

TOWN OF HARRISON

COUNTY OF HUDSON

ORDINANCE NO. 1445

AN ORDINANCE OF THE TOWN OF HARRISON, COUNTY OF HUDSON, STATE OF NEW JERSEY AMENDING TITLES 3, 9, AND 17 OF THE TOWN OF HARRISON MUNICIPAL CODE OF ORDINANCES AND THE WATERFRONT REDEVELOPMENT AREA REDEVELOPMENT PLAN TO IMPLEMENT PROVISIONS OF THE NEW JERSEY CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE, AND MARKETPLACE MODERNIZATION ACT

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, the passage of the public question was the largest margin of any statewide cannabis legalization ballot measure to date in U.S. history with more than 67% of voters supporting the initiative; and

WHEREAS, on February 22, 2021, Governor Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, the Act establishes six marketplace classes of licensed businesses, including: Class 1 Cannabis Cultivator license; Class 2 Cannabis Manufacturer license; Class 3 Cannabis Wholesaler license; Class 4 Cannabis Distributer license; Class 5 Cannabis Retailer license; and Class 6 Cannabis Delivery license; 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 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 stipulates that any municipal regulation of any of the above classes must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, conversely, if a municipality fails to adopt regulations, the above six classes of activities will be permitted in industrial and commercial areas of the Town without the benefit of municipal regulations governing their locations and/or any other restrictions the municipality may seek to impose; and

WHEREAS, section 40 of the Act authorizes municipalities by ordinance to adopt regulations which establish limited taxation of the above classes of activity within the municipality; and

WHEREAS, specifically, a municipality may adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality and at the discretion of the municipality, the tax may be imposed on: receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof; and

WHEREAS, the Mayor and Council determine that it is appropriate to implement these measures as permitted by law; and

WHEREAS, the Mayor and Council, upon adoption of state regulations, desire for a cannabis business application procedure to be implemented to ensure fairness and transparency; and

WHEREAS, the Town Planning Board adopted Master Plan Reexamination Reports in 2017 and in 2020 in which both reports reinforce the need to provide a supply of parking that meets the needs of the Town’s commercial areas; and

WHEREAS, the Town governing body, officials and professionals have gained the benefit of knowledge and experience from neighboring communities regarding the need for off-street parking for this specific type of business and have determined that reasonable, similar regulations are required in Harrison to ensure that these business uses do not negatively impact other commercial and residential businesses in the community; and

WHEREAS, in addition to the Land Development Code, via Ordinance No. 1286, the Town has adopted a Redevelopment Plan for the Waterfront Redevelopment Area prepared by Heyer, Gruel & Associates in 2012 and has amended the same from time to time to meet changing conditions and needs; and

WHEREAS, implementation of provision of this Ordinance required further amendment to the Waterfront Redevelopment Area Redevelopment Plan; and

WHEREAS, the purpose of this ordinance is to: (a) allow a limited number of cannabis licenses for cannabis cultivation, manufacturing, wholesale, distribution and delivery in the industrial zone and the licensing of ~~a-cannabis retailer~~retailers in the Waterfront Redevelopment Area ~~and Neighborhood Commercial (NC) Zone~~; (b) to establish standards for such businesses; (c) to establish application and registration fees so that the Town may adequately regulate such businesses; and (d) to establish a specific tax for such business ventures as permitted by law.

NOW, THEREFORE, BE IT ORDAINED AND ADOPTED, BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF HARRISION AS FOLLOWS:

THAT: Title 9, entitled "Public Peace and Welfare" is amended and supplemented to add a new Chapter 9.5 entitled "Cannabis Licensing," as follows.

9.50. Cannabis

9.50.010 Cannabis Cultivators (Class 1), Manufacturers (Class 2), Wholesalers (Class 3), Distributors (Class 4), Retailers (Class 5) and Delivery Services (Class 6) shall only be permitted uses in the Town as set forth in Title 17 of Municipal Code of Ordinances and the Waterfront Redevelopment Area Redevelopment Plan. A maximum of one of each of the ~~six~~-classes of licenses shall be permitted in the Town ~~except for Retailers (Class 5), for which there can be a maximum of two~~. The Town will utilize the State licensing process to determine if an applicant maintains the proper licensing and is not establishing its own standards for licensing at this time, but is reserving all rights in this regard.

9.50.020. These limitations are exclusive of Medical Dispensaries and Alternative Treatment Centers which are separately licensed by the State.

9.50.030. In the event more than one land use application for a cannabis establishment of the same classification are submitted to the Town in close proximity to one another, and if the applications comply with all the requirements of this chapter and the Act, the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection. The Town shall first review for approval the application that was first submitted and determined to be a complete and compliant application by the appropriate Town official(s).

9.50.040. Fees. The application fees for cannabis businesses shall be \$10,000 due at the time of submission of the application or prior to any request for a consent letter to the State of New Jersey, whichever may occur sooner. The annual registration fees for cannabis businesses shall be \$2,500. These fees shall be nonrefundable.

9.50.050. Violations and Penalties. Violation of any provision of this article shall, upon conviction thereof, be punished by a minimum fine of \$100 or a maximum of \$2,000 and/or by imprisonment for a term not exceeding 90 days and/or by a period of community service not exceeding 90 days. Each and every violation shall be considered a separate violation. Each day that a violation continues shall be a separate violation.

THAT: The following definitions shall be added to section 17-6 ("Definitions") and the Waterfront Redevelopment Area Redevelopment Plan "Definitions" sections:

CANNABIS - 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, 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 BUSINESS - Any person or entity that holds any of the six Classes of licenses established under P.L. 2021, c. 16, the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

CANNABIS CULTIVATOR - Any licensed person or entity that grows, cultivates, or produces cannabis, 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.

CANNABIS DELIVERY SERVICE - 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.

CANNABIS DISTRIBUTOR - 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.

CANNABIS ESTABLISHMENT - A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

CANNABIS MANUFACTURER - 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.

CANNABIS PRODUCT - 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.

CANNABIS RETAILER - 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.

CANNABIS TESTING FACILITY - 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 - 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.

THAT: Zoning Schedule II-B “Use Regulations – Commercial Districts” is amended and supplemented to add the following conditional use:

Zoning Schedule II-B	
Use Regulations – Commercial Districts	
Town of Harrison, Hudson County, New Jersey	
Uses	NC
Cannabis Retailer	C

THAT: Zoning Schedule II-C “Use Regulations – Industrial District” is amended and supplemented to add the following conditional uses:

Zoning Schedule II-C	
Use Regulations – Industrial District	
Town of Harrison, Hudson County, New Jersey	
Uses	I
Cannabis Cultivator	C
Cannabis Manufacturer	C
Cannabis Distributor	C
Cannabis Wholesaler	C
Cannabis Delivery Service	C

THAT: The Code of the Town of Harrison Section 17-82.10 “Conditional Uses” is amended and supplemented to add a new conditional use entitled “Cannabis Standards” to read as follows:

6. Cannabis Cultivator, Manufacturer, Distributor, Wholesaler, Retailer, and Delivery Service shall be conditional uses ~~in the Industrial Zone~~ pursuant to Zoning Schedules II-B and II-C, subject to the following conditions-:

- (a) Such facility shall meet all of the requirements for licensure, and hold the appropriate license issued by the Cannabis Regulatory Commission, Department of Treasury, State of New Jersey.
- (b) Minimum bulk standards shall be subject to the Industrial Zone standards found in Schedule I of the Land Use Development Ordinance.
- (c) Off-street parking and loading standards shall be subject to Section 17-91 and Schedule V-1 of the Land Use Development Ordinance. Cannabis businesses shall not be permitted to request an exemption from off-street parking requirements pursuant to Section 17-91.1(B)(6)(v).
- (d) Signage shall be subject to Section 17-93 of the Land Use Development Ordinance
- (e) No facility may permit on-site consumption of cannabis or cannabis products.
- (f) No outside storage of any cannabis products or related materials shall be permitted.
- (g) A security plan shall be submitted to the Harrison Police Department which shall demonstrate how the facility will maintain effective security and control of operations. The security plan shall identify the type and manner of 24-hour security, tracking and record-keeping of products and materials, surveillance systems to be utilized, and whether any armed security will be on the premises. The security footage shall be stored for a minimum of 30 days.
- (h) An odor mitigation/management plan shall be submitted as a component of all applications that details the proposed ventilation and filtration/treatment systems. Such treatment systems shall have sufficient odor absorbing filtration systems utilizing carbon filters or similar, and ventilation and exhaust systems to eliminate cannabis odors coming from the interior of the premises, such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the subject property line. The ventilation system and its maintenance, including the schedule indicating how frequently filters will be replaced, must be approved by the Town of Harrison Health Department. All cannabis establishments shall be enclosed in heated/air-conditioned buildings.
- (i) A Vicinity Map shall be submitted as a component of all applications, showing at least one thousand (1,000) feet of surrounding area and the distances to any schools or community centers/facilities. Distance shall be measured from the nearest point of the property line of the site that contains the cannabis business to the nearest point of the property line of the enumerated use using a direct straight-line measurement.
- (j) Hours of Operation for Cannabis Retailer:
 - [1] The hours of operation for retail establishments shall be limited to 10:00 AM to 10:00 PM.

THAT: The Waterfront Redevelopment Area Redevelopment Plan is amended and supplemented to add the following use and standards in Mixed Use, Mixed Use NOG, Mixed Use NOG Non-

residential, Mixed Use NOG Entertainment/Retail and R.R. Avenue Commercial Center as a Ground Floor Land Use option:

Cannabis Retailer, subject to the following standards:

- (a) Such facility shall meet all requirements for licensure, and hold the appropriate license issued by the Cannabis Regulatory Commission, Department of Treasury, State of New Jersey.
- (b) Lot, area, and bulk requirements:
 - [1] Meet the requirements for the Land Use District.
- (c) Hours of Operation:
 - [1] The hours of operation for retail establishments shall be limited to 10:00 AM to 10:00 PM.
- (d) Parking shall be subject to the retail parking standards of each Land Use District.
- (e) Signage shall be subject to all signage requirements of the Redevelopment Plan.
- (f) No facility may permit on-site consumption of cannabis or cannabis products.
- (g) No outside storage of any cannabis, cannabis products or related materials shall be permitted;
- (h) A security plan shall be submitted to the Harrison Police Department which shall demonstrate how the facility will maintain effective security and control of operations. The security plan shall identify the type and manner of 24-hour security, tracking and record-keeping of products and materials, surveillance systems to be utilized, and whether any armed security will be on the premises;
- (i) An odor mitigation/management plan shall be submitted as a component of all applications that details the proposed ventilation and filtration/treatment systems. Such treatment systems shall have sufficient odor absorbing filtration systems utilizing carbon filters or similar, and ventilation and exhaust systems to eliminate cannabis odors coming from the interior of the premises, such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the subject property line. The ventilation system and its maintenance, including the schedule indicating how frequently filters will be replaced, must be approved by the Town of Harrison Health Department. All cannabis establishments shall be enclosed in heated/air-conditioned buildings.
- (j) A Vicinity Map shall be submitted as a component of all applications, showing at least one thousand (1,000) feet of surrounding area and the distances to any schools or community centers/facilities. Distance shall be measured from the nearest point of the property line of the site that contains the cannabis business to the nearest point of the property line of the enumerated use using a direct straight-line measurement.

THAT: The Title 3 of the Code of the Town of Harrison entitled Revenue and Finance is amended and supplemented to add a new Section 3.26 entitled "Cannabis Tax" to read as follows:

3.26 Cannabis Tax

3.26.10 Purpose.

It is the purpose of this article to implement the provisions of P.L. 2021, c. 16, which authorizes the governing body of a municipality to adopt an ordinance imposing a tax at a uniform percentage rate not to exceed two percent (2%) of the receipts from each sale by a cannabis cultivator; two percent (2%) of the receipts from each sale by a cannabis manufacturer; one percent (1%) of the receipts from each sale by a cannabis wholesaler; and two percent (2%) of the receipts from each sale by a cannabis retailer, which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the cannabis establishment.

3.26.20. Unless otherwise defined herein, as used herein, the Town adopts by reference the terms and definitions established by Section 40 of Public Law 2021-16 (N.J.S.A. 24:6I-33).

3.26.30. Tax Established.

A. There is hereby established a local cannabis transfer tax in the Town of Harrison which shall be fixed at a uniform percentage rate of two percent (2%) of the receipts from each sale by a cannabis cultivator; two percent (2%) of the receipts from each sale by a cannabis manufacturer; one percent (1%) of the receipts from each sale by a cannabis wholesaler; and two percent (2%) of the receipts from each sale by a cannabis retailer for every occupancy of a cannabis establishment in the Town of Harrison.

B. In addition to the tax established in paragraph A of this section, a user tax, at the equivalent transfer tax rates, is hereby established on any concurrent license holder, as permitted by section 33 of P.L.2021, c.16 (C.24:6I-46), operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to paragraph A of this subsection, from the license holder's establishment that is located in Harrison to any of the other license holder's establishments, whether located in this Town or another municipality.

C. Any transaction for which the transfer tax or user tax is imposed, or could be imposed, pursuant to this section, other than those which generate receipts from the retail sales by cannabis retailers, shall be exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

3.26.40 Tax in addition to other taxes or fees.

The cannabis transfer tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon property or cannabis establishment.

3.26.50 Collection.

A. The transfer tax or user tax imposed by this article shall be collected or paid, and remitted to Town of Harrison by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item, or from the consumer at the point of sale, on behalf of the Town by the cannabis retailer selling the cannabis item to that consumer. The transfer tax or user tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable, or equivalent value of the transfer, for the cannabis or cannabis item.

B. Every cannabis establishment required to collect a transfer tax or user tax imposed by ordinance pursuant to this section shall be personally liable for the transfer tax or user tax imposed, collected, or required to be collected under this section. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment or the consumer as if the transfer tax or user tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax was a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the Chief Financial Officer of Harrison shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

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

D. All revenues collected from a transfer tax or user tax imposed by ordinance pursuant to this section shall be remitted to the Harrison Chief Financial Officer on a quarterly basis payable for the prior three month's activities and due at the same time as quarterly dates for the collection of property taxes. The revenues due on February 1 of each year shall include all transfer taxes or user taxes collected for the prior year months of October, November and December. The revenues due on May 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of January, February and March. The revenues due on August 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of April, May and June. The revenues due on November 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of July, August and September.

3.26.60 Payment; vendor violations and penalties.

A. The Chief Financial Officer shall collect and administer any transfer tax or user tax imposed to this section.

B. The municipality shall enforce the payment of delinquent taxes or transfer fees imposed pursuant to this section in the same manner as provided for municipal real property taxes.

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

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

BE IT FURTHER ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF HARRISON:

THAT: All prior Ordinances, which are inconsistent with the provision of this Ordinance, as well as any prior versions of the Waterfront Redevelopment Area Redevelopment Plan are hereby repealed to the extent of such inconsistency.

THAT: This Ordinance shall become effective immediately upon final passage and publication as required by law.

/s/ Ellen Mendoza

Councilwoman Ellen Mendoza

Introduced: 07-20-2021

I, Paul J. Zarbetski, Town Clerk of the Town of Harrison, County of Hudson, State of New Jersey, hereby certify that at a Meeting of the Mayor and Council held on July 20, 2021 the foregoing Ordinance passed on first reading.

Paul J. Zarbetski, Town Clerk

Town Council	Moved	Seconded	Yes	No	Abstain	Absent
L. BENNETT			X			
M. CAMANO		X	X			
M. DOLAGHAN			X			
J. DORAN	X		X			
J. HUARANGA			X			
E. MENDOZA			X			
F. NASCIMENTO			X			
E. VILLALTA			X			
J. FIFE			X			

Adopted: 08-03-2021

Approved:

James A. Fife

James A. Fife

I, Paul J. Zarbetski, Town Clerk of the Town of Harrison, County of Hudson, State of New Jersey, hereby certify that at a Meeting of the Mayor and Council duly held on August 3, 2021 the foregoing Ordinance, previously published according to law, was adopted on second reading, approved by the Mayor, spread in full in the ordinance book, and published according to law.

Paul J. Zarbetski, Town Clerk

Town Council	Moved	Seconded	Yes	No	Abstain	Absent
L. BENNETT			X			
M. CAMANO		X	X			
M. DOLAGHAN			X			
J. DORAN	X		X			
J. HUARANGA			X			
E. MENDOZA			X			
F. NASCIMENTO			X			
E. VILLALTA					X	
J. FIFE			X			