendment.** The Development Ordinance of the Borough of Millstone is hereby amended to permit Class 5 cannabis retailers in the Traditional Village Commercial District

4. **Licensing requirements and general limitations for Class 5 cannabis retailers.**

a. Purpose.

This ordinance is enacted in accordance with the provisions of the Act and the regulations promulgated by the Cannabis Regulatory Commission (“CRC”). The purpose of this ordinance is to regulate the establishment and operation of cannabis businesses in the Borough of Millstone and to specify the conditions and limitations applicable thereto.

b. Definitions.

For the purpose of, words and phrases herein shall have the meanings set forth in Act.

c. Applicable laws.

All applications for licenses, all licenses issued and all proceedings under this chapter shall be in accordance with the Act, rules and regulations ~~referred~~ ~~issued by~~ of the CRC, and all other applicable laws of the State of New Jersey. The regulations set forth herein are subject to the enabling authority of the State of New Jersey, by and through the ~~Cannabis Regulatory Commission~~ CRC, and are subject to compliance with all statutes and/or regulations promulgated and adopted by the State of New Jersey or its instrumentalities. If any provision of this chapter is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail.

d. License required.

No cannabis facility may lawfully operate in the Borough without the issuance of a State permit or license and full regulatory oversight of the cannabis business by the Cannabis Regulatory Commission or other state licensing authority as well as oversight and issuance of a license by the Borough in accordance with the provisions of this chapter.

e. Conditions and limitations.

- i. Only the following marketplace class of cannabis facilities shall be allowed to operate in the Borough, subject to the limitations and requirements set forth herein and elsewhere in this ordinance and all other classes shall be prohibited:

Class 5 Cannabis Retailer

ii.

Only ~~a Borough license~~ local support resolution adopted issued by the Borough Council pursuant to this chapter shall constitute ~~“written municipal approval proof of local support”~~ pursuant to Act, N.J.S.A. 24:6I-36(b)(1)(c)(i) and 24:6I-45(c). Other written statements, letters, ~~resolutions~~, or other documents issued by the Borough or any official, employee, or other representative shall not constitute ~~annual or renewed “written municipal approval proof of local support”~~ for purposes of the CRC ~~requirements~~. The Borough Council shall decide whether to adopt a local support resolution to support the applicant’s application to the CRC for a State license, considering public interest factors, including but not limited to the following:

- (1) Local residents' and consumers' interests;
- (2) Jobs and economic opportunity within the Borough;
- (3) Compliance with local ordinances and regulations;
- (4) Public safety; and
- (5) Sustainability of the site for activities related to the operation of the proposed cannabis establishment.

~~iii.~~

iii. By a local support resolution, the Borough Council may authorize the zoning officer of the Borough to provide a letter or affidavit to support the cannabis applicant’s application to the CRC, providing zoning approval of a proposed location of the applicant's cannabis business by stating that the location will conform with municipal zoning requirements allowing for activities related to the operations of the proposed cannabis business to be conducted at the location:

~~iii.~~ iv. Cannabis retailers (“facility”) shall be permitted, pursuant to this chapter, only if in addition to all applicable land use regulations, the following requirements are met:

- (1) Land development regulations: The facility shall obtain all approvals required pursuant to the Borough’s land development regulations which approval(s) shall be evidenced by the issuance of a zoning permit.
- (2) Hours of operation: The operating hours of the licensed facility shall be between 9:00 am and 10:00 pm daily. It shall be unlawful for any person to sell or dispense cannabis or

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cannabis products in any licensed facility at any time other than between these hours.

- (3) The licensed facility shall be accessible directly from a right-of-way through a separate entrance independent from any other retail ingress.
- (4) No cannabis product shall be visible from a public sidewalk, public street or right-of-way or any other public place.
- (5) All cannabis products shall be stored securely indoors and onsite.
- (6) Consumption of cannabis products, by any means of ingestion, shall not be permitted in the licensed facility or adjacent grounds. .
- (7) 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.
- (8) All cannabis facilities 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; shall have security fencing and gates around the perimeter of the premises; and shall have trained security personnel onsite at all times during operating hours.
- (9) Signage design shall comply with any applicable Borough's sign regulations
- (10) No cannabis facility shall be housed in a vehicle or any movable or mobile structure.
- (11) Comply with all rules and regulations adopted by the New Jersey Cannabis Regulatory Commission.
- (12) Consumption of cannabis products, by any means of ingestion or smoking shall not be permitted in the licensed facility or adjacent grounds unless within an approved cannabis consumption area. Each retailer may only operate one cannabis consumption area. The cannabis consumption area shall be either (a) an indoor, structurally enclosed area of the licensed cannabis retailer's premise that is separate from the area in which retail sales of cannabis items occur or (b) an exterior structure on the same premise as the retailer, either separate from or connected to the retailer and likewise

Commented [X"L1]: Such fencing and gates may become eyesores for the Borough at least for retailers.

wholly enclosed. There shall be no outdoor cannabis consumption area. The cannabis consumption area shall be equipped to mitigate and contain odors from cannabis products which may be smoked. The cannabis consumption area shall be equipped with a ventilation system sufficient in type and capacity to mitigate cannabis odors emanating from the interior of the cannabis consumption area. The discharge of said ventilation system shall not discharge any odors that can be smelled by any adjacent property owner or within a right of way.

f. Licensing

i. Issuing authority.

- (1) All licenses required by this chapter shall be issued by the Council, which shall also administer the provisions of this chapter.
- (2) No license issued pursuant to this chapter shall be effective until or unless the State has issued the requisite permits or licenses to operate such a facility.
- (3) Each license shall be effective from January 1 until December 31 and shall be annually renewed upon the submission of an application and renewal fee provided all conditions and requirements of applicable State law and this chapter are met.

ii. Application process.

- (1) Application. Persons wishing to obtain any classification of cannabis license shall file a license application with the Borough Clerk, on a standardized form established by the Clerk. 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.
- (2) To be deemed complete, all applications shall be accompanied by the following:
 - a. Nonrefundable application fee.
 - b. Registration fee, which shall be refunded in the event the applicant does not receive a license.

- c. Zoning ~~permit approval, including an affidavit or letter by the Borough's zoning officer,~~ demonstrating that the location proposed for licensing by the applicant complies with all applicable requirements of the Borough's land development regulations ~~and site plan approval.~~
- d. 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.
- e. 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.
- f. Affidavit or other documentary proof that 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.

(3) All applications upon being deemed complete shall be submitted to the Council for approval or denial. In evaluating the application(s), the Council shall evaluate all applicants and issue a notification of award after consideration and evaluation of the following criteria:

- a. 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;

Commented [MOU2]: Because the CRC utilizes a 90-day timeframe, it is recommended that the ordinance contain a timeframe for the Council to review and respond to applications (perhaps within 30 days, and if the process will take longer, a notification will be sent to the applicant before 30 days, indicating more time is needed)

b. 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 and a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management;

~~e. Applicant's or its owners' experience conducting or supporting or plans to conduct institutional review board-approved research involving human subjects that is related to medical cannabis or substance abuse, where the value of past or ongoing clinical research shall outweigh plans to conduct such research, whether the applicant has had any assurance accepted by the U.S. Department of Health & Human Services indicating the applicant's commitment to complying with 45 CFR Part 46, and whether the applicant has a research collaboration or partnership agreement in effect with an accredited U.S. school of medicine or osteopathic medicine with experience conducting cannabis related research;~~

Commented [X"L3]: We recommend removing this paragraph because it relates to medicinal dispensaries only.

~~d.c.~~ Applicant's or its owners' demonstrated commitment sufficient experience as responsible employers, defined as the applicant entity being a party to a labor peace 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 license, in an effort to create well-paying jobs with employee benefits in the municipality;

~~d.~~ Summary of the applicant's environmental impact and sustainability plan ~~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 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;~~

e- e. Any applicant which has already been awarded by the CRC an annual cannabis license with the proposed location of its cannabis facility in the Borough shall be deemed to have satisfied all the criteria contained in the Subsection (3).

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- (4) Notwithstanding the foregoing competitive application process, ~~a notification of award and conditional municipal license~~ the issuance of the local support resolution 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 Council'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.

iii. Fees; number of licenses.

- (1) The number and type of cannabis licenses and the annual fees therefor shall be as follows:

Class of License	Application Fee (non-refundable)	Annual Registration Fee (Refunded in the event the applicant does not receive a license)	Number of Licenses
Class 5 Cannabis Retailer	\$1,000.00	\$5,000.00	Limited to 1

- (2) The license fee shall be paid on or before January 1 and shall cover the time period from January 1 until December 31. For a license issued after December 1 and before December 31, the license fee shall be prorated on a per month basis.
- (3) Licenses issued pursuant to this chapter shall ~~be personal to the licensee and~~ shall not be transferable.
- (4) A separate license shall be required for each class of cannabis business, and a separate application fee and registration fee shall be charged for each type of license.

iv. Suspension or Revocation of License

(1) Suspension; revocation; non-renewal.

Any suspension, revocation or non-renewal of a license pursuant to this ordinance, or any suspension, revocation or non-renewal of a CRC-issued license or permit for the operation, or any adjudication of felony criminal guilt by the cannabis business or its principals shall constitute an automatic revocation of a Borough license issued pursuant to this chapter, at which time the operation shall immediately cease. A criminal adjudication voids and prohibits any future reinstatement of a Borough license.

v. Enforcement, Violations and Penalties

(1) Violations and penalties.

Any violation of the terms of this chapter, of any condition of the license, or of any State, or local law or regulation may result in the revocation of the license and may further subject the licensee to any applicable penalties.

(2) Enforcement.

The provisions of this chapter shall be enforced by the appropriate police authority, Borough Zoning Officer and/or Borough Health Officer as appropriate based on the nature of the violation.

5. Taxation of Class 5 cannabis retailers.

a. Cannabis transfer tax.

i. All cannabis establishments operating in the Borough shall be subject to the following transfer tax on the sale of cannabis or cannabis related items:

(1) Class 5 cannabis retailers: Two percent (2%) of the receipts from each sale

ii. The transfer tax imposed pursuant to this section shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

- iii. Any transaction for which the transfer tax is imposed shall be exempt from the tax imposed under the “Sales and Use Tax Act,” N.J.S.A. 54:32B-1 et seq.
 - iv. The transfer tax shall be collected or paid, and remitted to the Borough by the cannabis establishment purchasing or receiving the cannabis or cannabis item. The transfer tax shall be stated, charged and shown separately on any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable or equivalent value of the transfer for the cannabis or cannabis item.
- b. Cannabis user tax.
- i. Any concurrent license holder operating more than one cannabis establishment shall be subject to a two percent (2%) user tax. The user tax 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 this article, 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 in another municipality.
 - ii. The user tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis. Any transaction for which the user tax is imposed, is exempt from the tax imposed under the Sales and Use Tax Act. N.J.S.A. 54:32B-1 et seq.
 - iii. The user tax shall be stated, charged and shown separately on any sales slip, invoice, receipt or other statement or memorandum of the price paid or payable or equivalent value of the transfer for the cannabis or cannabis item.
- c. Collection of cannabis transfer and user tax.
- i. Every cannabis establishment required to collect the transfer and user taxes imposed by this ordinance shall be personally liable for the transfer and user tax imposed, collected, or required by this ordinance and the Act.
 - ii. Any cannabis establishment collecting a transfer tax or user tax shall have the same right with respect to collecting the tax from another cannabis establishment or the consumer as if the tax was a part of the sale and payable at the same time. With respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the tax was part of the purchase price of the cannabis or cannabis item and payable at the same time, provided that the

Borough's chief financial officer is joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

iii. No cannabis establishment required to collect the transfer and user taxes imposed by this ordinance shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.

d. Remittance of cannabis taxes; delinquencies.

i. All revenues collected from the transfer tax and user tax imposed pursuant to this article shall be remitted to the Borough's chief financial officer on a monthly basis.

ii. The Borough shall enforce the payment of delinquent taxes or transfer fees imposed by this article in the same manner as provided for municipal real property taxes.

iii. In the event that the transfer tax or user tax imposed by this article is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid Borough taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of Borough taxes, and shall be on a parity with and deemed equal to the Borough lien on the parcel for unpaid property taxes due and owing in the same year.

iv. The Borough shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance of cannabis taxes and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

v. No licensed cannabis establishment operating in the Borough shall be permitted to renew a license issued pursuant to this ordinance should any transfer or user tax imposed by this article be delinquent.

6. **Repeal.** Any article, section, paragraph, subsection, clause, or other provision of the Borough of Millstone Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

7. **Severability.** If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

8. **Effectiveness.** This ordinance shall take effect upon its passage and publication and filing with the Somerset County Planning Board, and as otherwise provided for by law.

ATTEST:

Gregory J. Bonin, Clerk

Raymond Heck, Mayor