

ORDINANCE NO. 2025-03

AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF LOPATCONG, CHAPTER 243, ZONING AND LAND USE, ARTICLE XIII, GENERAL REGULATIONS TO PERMIT AS A PRINCIPAL PERMITTED USE CERTAIN CANNABIS ESTABLISHMENTS IN DESIGNATED ZONE DISTRICTS AND CREATE CHAPTER [88] “CANNABIS REGULATION”

WHEREAS, pursuant to N.J.S.A.40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

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 cannabis 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 classes of licenses for cannabis establishments, including:

- 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 purchases 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, as authorized by the Act, on August 19, 2021, the Township of Lopatcong adopted Ordinance No. 2021-07 to “To Prohibit the Operation of Any Class of Cannabis Businesses within its Geographical Boundaries and Amended Chapter 243 “Zoning and Land Use,” Article XIII “ General Regulations,” Creating Section 65.3 “Prohibited Uses,” to Add Cannabis Businesses to the List of Prohibited Uses.” which “opted out” of the legalization of all adult use cannabis businesses within the Township of Lopatcong; and

WHEREAS, Section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments as well as the location, manner and hours of operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, the Township Council have determined that it is appropriate and in the best interest of the Township of Lopatcong to permit a limited number of Class 5 Cannabis Retailer licenses to operate in designated zone districts in the Township, subject to sensible regulations to regulate such licensees in a responsible manner to protect the health, safety and welfare of the residents of the Township and to enforce rules and regulations consistent with State law.

NOW THEREFORE, BE IT ORDAINED, by the Council of the Township of Lopatcong, County of Warren, and State of New Jersey, as follows:

Section 1. The Code of the Township of Lopatcong, Chapter 243, Zoning and Land Use, Article XIII, General Regulations, Section 65.3(A), is hereby amended as follows. Added text is underlined, and text being eliminated is ~~struck through~~.

~~A. All classes of cannabis establishments, cannabis distributors, cannabis delivery services, and medical cannabis alternative treatment centers as said terms are defined in Section 3 of P.L. 2021, c. 16 shall be prohibited in all zone districts of the Township unless otherwise specifically permitted by this Chapter. This shall not be construed to prohibit the delivery of cannabis items and related supplies in all zone districts by a state and municipally licensed cannabis delivery service.~~

~~B. A.~~ Truck stops. Truck stops as defined in § 243-5 shall be prohibited in all zones within the Township.

Section 2. The Code of the Township of Lopatcong, Chapter 243, Zoning and Land Use, Article XIII, General Regulations, Section 74(A), is hereby amended to add Subsection (7), as follows:

7. Cannabis Retailers, subject to compliance with the regulations set forth in Chapter [88] and the following requirements:

(a) No Cannabis Retailer shall be maintained or operated in a manner that causes, creates or allows the public viewing of cannabis, cannabis infused products or cannabis paraphernalia or similar products from any sidewalk, public or private right of way;

(b) The minimum lot area for a Cannabis Retailer shall be one (1) acre.

(c) A Cannabis Retailer must receive all required approvals from the Township Planning Board or Board of Adjustment, as applicable.

(d) A Cannabis Retailer must be licensed by the Township, in accordance with Chapter [88] of this Code, and the Commission.

Section 3. The Code of the Township of Lopatcong is amended to establish Chapter [88], Cannabis Regulation, as follows:

§ 88-1 Purpose.

This Chapter is authorized pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act”, P.L. 2021, c.016, and the implementing regulations promulgated by the Cannabis Regulatory Commission (collectively, the “Act”), which are hereby incorporated herein by reference, and shall be controlling unless more restrictive standards are prescribed herein. If any provision of this Chapter is inconsistent with the statutes and/or regulations of the State of New Jersey, the Act shall govern.

§88-2 Definitions.

For the purposes of this Chapter, all terms shall be defined consistent with the Act. The following terms shall have the meanings indicated:

“Cannabis Consumption Area” means, as further described in section 28 of P.L.2019, c.153 (C.24:6I-21), a designated location operated by a licensed cannabis retailer or permit holder for dispensing medical cannabis , for which both a State and local endorsement has been obtained, that is either: (1) an indoor, structurally enclosed area of the cannabis retailer or permit holder that is separate from the area in which retail sales of cannabis items or the dispensing of medical cannabis occurs; or (2) an exterior structure on the same premises as the cannabis retailer or permit holder, either separate from or connected to the cannabis retailer or permit holder, at which cannabis items or medical cannabis either obtained from the retailer or permit holder, or brought by a person to the consumption area, may be consumed.

“Cannabis Cultivator” means 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 usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

“Cannabis Delivery Service” means 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.

“Cannabis Distributor” means 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.

“Cannabis Establishment” means a Cannabis Cultivator, Cannabis Manufacturer, Cannabis

Wholesaler, or a Cannabis Retailer.

“Cannabis Manufacturer” means 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.

“Cannabis Retailer” means 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 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.

“Cannabis Testing Facility” means an independent, third-party entity meeting accreditation requirements established by the Cannabis Regulatory Commission that is licensed to analyze and certify cannabis items and medical cannabis for compliance with applicable health, safety, and potency standards.

“Cannabis Wholesaler” means 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.

“Commission” means the Cannabis Regulatory Commission (“CRC”), established pursuant to Section 31 of P.L. 2019, c. 307 (C. 24:61-24) or other entity with regulatory jurisdiction over adult-use cannabis.

“Conditional license” means a temporary license 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 that allows the holder to lawfully act as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service as the case may be, which is issued pursuant to an abbreviated application process, after which the conditional license holder shall have a limited period of time in which to become fully licensed by satisfying all of the remaining conditions for licensure which were not required for the issuance of the conditional license.

“Delivery” means the transportation of cannabis and cannabis products and related supplies to a consumer. “Delivery” also includes the use by a licensed cannabis retailer of any third party technology platform to receive, process, and fulfill orders by consumers, which third party shall not be required to be a licensed cannabis establishment, distributor, or delivery service, provided that any physical acts in connection with fulfilling the order and delivery shall be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer, which includes a certified cannabis handler employed or otherwise working on behalf of a cannabis delivery service making off-premises deliveries

of consumer purchases fulfilled by that cannabis retailer.

“License” means a license issued under P.L.2021, c.16 (C.24:6I-31 et al.), 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 P.L.2021, c.16 (C.24:6I-31 et al.) otherwise intend to only apply to a license and not a conditional license.

“Licensee” means a person or entity that holds a license issued under P.L.2021, c.16 (C.24:6I-31 et al.), 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 P.L.2021, c.16 (C.24:6I-31 et al.) otherwise intend to only apply to a person or entity that holds a license and not a conditional license.

§88-3 Local Licensing Authority.

A. A local license shall be required to operate a Cannabis Retailer in the Township. The Township Clerk is hereby designated to act as the local licensing authority for the Township for all Cannabis Retailers.

B. Under no circumstances shall the Township Clerk receive or act upon any application for local licensing of a Cannabis Retailer if the Commission has not issued the appropriate State license. It is the intent of this Chapter that no Cannabis Establishment may lawfully operate in the Township absent the issuance of the appropriate State license and full regulatory oversight of the Cannabis Retailer by the Commission as well as that of the Township.

C. Under no circumstances shall the Township Clerk receive or act upon any application for local licensing of a Cannabis Retailer unless or until the applicant has obtained the appropriate zoning approval from the Township land use board with jurisdiction over the application and a Certificate of Zoning Compliance has been issued by the Zoning Officer.

D. The Township Clerk, or his/her designee, shall be authorized to establish rules and regulations consistent with the intent of this Chapter.

§88-4 Local Licensing Application

A. Persons wishing to obtain a local license for a Cannabis Retailer shall file a license application with the Township Clerk, on a standardized form established by the Township and available in the Clerk’s office and on the Township’s website.

B. An application shall be deemed incomplete, and shall not be processed by the Township Clerk, until all documents and application fees are submitted. To be deemed complete, all applications shall be accompanied by the following:

(1) The applicant shall submit proof of licensure by the Commission.

(2) The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the Cannabis Retailer, which proof may consist of the following: a deed, a lease, a real estate contract contingent upon successful licensing, or a letter of intent from the owner of the premises indicating an intent to lease the premises to the applicant contingent upon approval of required licenses.

(3) The location proposed for licensing by the applicant shall comply with all applicable Township zoning laws and the location restrictions set forth herein.

(4) The applicant shall submit a nonrefundable application fee in the amount of \$5,000 or a nonrefundable annual renewal fee in the amount of \$2,500, as appropriate. The amount of the nonrefundable application or renewal fee may be modified from time to time by subsequent duly adopted resolution of the Township Council.

(5) The applicant and the contents of the application shall otherwise comply with any and all qualification standards set forth in the State and local laws, regulations, or requirements.

§88-5 Term of License and License Renewals; Annual License Fee

- A. Any license shall be valid for a period of one year from January 1 in each year.
- B. The Township Clerk may, at his/her discretion, adjust the annual renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.
- C. Upon renewal of a license, the licensee shall be governed by any amendments, additional restrictions, or changes in requirements adopted since the previous license was issued or renewed.
- D. Transfer of ownership of a license, change of location of any license, or modification to expand a licensed premise shall be treated as a new application, subject to Township land use review and approval.
- E. If the licensee has received notice of violation of any law or regulation relating to their State license, including disciplinary action against any past or current cannabis license, the applicant for renewal shall include a copy of the notice of violation or disciplinary action with their application.

§88-6 Permitted Licenses; Limitation on the Number of Licenses.

- A. A maximum of one (1) Class 5 Cannabis Retailer license shall be permitted to operate in the Township.
- B. Pursuant to Section 31b of the Act, all other classes of licensed cannabis businesses not expressly permitted herein, including Class 1 Cannabis Cultivator licenses, Class 2 Manufacturer licenses, Class 3 Cannabis Wholesaler licenses, Class 4 Cannabis Distributor licenses, and Class 6 Cannabis Delivery licenses, are hereby prohibited from operating anywhere in the Township, except for the delivery of cannabis items and related supplies by a Cannabis Delivery Service or a Cannabis Retailer approved by the Commission.

§88-7 Location Restrictions.

A. No building or structure associated with a Cannabis Retailer shall be located within 500 feet of any school property (including any property owned or leased by a public school board), or within 500 feet of the real property comprising a public park.

§88-10 Security and Reporting.

A. The Township Police Department shall be provided the name and phone number of a contact person to notify during suspicious activity during or after operating hours. Security staff is required on the premises during all hours of operation.

B. A burglarproof drop safe that regulates an employee's access to cash shall be used on the premises.

C. The exterior portion of a Cannabis Retailer, including parking areas, shall be well lit during business hours. Said lighting shall be designed so as to not unduly interfere with any neighbor's reasonable use and/or enjoyment of the property.

D. Security protocols shall be submitted to the Township Police Department for compliance review with all safety and security standards established by the State of Cannabis Retailers. The Township Police Department may, at their discretion and upon review of the proposed location, recommend or require additional safety and security measures.

§88-11 Storage of Products.

Cannabis plants, products, accessories, and associated paraphernalia shall not be visible from a public sidewalk, public street or right-of-way, or any other public place. On-site storage of usable cannabis shall comply with applicable federal, state and local laws and regulations.

§88-12 Limitations on Consumption or Smoking on Premises.

No Cannabis Retailer shall permit the consumption of cannabis by means of smoking, vaping, or aerosolizing in a public place, including any indoor public place as the term is defined in N.J.S.A. 26:3D-57, without the approval by the Commission and the Township. Approved "Cannabis Consumption Areas," (as that term is defined by N.J.A.C. 17:30-1.2), shall comply with State and local laws, regulations, or requirements.

§88-13 Prevention of emissions and disposal of materials.

A. A Cannabis Retailer must provide sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the Cannabis Retailer.

B. A Cannabis Retailer shall properly dispose of all materials and other substances in a safe and sanitary manner in accordance with State regulations.

C. A Cannabis Retailer must meet industry best practices for odor control.

D. All State law and regulations concerning ventilation systems shall be followed.

§88-14 Transfer Tax

A. In accordance with the Act, the cannabis transfer tax for the Township shall be two percent (2%) of the receipts from each sale by a Class 5 Cannabis Retailer.

B. The transfer tax shall be collected or paid, and remitted to the Township by the Cannabis Retailer from the Cannabis Retailer 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.

C. All revenues collected from a transfer tax imposed by this Chapter shall be remitted to the chief financial officer of the Township in a manner prescribed by the Township. The chief financial officer shall collect and administer any transfer tax imposed by ordinance pursuant to this Chapter. The Township shall enforce the payment of delinquent taxes or transfer fees imposed by ordinance pursuant to this Chapter in the same manner as provided for municipal real property taxes.

D. The Township chief financial officer or his/her designee, shall be authorized to establish rules and regulations consistent with the intent of this Chapter regarding the collection and enforcement of the transfer tax.

§88-15 Compliance with Law.

A Cannabis Retailer shall comply with all applicable State and local laws and regulations.

§88-16 Revocation or Suspension of License

B. The Township Clerk shall suspend or revoke any license if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked.

C. Where it is found that a licensee has engaged in a 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 Township Clerk is authorized and empowered to immediately suspend any license or permit issued pursuant to this Chapter and order that the licensee cease all operations until such time as the violations are abated.

D. Any person aggrieved by the action of the Township Clerk in the denial of an application for license or the decision with reference to the revocation or suspension of a license in accordance with this Chapter, shall have the right of appeal to the Business Administrator, or his/her designee. Such appeal shall be taken by filing with the Business Administrator, within 10 days of the action complained of, a written statement setting forth fully the grounds for the appeal. The Business Administrator, or his/her designee, may decide the matter on the papers or schedule a time and place for a hearing on such appeal. Notice of any such hearing shall be served upon the applicant/licensee (whichever is appropriate) or mailed, postage prepaid, to the applicant/licensee at the address given on the application for license in accordance with this Chapter, at least five days prior to the date set for said hearing. The decision and order of the Business Administrator, or his/her designee, on such appeal shall be final and conclusive.

Section 4. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Township of Lopatcong inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

Section 5. 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.

Section 6. This ordinance shall take effect as required by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Township of Lopatcong held on Wednesday, February 5, 2025 and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Township Council to be held on Wednesday, March 5, 2025 at 7:30 PM or as soon thereafter as the Township Council may hear this Ordinance at the Municipal Building located at 232 So. Third St., Phillipsburg, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Margaret B. Dilts, MMC

ORDINANCE NO. 2025-03

SECOND NOTICE OF AN ORDINANCE

NOTICE is hereby given that a regular meeting of the Township Council of the Township of Lopatcong, County of Warren and State of New Jersey, held on Wednesday, March 5, 2025 at the Municipal Building, 232 South Third Street, Phillipsburg, New Jersey, the following Ordinance was presented and passed on the final reading. The Ordinance was then ordered to be published according to law by title only.

AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF LOPATCONG, CHAPTER 243, ZONING AND LAND USE, ARTICLE XIII, GENERAL REGULATIONS TO PERMIT AS A PRINCIPAL PERMITTED USE CERTAIN CANNABIS ESTABLISHMENTS IN DESIGNATED ZONE DISTRICTS AND CREATE CHAPTER [88] "CANNABIS REGULATION"

Said Ordinance may be read and inspected at any time at the Office of the Municipal Clerk, Lopatcong Township Municipal Building, 232 S. Third Street, Phillipsburg, New Jersey Monday through Friday 9:00 am to 4:30 pm.

Margaret B. Dilts, MMC