

**AN ORDINANCE OF THE BOROUGH OF LAKEHURST, COUNTY OF OCEAN,
STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE REVISED
GENERAL ORDINANCES OF THE BOROUGH, CHAPTER XXV ENTITLED
“LAND DEVELOPMENT”, SECTION 25-32 RESERVED; AND CHAPTER IV
ENTITLED “GENERAL LICENSING”, SECTION 4-5 RESERVED**

**An Ordinance to Permit and Govern Cannabis Operations Within the Borough of
Lakehurst**

2021-06

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal, and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety, and welfare of the municipality and its inhabitants; and

WHEREAS, Governor Murphy signed into law legislation legalizing and regulating cannabis use and possession for adults 21 years and older, [A-21](#) (P.L.2021, c.16); and Governor Murphy signed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, and decriminalizing marijuana and hashish possession, [A-1897](#) (P.L.2021, c.19). The Governor also signed [S-3454](#) (P.L.2021, c.25), clarifying marijuana and cannabis use and possession penalties for individuals younger than 21 years old; and

WHEREAS, New Jersey law enforcement officers made over 24,000 arrests for marijuana possession in 2012, more than in the previous 20 years, which equated to roughly three out of every five arrests; and

WHEREAS, the Legislature of the State of New Jersey recognizes the need to eliminate the illegal market for marijuana and provide relief to those who have been, or will continue to be adversely affected by arrests resulting from illegal marijuana sales, through a statewide legislative effort providing for decriminalization and record expungement; and

WHEREAS, the Legislature of the State of New Jersey also recognizes the need to utilize tax revenue from legalized marijuana business operations to support drug treatment and education efforts, and community reinvestment initiatives; and

WHEREAS, the Governing Body has determined that the State Legislature has adequately addressed, and will continue to adequately address, the majority of statewide public health, safety, and welfare concerns which may arise from the legal adult use of marijuana; and

WHEREAS, the Borough of Lakehurst has determined that State licensed businesses that legally cultivate, process, sell, and/or distribute marijuana under such State licenses require special attention in the form of an ordinance tailored toward the Borough of Lakehurst, to preserve the public health, safety, and welfare of the Borough and its inhabitants; and

WHEREAS, the new legislation expressly preserves local control over marijuana facilities and land uses, including the authority to control both medical and legal cannabis/marijuana-based businesses in their town; and

WHEREAS, municipalities have until August 21, 2021, to pass ordinances that either bans cannabis businesses, welcomes them, or sets limits for the type of businesses or number of dispensaries and those that do nothing will lock in a standard set of rules for five years; and

WHEREAS, if a municipality fails to adopt an ordinance prohibiting a particular class by August 21, 2021, a five-year lock in period will be triggered; and

WHEREAS, this Ordinance shall rely upon and be interpreted in accordance with the statutes, rules, and regulations enacted by the New Jersey Legislature and the various State Agencies, Authorities, and Departments governing the legal adult use of marijuana in the State of New Jersey; and

WHEREAS, the Borough of Lakehurst has a Master Plan which contains zoning classifications and districts as outlined in same; and

WHEREAS, medical marijuana and cannabis businesses, dispensaries, commercial operations, and delivery operations are not listed in the Zoning Code as either permitted or conditionally permitted land uses and are, therefore, prohibited under the Borough's permissive zoning provisions, as set forth in the Borough's Municipal Code.

NOW THEREFORE BE IT ORDAINED by the Lakehurst Borough council that the within sections permit certain uses and establish site standards as follows:

SECTION 1: The Land Development Ordinance of the Borough of Lakehurst, Chapter 25, section 25-32 entitled reserved is hereby created to permit and govern legal marijuana operations within the Borough of Lakehurst as follows:

25-32 MARIJUANA OPERATIONS

25-32.1 LAND USE & ZONING FOR MARIJUANA OPERATIONS

- a) All residential zones are barred from retail and growing facilities. Pre-existing non-conforming retail uses are explicitly barred from marijuana/cannabis retail use.
- b) Two marijuana and cannabis retail licenses shall be permitted in the Borough. One retail license shall be permitted in the B1 Zone, and one retail license shall be permitted in the B2 Zone. There shall not be two retail licenses in the same zone.
- c) In the light industrial zone, the Borough shall allow only one entity to hold a Class 1 cannabis cultivation license and/or a class 2 cannabis manufacturer license and/or a class 3 cannabis wholesaler license and/or or a class 4 cannabis distributor license if the licenses are owned by the same entity.
 1. A class 5 cannabis retail site shall not be permitted in the light industrial zone.
- d) Class 6 cannabis delivery licenses are not permitted in the Borough.
- e) Distance from schools and parks. All Cannabis operated facilities shall be located a minimum of two hundred (200) feet from schools having full time enrollment of 100 or more students, as measured from the nearest property boundary of such school use to the front door or primary access of the proposed licensed premises and any public parks.

Prior to issuing a retail marijuana business license, the Borough shall confirm the proposed licensed premises boundaries meet such requirements.

25-32.2 LIMITATION ON THE NUMBER OF LICENSES THAT MAY BE ISSUED WITHIN THE BOROUGH.

The “New Jersey Regulatory Enforcement Assistance and Marketplace Modernization Act” establishes six “marketplace” classes of licensed businesses: Namely,

- Class 1 Cannabis Cultivation License
- Class 2 Cannabis Manufacturer License
- Class 3 Cannabis Wholesaler License
- Class 4 Cannabis Distributor License
- Class 5 Cannabis Retailer License
- Class 6 Cannabis Delivery License

1. As stated above in Section 25-32, two marijuana and cannabis retail licenses shall be permitted in the Borough. One retail license shall be permitted in the B1 Zone, and one retail license shall be permitted in the B2 Zone. There shall not be two retail licenses in the same zone.
2. In the light industrial zone, the Borough shall allow only one entity to hold a Class 1 cannabis cultivation license and/or a class 2 cannabis manufacturer license and/or a class 3 cannabis wholesaler license and/or or a class 4 cannabis distributor license if the licenses are owned by the same entity.
3. Class 5 cannabis retail site shall not be permitted in the light industrial zone.
4. Class 6 Cannabis Delivery Licenses shall not be permitted. No marijuana business shall be in a movable or mobile vehicle or structure.
5. Storage of products. All products and accessories for a Class 5 license shall be at a minimum at or near the center of the store, completely indoors and onsite.

25-32.3 STATE LICENSED MARIJUANA MANUFACTURING, CULTIVATION, PROCESSING, DISTRIBUTION AND DISPENSARIES PERMITTED.

1. Any business duly licensed by the State of New Jersey to conduct legal use marijuana operations, as defined by State law, may operate within the zones referenced in Article II and Article III so long as: (i) the entity maintains its State and local (if applicable) license in good standing and the entity otherwise remains in full compliance with the laws and regulations established by the State of New Jersey and the applicable Agency, Authority, and/or Department governing the licensed activity, as may be amended.
2. No Business License to operate within the Borough shall be granted or renewed without such evidence as may be required by the Clerk’s Office to determine that the entity

maintains all valid State and/or Departmental licenses and approvals, and that all such licenses and/or approvals remain in good standing at the time of registration.

25-32.4 SITE STANDARDS

- a) There shall be no on-site sales of alcohol or tobacco products.
- b) There shall be no on-site sales of food, beverage, and other refreshments.
- c) The consumption of marijuana on any retail site, either indoor or outdoor is strictly prohibited. No consumption of any marijuana product shall be allowed or permitted on the licensed premises or adjacent grounds.
- d) Hours of public operation shall be limited to 10am to 9pm daily. No licensed marijuana business shall be open to the public between the hours outside of 10am to 9pm any day.
- e) For any of the Class 1-5 licenses, the facility or retail store shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odors generated inside the facility are not detectable by a person of reasonable sensitivity anywhere on adjacent property, within public rights of way, or within any other unit located within the same building as the licensed facility if the use only occupies a portion of a building.
- f) To the extent not already required by the entity's State license, all sites must be equipped with security cameras requiring identification quality imaging, which covers all areas, including, but not limited to, all exterior parking and loading areas, points of entry, and interior spaces which are either open to the public or used for the storage or processing of marijuana products. Footage must be maintained for the duration required under State law.
- g) All licensed cannabis facilities must provide the Lakehurst Borough Police Department with access to security footage immediately upon request by the Department.
- h) To the extent not already required by the entity's State license, all licensed facilities must provide at least one security guard who is certified by the police training commission, or more if required by the State, during all times the facility is open to the public.

SECTION 2: The Revised General Ordinance of the Borough of Lakehurst, Chapter 4, section 4-5 entitled reserved is hereby created within the Borough of Lakehurst as follows:

4-5 LICENSED MARIJUANA OPERATIONS

4-5.1 LICENSING & FEES.

- a) To be granted a business license for the operation of any State Licensed Marijuana facility within the Borough, the following conditions must be satisfied:

1. Completion of all forms, checklists, and other submissions as may be required by the Clerk's Office;
 2. Payment of all applicable local fees, including inspection and licensing fees;
 3. Demonstration that all applicable State licenses have been obtained;
 4. Passage of all applicable State and local inspections required to be completed prior to the beginning of operations and/or renewal of any State and/or local license;
 5. Emergency contact information to be utilized by police, fire, and EMT personnel in the event of an on-site emergency; and,
 6. Submission of a full copy of the Application for State Licensure, via hard copy or digitally, with pages prominently marked "CONFIDENTIAL" as appropriate for purposes of compliance with New Jersey's Open Public Records Act (NOTE: pages not marked as confidential will be disclosed in response to an applicable OPRA request).
- b) Application and License Fees: Application and license fees (which are in addition to any state license fees), whether or not shared with the Borough and in addition to any applicable fees required under the Borough Land Use Code and Building Code for marijuana businesses shall be as follows:
1. New license application fees:
 - i. First submittal: \$1,000.00.
 2. Fingerprint-based criminal background check fee, per person checked: actual cost.
 3. Renewal application fee: \$500.00.
 4. Late renewal fee: \$750.00.
 5. Change of business manager: \$150.00 (plus actual fingerprint-based background check fees).
 6. Transfer of location: \$1,000.00.
 7. Modification of premises or other activities for which a fee is permitted, but for which a fixed amount is not set in this Article: \$250.00.
 8. Change of corporate structure or change of a Controlling Beneficial Owner: \$150.00 per person (plus actual fingerprint-based background check fees).
 9. Other change in financial interests: \$100.00 minimum, or actual cost if more than \$100.00.
- c) The primary purpose of the fees established in this Section is to defray the costs of the particular municipal services provided and not to defray the costs of general services provided by the Borough or to raise general revenues. The fees provided in this Section are reasonably related and proportional to the costs of the services provided and do not generate additional net revenue.
- d) Fees described in this section are non-refundable even if a license or application is denied, approved but not issued, lapsed, abandoned, or withdrawn.

4-5.2 VIOLATIONS; PENALTY

- a) Any person, other than a licensee of a retail marijuana business, who violates any

provision of this Article shall be deemed guilty of a municipal offense and may be punished by a fine not to exceed one thousand dollars (\$1,000.00), imprisonment for a period not to exceed ninety (90) days, or by both such fine and imprisonment.

- b) Any licensee of a retail marijuana business who violates any provisions of this Article shall be subject to civil penalties of up to one thousand dollars (\$1,000.00) for each day during which such violation occurs or continues. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. Following notice and hearing, the Local Licensing Authority may impose such civil penalties.

4-5.3 GROSS RECEIPTS, TAXES

- a) Pursuant to the authority granted by the State of New Jersey, the Borough is levying a Two Percent (2%) tax per sales transaction on all cannabis related sales from marijuana-based businesses.
- b) Every marijuana-based business shall remit such tax on or before the tenth day of each month on account of marijuana and/or cannabis-based transactions in the preceding month to the Borough Clerk.
- c) The burden of proving that any transaction is exempt from the tax shall be upon the seller. It shall be the duty of every seller to maintain, keep and preserve suitable records of all sales made by the seller and such other books or accounts as may be required by the Borough Clerk to determine the amount of the tax of which the Seller is liable under this Article. It shall be the duty of every such seller to keep and preserve for a period of five (5) years all such books, invoices, and other records and the same shall be open for examination by the Borough Clerk or designee.

Severability.

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Effective date.

This Ordinance shall take effect immediately upon final passage and publication as required by law.

Hon. Harry Robbins
Mayor

NOTICE

NOTICE IS HEREBY GIVEN that an ordinance #2021-06 entitled: “AN ORDINANCE OF THE BOROUGH OF LAKEHURST, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE REVISED GENERAL ORDINANCES OF THE BOROUGH, CHAPTER XXV ENTITLED “LAND DEVELOPMENT”, SECTION 25-32 RESERVED; AND CHAPTER IV ENTITLED “GENERAL LICENSING”, SECTION 4-5 RESERVED” was finally adopted after a public hearing and Council approval at a meeting of the governing body held on the nineteenth day of August, 2021.

Maryanne Capasso, RMC
Municipal Clerk