

ORDINANCE 19-2021

BOROUGH OF EATONTOWN,  
COUNTY OF MONMOUTH, STATE OF NEW JERSEY

AN ORDINANCE AMENDING CHAPTER 89 SECTION 4 OF THE BOROUGH CODE ENTITLED "DEFINITIONS" AND CREATING TWO NEW SECTIONS OF THE BOROUGH CODE, CHAPTER 89 SECTION 52 ENTITLED "CANNABIS ZONING" AND ARTICLE III, CHAPTER 200, SECTION 7 ENTITLED "CANNABIS LICENSING AND TAXATION" TO ALLOW THE OPERATION OF CERTAIN CANNABIS LICENSES WITHIN THE GEOGRAPHICAL LIMITS OF THE BOROUGH OF EATONTOWN

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, 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, the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) delegates to municipalities the power to zone and regulate development and that statute is amended from time to time by the State legislature; and

WHEREAS, the Borough Council of the Borough of Eatontown has determined that the cultivation, manufacture, wholesale, and distribution of cannabis as well as its retail sale present special concerns and should be permitted in appropriate locations and regulated to protect the health safety and welfare of its citizens;

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:

## SECTION 1.

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

**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.). (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 1 Cannabis Cultivator license. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 6 Cannabis Delivery license. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 4 Cannabis Distributor license. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Cannabis establishment** - means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 2 Cannabis Manufacturer license." (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Cannabis product** - means a product containing usable cannabis , cannabis extract, or any other cannabis resin and other ingredients intended for human consumption or use, including a product intended to be applied to the skin or hair, edible cannabis products, ointments, and tinctures. "Cannabis product" does not include: (1) usable cannabis by itself; or (2) cannabis

extract by itself; or (3) any other cannabis resin by itself. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Cannabis resin** - means the resin extracted from any part of the plant Cannabis sativa L., including cannabis extract and resin extracted using non-chemical processes, processed and used in accordance with P.L.2021, c.16 (C.24:6I-31 et al.). "Cannabis resin" does not include: any form of 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.); hashish 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 as defined in section 2 of P.L.1970, c.226 (C.24:21-2) and applied to any offense of 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.). (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 5 Cannabis Retailer license. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. This person or entity shall hold a Class 3 Cannabis Wholesaler license. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Commission** - means the Cannabis Regulatory Commission established pursuant to section 31 of P.L.2019, c.153 (C.24:6I-24). (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Consumption** - means the act of ingesting, inhaling, or otherwise introducing cannabis items into the human body. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Delivery** - means the transportation of cannabis items 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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Licensee representative** - means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent that the person acts in a representative capacity. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Manufacture** - means the drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" does not include packaging or labeling. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Mature cannabis plant** - means a cannabis plant that is not an immature cannabis plant. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**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.). "Medical cannabis" does not include any cannabis or cannabis item which is cultivated, produced, processed, and consumed in accordance with P.L.2021, c.16 (C.24:6I-31 et al.). (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Microbusiness** - means a person or entity licensed under P.L.2021, c.16 (C.24:6I-31 et al.) as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service that may only, with respect to its business operations, and capacity and quantity of product: (1) employ no more than 10 employees; (2) operate a cannabis establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis cultivator, grow cannabis on an area no more than 2,500 square feet measured on a horizontal plane and grow above that plane not higher than 24 feet; (3) possess no more than 1,000 cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation shall not be subject to this limit; (4) acquire each month, in the case of a cannabis manufacturer, no more than 1,000 pounds of usable cannabis ; (5) acquire for resale each month, in the case of a cannabis wholesaler, no more than 1,000 pounds of usable cannabis , or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof; and (6) acquire for retail sale each month, in the case of a cannabis retailer, no more than 1,000 pounds of usable cannabis , or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Noncommercial** - means not dependent or conditioned upon the provision or receipt of financial consideration. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**Premises or Licensed Premises** - includes the following areas of a location licensed under P.L.2021, c.16 (C.24:6I-31 et al.): 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. (This definition is intended to correlate with Cannabis Class Uses as developed and updated by the State of New Jersey)

**SECTION 2.** A new section, Chapter 89, Section 52, currently reserved is hereby amended and will be entitled "Cannabis Conditional Use Requirements" 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. Hours of Operation. Cannabis Class uses are permitted the following hours of operation:
  - 1 Monday thru Saturday: 9 am to 10 pm;
  - 2 Sunday: 11 am to 7 pm
- 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 shall be located on Industrial Way west of Route 35.
  - 2 Class 5 shall be located on Route 36 and on Route 35 south of the intersection with Route 36.; and is not to be located less than 1,000 feet from a school on the same side or opposite of the street.
  - 3 Class 6 Delivery Service shall not be a permitted in any location or zoning district within Eatontown.
- C. Permitted Classes of Licenses (as defined by the State of NJ). The following classes or combination of are permitted pursuant to the conditional use limitations enumerated above:
  - 1 Class 1 – Cannabis Cultivator
  - 2 Class 2 – Cannabis Manufacturer
  - 3 Class 3 – Cannabis Wholesaler
  - 4 Class 4 – Cannabis Distributor
  - 5 Class 5 – Cannabis Retailer
- D. Quantity. The maximum permitted number of Class 5 Cannabis Retail establishments within the Borough of Eatontown is three (3), 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 of each Class 1-Cannabis Cultivator facilities, Class 2-Cannabis Manufacturer facilities, Class 3-Cannabis Wholesaler facilities, and Class 4-Cannabis Distributor facilities.
- E. Cannabis Consumption Areas. Cannabis Consumption Areas are prohibited.

**SECTION 3.**

Article III, Chapter 200-7 entitled "Cannabis Licensing" is hereby created as follows:

**200-7 Cannabis Licensing and Taxation**

**200-7.1 License.**

- A. Laws applicable. All application for licenses, all licenses issued and all proceedings under this Chapter shall be in accordance with the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" ("the Act") (P.L. 2021, c.16), rules, regulations, and all other applicable laws of the state of New Jersey.
- B. Issuing authority. All licenses required by this chapter shall be issued by the Borough Clerk.
- C. License required. It shall be unlawful for any person, firm, or corporation to own or operate within the Borough of Eatontown any recreational cannabis businesses for the cultivation, manufacture, wholesale, and distribution of cannabis as well as its retail sale without first having obtained a properly issued license that is issued in accordance with the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c.16) and the provisions of this chapter.

- D. License fees. The annual license fees, type and maximum number of licenses for the cultivation, manufacture, wholesale, distribution retail sale and delivery of cannabis shall be as follows: The application fee for Class 1-5 Licenses shall be \$10,000 and \$2,500 per annum thereafter.
- E. The Borough shall develop an objective selection criteria for the issuance of Class 5 retail licenses should the number of license applications exceed the limit noted in 89-52 (D).

**200-8. On-site restrictions.**

On-site consumption of cannabis for all classes of cannabis facilities in any form or its transfer from its original packaging by patrons, employees or other persons in the building, premises, or in any automobile or other vehicle located on the premises is prohibited.

**200-9 Persons under legal age.**

- A. Presence. No person under the legal age of 21 shall be allowed in any building where cannabis is sold.
- B. Purchase of cannabis by a person under legal age. No person under the legal age of 21 shall purchase, attempt to purchase or have another purchase for that person any cannabis on any premises license for the sale of cannabis.
- C. Purchase of cannabis for a person under the legal age. No person shall purchase, attempt to purchase, or transfer cannabis to a person under the legal age of 21. It shall be unlawful for any person to induce or attempt to induce any licensee or any employee of a licensing to sell, serve or deliver cannabis to a person under the legal age of 21.

**200-10 Other Licensing Requirements.**

- A. On-site sales of alcohol or tobacco products are prohibited.
- B. On-site consumption of food, alcohol, tobacco, or cannabis products by patrons is prohibited.
- C. Security Requirements for Class 2, 3, and 4 and 5 cannabis establishments:
  - 1 All licensed facilities shall be equipped with security cameras covering all exterior parking and loading areas, all points of entry into the facilities, and interior spaces that are open to the public and that are used to store cannabis products.
    - [a] Security cameras shall be installed to monitor and record all areas of the premises, except in restrooms, and where persons may gain or attempt to gain access to cannabis products or cash maintained by the cannabis establishment. Cameras shall record operations of the business and all potential areas of ingress and egress to the facility with sufficient detail to identify facial features and clothing. Recordings from security cameras shall be maintained for a minimum of forty days in a secure offsite location or through a service over a network that provides on-demand access, commonly referred to as a "cloud." The offsite location shall be submitted to the Police Department and shall be updated within forty-eight hours of any change of such location.
  - 2 All licensed cannabis establishments shall provide the Police Department with access to recorded security footage immediately upon request by the Department.
  - 3 All licensed cannabis establishments shall have at least one privately licensed security guard stationed at each facility during operation. The expense of providing the privately licensed security guard shall be paid by the cannabis establishment.
  - 4 All licensed retail establishments shall provide a dimensioned floor plan, clearly labeled, showing: the layout of the structure and floor plan in which the retail operation is to be located; the principal uses of the floor area depicted on the floor plan including, but not limited to, public areas, processing and manufacturing areas, loading and unloading areas, storage areas and restricted areas where cannabis products will be located, storage areas and restricted areas where cannabis products will be located; all points of entry into the facility; and the locations of all security cameras that will be positioned within the facility.
  - 5 All licensed cannabis establishments shall provide a plan for exterior lighting for security purposes.
  - 6 All licensed cannabis establishments shall install and use a safe for storage of any cannabis products and cash on the premises when the business is closed. The safe shall be incorporated into the building structure or securely attached thereto as approved by the Eatontown Borough Police Department and Construction Official. For cannabis products that require refrigerated storage, the refrigerated container or freezer shall be locked in a manner authorized by the Eatontown Borough Police Department.

7 All licensed cannabis establishments shall install and use an alarm system that is monitored by a company that is staffed twenty-four hours a day, seven days a week. The name, location and contact information of the company monitoring the alarm shall be provided to the Eatontown Police Department and shall be updated within forty-eight hours of any change of monitoring company. If the alarm system includes a panic alarm, an operable dedicated phone for Eatontown Police Department to respond to the alarm shall remain on the premises at all times.

**200-11. Taxation.**

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 municipality in the manner prescribed by the Borough. Any delinquencies are treated the same as delinquent property taxes. The local tax does not apply to delivery services to consumers transfers for the purpose of bulk transportation.

**200-12. Revocation of license.**

A. Any license issued under this chapter may be suspended or revoked for a violation of any of the provisions of this chapter, or any provision of the applicable statute or any of the rules or regulations of the State of New Jersey.

B. The provisions of this Ordinance shall be enforced by the Police Department or the Code Enforcement Officer or her/his designee. In the event that the Borough Council finds upon a written complaint filed that there is such a serious infraction of the rules, regulations and ordinances of the Borough of Eatontown for the rules, regulations and laws of the State of New Jersey or that the operation of a premises licensed hereunder will constitute a serious menace to the health, safety, welfare and morals of the people of the Borough or the occupants of such licensed premises, the Borough Council shall have the right to hold a hearing where said operator and complainant will be given the right to provide testimony and be subject to cross-examination regarding said complaint. Upon the Council's finding of good cause, it may immediately suspend the license of such person, firm, partnership, corporation or entity licensed under this article. The hearing to continue the suspension or revocation of the license or take such other action as the Borough Council deems necessary in its lawful discretion shall proceed where applicable in the same manner as if the proceeding were for the issuance of a new license. Nothing contained herein shall prevent the Borough of Eatontown or the officers of the Borough from proceeding against the applicant in a court of competent jurisdiction.

C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this Chapter.

**200-12 Violations and penalties.**

Any licensee or any person who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, have his, her or its license subject to a fine of \$500.00 for the first offense and \$2,000.00 for any subsequent offense or by imprisonment for a term not exceeding 90 days or by a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law as well as such penalties as may otherwise be provided by law.

The remainder of all other sections and subsections of the aforementioned 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.**

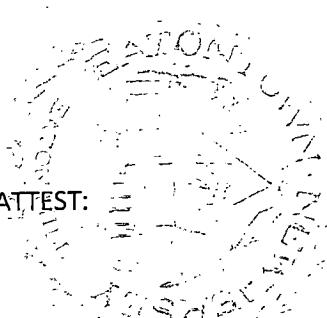
If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

**SECTION 6.**

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

DATE INTRODUCED: July 21, 2021  
PUBLIC HEARING: August 5, 2021

ATTEST:

  
Julie Martin  
Julie Martin, RMC, Municipal Clerk  
Date: 8-6-2021

APPROVED:

  
Anthony Talerico  
Anthony Talerico, Mayor  
Date:

**RESOLUTION 130 -2021**

**BOROUGH OF EATONTOWN  
COUNTY OF MONMOUTH**

**RESOLUTION SETTING FORTH THE REASONS FOR ADOPTING ORDINANCE 19-2021 NOTWITHSTANDING THE  
PLANNING BOARD'S REPORT OF INCONSISTENCY WITH THE MASTER PLAN**

**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 Marijuana 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 Marijuana 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 Marijuana 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 Marijuana 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 Marijuana 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**, 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**, the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) delegates to municipalities the power to zone and regulate development and that statute is amended from time to time by the State legislature; and

**WHEREAS**, the Borough Council of the Borough of Eatontown introduced Ordinance #19-2021 entitled "An Ordinance Amending Chapter 89 Section 4 Of The Borough Code Entitled "Definitions" And Creating Two New Sections Of The Borough Code, Chapter 89 Section 52 Entitled "Cannabis Zoning" And Article III, Chapter 200, Section 7 Entitled "Cannabis Licensing And Taxation" To Allow The Operation Of Certain Cannabis Licenses Within The Geographical Limits Of The Borough Of Eatontown" (the "Ordinance") which will allow the operation of cannabis facilities licensed by the State of New Jersey as Classes 1, 2, 3 and 4 in Industrial Way West of Route 35 and Class 5 on Route 36 and Route 35 south of the intersection with Route 36; and

**WHEREAS**, Ordinance #19-2021 was referred to the Borough of Eatontown Planning Board pursuant to N.J.S.A. 40:55D-26 which requires the Planning Board to make a report identifying any provision of the proposed development regulation which is inconsistent with the Master Plan and any other matter the Board deems appropriate; and

**WHEREAS**, the Planning Board considered Ordinance #19-2021 at its regularly scheduled meeting of August 2, 2021 and it reported to the Borough Council pursuant to N.J.S.A. 40:55D-62 (a) that the Ordinance is inconsistent with the Master Plan; the Board reasoned that the regulation of cannabis was previously considered by the Planning Board during its 2018 Master Plan review and the Board chose not to include cannabis related activities within any of the Borough's zoning districts at that time; and

**WHEREAS**, N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-62(a) authorizes a municipality to adopt or amend a zoning ordinance which is inconsistent with the Master Plan but in such case, the Council is required to adopt a resolution and place on the record the reasons for the adoption notwithstanding the inconsistency finding of the Planning Board; and

**WHEREAS**, the Borough Council believes it is in the best interest of the Borough to adopt the Ordinance and it is therefore adopting the within Resolution setting forth the rationale for the adoption in light of the inconsistency with the Master Plan finding of the Planning Board.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Eatontown, County of Monmouth, State of New Jersey, that it has adopted Ordinance #19-2021 notwithstanding the Master Plan inconsistency finding of the Eatontown Planning Board because (1) the Planning Board's last Master Plan review was approved in December 2018 at a time when only medical marijuana facilities were authorized by state law and the Legislature enacted into the Marijuana Act legalizing recreational cannabis over two years later on February 22, 2021; and (2) if the Borough Council does not enact any regulation concerning legalized marijuana by August 22, 2021, that shall mean for a period of five years thereafter through August 2026, the Borough Council will be unable to regulate legalized recreational cannabis pursuant to Section 31b of the Marijuana Act and 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 regardless of the Borough's Master Plan.

	MOTION	SECONDED	AYE	NAY	ABSTAIN	ABSENT	CERTIFICATION
Council President Gonzalez		X	X				I, Julie Martin, Borough Clerk of the Borough of Eatontown do hereby certify this to be a true and exact copy of a resolution adopted by the Governing Body of the Borough of Eatontown, County of Monmouth, State of New Jersey at a special meeting held on August 5, 2021
Councilmember Story			X				
Councilmember Olsavsky			X				
Councilmember Regan, Jr.				X			
Councilmember Escalante			X				
Councilmember Jones	X		X				
Mayor Talerico							Julie Martin, RMC, Borough Clerk