

## **BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION**

NOTICE is hereby given that **Ordinance 16-2023** - Ordinance of the Borough of Eatontown Entitled “An Ordinance Amending Chapter 89 “Land Use”, Article VII “Area Bulk and Use Requirements”, Section 89-52 “Cannabis Conditional Use Requirements” and Chapter 200 “Licenses and Permits”, Article III “Cannabis Licensing and Taxation” Section 200-7 and 200-11 “Taxation”” was passed after a public hearing at the regular meeting of July 26, 2023 by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

### **ORDINANCE 16-2023**

#### **BOROUGH OF EATONTOWN,**

#### **COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

### **AN ORDINANCE AMENDING CHAPTER 89 “LAND USE”, ARTICLE VII “AREA BULK AND USE REQUIREMENTS”, SECTION 89-52 “CANNABIS CONDITIONAL USE REQUIREMENTS” AND CHAPTER 200 “LICENSES AND PERMITS”, ARTICLE III “CANNABIS LICENSING AND TAXATION” SECTION 200-7 AND 200-11 “TAXATION”**

**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”) (P.L. 2021, c.16), 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 to cultivate, manufacture, wholesale, distribute, sell and deliver cannabis and cannabis related products; and

**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 of 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 180 days of the effective date of the Act (or by August 22, 2021); and

**WHEREAS**, the Borough Council adopted Ordinance 19-2021 authorizing no more than two of each Class 1-Cannabis Cultivator facilities, Class 2-Cannabis Manufacturer facilities, Class 3-Cannabis Wholesaler facilities, Class 4-Cannabis Distributor facilities; and three Class-5 Retailer establishments inclusive of the existing Alternative Treatment Center which was deemed to concurrently hold a Class 5 Retail License pursuant to the Act.

**WHEREAS**, the Borough Council of the Borough of Eatontown has determined that it is in the public interest to expand the number of cannabis licenses to four within each Class including the requirement of a Microbusiness for Classes 1 through to enhance tax revenue from cannabis and to otherwise clarify certain conditions within the Cannabis Ordinance.

**NOW THEREFORE BE IT ORDAINED**, by the Borough Council of the Borough of Eatontown that the Borough Code of the Borough of Eatontown be and is hereby amended as follows:

[additions are underlined, and deletions are noted through strike-out]

#### **SECTION 1.**

**89-4– DEFINITIONS** – is hereby amended to add the following:

“School means a public or private school or that portion of a public or private school which provides facilities for teaching any grade from kindergarten through grade twelve.”

**SECTION 2.** Chapter 89, Section 52 entitled “Cannabis Conditional Use Requirements” is hereby amended as follows:

**Section 89-52 -Cannabis Conditional Use Requirements**

Cannabis Class uses, (other than Alternative Treatment Centers) shall be permitted as a Conditional Use given the following conditions:

- A. [No changes].
- B. Location. The permitted location of such uses shall be in accordance with the current NJ State requirements in addition to the following:
  - 1 Class 1, 2, 3 and 4 (non-Microbusiness facilities) shall be located on Industrial Way West and Industrial Way East to Wall Street. Class 1, 2, 3 and 4 Micobusiness facilities shall be located on Meridian Road, Corbett Way, Christopher Way and James Way.
  - 2 Class 5 shall be located on Route 36 and on Route 35 both south of the intersection with Route 36 and north of the intersection with Route 36 until the south corner of Clinton Avenue.
    - i. Class 5 cannabis retail facilities ~~and is not to be located less than 1,000 feet from a school on the same side or opposite of the street~~ shall be located a minimum of a 1,000 feet radius from any property line of a Class 5 retail facility to any property line of a School or Day-Care Center. This measurement shall not apply to properties on the opposite side of a divided State Highway.
    - ii. Class 5 cannabis retail facilities shall also be located a minimum of a 1,000 feet radius from any property line of such facility to any property line of another Class 5 cannabis retail facility.
  - 3 [No change]
- C. [No changes].
- D. Quantity. The maximum permitted number of Class 5 Cannabis Retail establishments within the Borough of Eatontown is ~~three (3),~~ four (4) inclusive of the existing Alternative Treatment Center which is deemed to concurrently hold a Class 5 Retail License pursuant to the Act. There shall be no more than ~~two-three~~ of each Class 1-Cannibis Cultivator facilities, Class 2-Cannabis Manufacturer facilities, Class 3-Cannabis Wholesaler facilities, and Class 4-Cannabis Distributor facilities. Notwithstanding this limitation on the number of Class 1, 2 3, and 4 Cannabis facilities, there shall be one additional Microbusiness permitted for each Class 1-Cannibis Cultivator facilities, Class 2-Cannabis Manufacturer facilities, Class 3-Cannabis Wholesaler facilities, and Class 4-Cannabis Distributor facilities.
- E. [No changes].

**SECTION 3.**

Article III

Cannabis Licenses and Permits, Chapter 200-7 is hereby amended as follows:

- A. [No change].
- B. All licenses required by this article shall be issued by the Borough Clerk upon the adoption of a Resolution by the Borough Council authorizing the issuance of a Class 1, 2, 3, 4 or 5 cannabis license including a Microbusiness.
- C. [No change].
- D. [No change].
- E. [No change].
- F. In order to be eligible for the issuance of a license to operate a Class 1, 2, 3, 4 or 5 license, including a license to operate a Microbusiness authorized hereunder, the applicant shall provide the Borough with proof of the following:
  - 1. Resolution of Support issued by the Borough Council supporting issuance of license for a Class 1, 2, 3, 4 or 5 license from Cannabis Regulatory Commission at a location consistent with this Ordinance.
  - 2. License to operate a Class 1, 2, 3, 4, or 5 issued by the Cannabis Regulatory Commission at a location consistent with the Resolution of Support issued by the Borough Council consistent with this Ordinance.

3. Proof of site control for the location proposed for the cannabis facility through either proof of ownership of the property or a lease in effect for at least the period the license is effective.
4. Approval from Planning Board, if required, and Zoning Officer for location and operation of cannabis facility, from which cannabis operations will occur.

Upon issuance of the license by the Borough Clerk upon authorization from the Borough Council, the license shall remain in effect for one year, subject to annual renewal, as set forth in this Ordinance. If the approved Class 1, 2, 3, 4 or 5 Cannabis facility is not operational within one year, the license shall lapse and be eligible for other Cannabis operators within the particular class of operation, unless the Cannabis Licensee demonstrates good cause for not being operational within one year. At a minimum, in order for good cause to exist as it relates to the renewal of a cannabis license, the Cannabis Licensee shall provide at least three updates to the Borough Council, via the Borough Clerk, nine months prior, six months prior and three months prior to the license lapsing and/or renewing. The purpose of these updates is to update the Borough Council of any delays in bringing the operation into existence and how the Licensee operated in good faith to mitigate against any delays preventing the Cannabis Licensee from becoming operational.

#### Section 4.

Chapter 200-11 entitled "Taxation" is hereby created as follows:

#### 200-11. Taxation.

1. Cannabis products will be subject to the State sales tax and, as authorized by the Legislature, local cannabis tax of 2% for cannabis cultivator, manufacturer, and/or retailer; and 1% for wholesalers. The tax percentage is based on the receipts for each sale and will be paid directly to the Borough ~~municipality in the manner prescribed by the Borough~~ in quarterly payments due on January 5, April 5, July 5 and October 5 of each year for receipts generated the previous three months. Any delinquencies are treated the same as delinquent property taxes and any delinquencies of more than 30 days shall result in the revocation of the Borough issued license thereby precluding operation off the facility until such time as the delinquency is cured. The cannabis operator shall be given notice of the delinquency by the Borough and shall have 10 days to cure before the license is revoked. Delinquencies greater than 30 days shall be charged at the same interest rate as delinquent property taxes, then in effect. Any legal cost to recover delinquent payments, shall be charged to the licensee and payable to the Borough with the following quarter's payment. The local tax does not apply to delivery services to consumers transfers for the purpose of bulk transportation.

The remainder of all other sections and subsections of the ordinance not specifically amended by this Ordinance shall remain in full force and effect.

#### **SECTION 4**

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

#### **SECTION 5.**

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

#### **SECTION 6.**

This Ordinance shall take effect upon its passage and publication according to law.