

**BOROUGH OF EAST RUTHERFORD
ORDINANCE NO. 2024-06**

**AN ORDINANCE REPEALING ORDINANCE NO. 2023-24, AND TO
CONDITIONALLY PERMIT CERTAIN CLASSES OF CANNABIS BUSINESSES TO
LOCATE WITHIN SPECIFIED GEOGRAPHICAL BOUNDARIES OF THE BOROUGH
OF EAST RUTHERFORD IN BERGEN COUNTY, NEW JERSEY, ADDING
LICENSING REQUIREMENTS TO CHAPTER 181, ARTICLE III, ENTITLED
“CANNABIS LICENSING”, AMENDING CHAPTER 263 TAXATION, ARTICLE II
CANNABIS TRANSFER AND USER TAX, SPECIFICALLY §263-6a(3) AND CHAPTER
389 ZONING, ARTICLE IV, ENTITLED USE REGULATIONS, SPECIFICALLY §389-
20.1 CANNABIS**

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, the Hon. Philip 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, Section 31(a) 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, the Borough Council of the Borough of East Rutherford (the “Borough”), in the County of Bergen and State of New Jersey, have further studied the issues at hand, including the receipt of input from the Planning Board, and have at this time found it necessary and appropriate, and in the best interests of the health, safety and welfare of the Borough’s residents and members of the public who visit, travel, and/or conduct business in the Borough, to permit additional certain classes of cannabis-related businesses and cannabis consumption areas, land use and development within the geographic boundaries of the Borough, pursuant to the terms and conditions set forth herein, and to amend the Borough’s Ordinances accordingly.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of East Rutherford, in the County of Bergen, and State of New Jersey, as follows:

Section 1. Chapter 181. Licenses, Article III. Cannabis Licensing is deleted in its entirety and replaced with the following:

Article III. Cannabis Licensing.

§ 181-19. Definitions.

As used in this article, the following terms shall have the meanings as defined in the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” also referenced herein as the “Act” or “P.L. 2021, c. 16,” as it may be amended or superseded, and are included herein for purposes of general acknowledgement and ease of use:

ADULT USE CANNABINOIDS" means:

1. Any tetrahydrocannabinols, artificially-derived cannabinoid, or hemp product or that is not subject to regulation pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, New Jersey Compassionate Use Medical Marijuana Act, and/or Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, or otherwise regulated by State law, and that is reasonably determined to have an intoxicating effect when ingested, smoked, or otherwise consumed;
2. Tetrahydrocannabinolic acids that are artificially or naturally derived;
3. Delta-8 THC;
4. optical isomers of delta-8-tetrahydrocannabinol or delta-9-tetrahydrocannabinol;

"ADULT USE CANNABINOID ITEMS" means any products containing 0.5 milligrams or more of any combination of THC or adult use cannabinoids as defined herein, including delta-8 THC or delta-8-tetrahydrocannabinol, delta-10 THC, Tetrahydrocannabivarin ("THC-V"), THC-O-Acetate ("THC-O"), hexahydrocannabinol ("HHC"), or any other cannabinoids advertised by the manufacturer or seller as having an intoxicating effect.

CANNABIS — All parts of the plant *Cannabis sativa* L., including indica and any and all hybrids, 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 CREAMMA for use in cannabis products as set forth in that 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 Honig Act and N.J.S.A. 18A:40-12.22, et al; marijuana as defined in N.J.S.A. 2C:35-2 and applied to any offense set forth in chapters 35, 35A and 36 of Title 2C of the New Jersey Statutes, N.J.S.A. 2C:35B-1 et seq., or marijuana as defined in N.J.S.A. 24:21-2 and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act" N.J.S.A. 24:2-1, et al; or hemp or a hemp product cultivated, handled, processed, transported or sold pursuant to the "New Jersey Hemp Farming Act" N.J.S.A. 4:28-6, et al.

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 — Any person or entity holding a Class 1 cannabis cultivator license issued by the State of New Jersey that grows, cultivates, or produces cannabis in the State of New Jersey, 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 — The transportation of cannabis items and related supplies to a consumer. "Cannabis 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.

CANNABIS DELIVERY SERVICE — Any person or entity holding a Class 6 cannabis delivery license issued by the State of New Jersey 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 — Any person or entity holding a Class 4 cannabis distributor license issued by the State of New Jersey that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports 40 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 — Permitted classes of licenses.

CANNABIS ITEM — Any usable cannabis, cannabis product, cannabis extract, and any other cannabis resin. "Cannabis item" does not include: any form of medical cannabis dispensed to registered qualifying patients pursuant to the Honig Act and N.J.S.A. 18A:40-12.22, et al., or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act" N.J.S.A. 4:28-6, et al.

CANNABIS MANUFACTURER — Any person or entity holding a Class 2 cannabis manufacturer license issued by the State of New Jersey, 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 — Any person or entity holding a Class 5 cannabis license issued by the State of New Jersey 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 WHOLESALER — Any person or entity holding a Class 3 cannabis wholesaler license issued by the State of New Jersey 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 or CRC — The New Jersey Cannabis Regulatory Commission established pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA).

MICROBUSINESS — Shall have the same meaning as defined in N.J.S.A. 24:6I-33 and operated in accordance with N.J.A.C. 17:30-6.7. Per statute, it means a person or entity licensed by the State 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: employ no more than 10 employees; 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 about that plane not higher than 24 feet; 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; acquire each month, in the case of a cannabis manufacturer, no more than 1,000 pounds of usable cannabis; 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 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. Cannabis microbusinesses are not permitted in the Township.

PUBLIC PLACE or QUASI-PUBLIC PLACE — Any place to which the public has

access that is not privately owned; or any place to which the public has access where alcohol consumption is not allowed, including but not limited to, a public street, road, thoroughfare, school, sidewalk, bridge, alley, plaza, park, playground, swimming pool, shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

RESOLUTION OF SUPPORT - Proof of local municipal support, which shall be demonstrated by a resolution adopted by the municipality's governing body.

All other terms as defined in the Act are hereby incorporated herein by reference and shall have the meanings set forth in the Act, as may be amended or superseded.

In addition, the following term shall have the meaning indicated:

GIFTING - Shall mean the sale of any object containing cannabis or a cannabis product wherein the cannabis itself is assigned no or a below market price sales price.

§ 181-20. The sale of adult use cannabinoid items to minors is prohibited.

A. It shall be unlawful and a violation of this article to sell, or offer for sale, or distribute any adult use cannabinoid item to an individual under the age of 21 years.

B. Any person who sells any adult use cannabinoid items and who has reasonable cause to believe that a person who attempts to purchase the product is under 21 years of age shall require that the purchaser present identification that indicates his or her age.

C. A person may only sell adult use cannabinoid items products in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays, vending machines, and delivery of adult use cannabinoid items are prohibited.

D. In addition to the authority and powers conferred herein, the health officer is authorized to suspend or revoke any license issued to a license holder in violation of any of the provisions of this section. No suspension or revocation shall take place prior to the license holder having an opportunity to be heard upon at least ten days' notice.

§ 181-21. Licensed Use Applicability.

The use of any cannabis license shall only be in strict accordance with the land use and location requirements of the Borough of East Rutherford Municipal Code. Consequently, the Borough of East Rutherford may or may not establish locations for the use and operation of the six types of cannabis business licenses and operations as set forth in the Act. Should the Borough of East Rutherford establish more than one type of cannabis license, nothing herein shall prohibit a single owner from owning more than one such license, provided such ownership is not prohibited by State statute or rule.

§ 181-22. Local Licensing Authority, License Maximum and Regulations.

- A. The Borough Council is hereby designated to act as the local licensing authority for the Borough of East Rutherford for all cannabis businesses within the Borough. The Mayor’s designee with advice and consent from the Borough Council shall function as the receiver of any communications from the State Cannabis Regulatory Commission and shall promptly convey any item of information with regard to the licensing of cannabis businesses by the State or in which State law requires any review or approval by the Borough of any action to the Borough Council.

- B. Under no circumstances shall a local license for a cannabis business issued by the Borough Council be effective until or unless the State has issued the requisite licenses to operate such a facility. It is the intent of this article that no cannabis business may lawfully operate in the Borough of East Rutherford without the issuance of a State license and full regulatory oversight of the cannabis business by the Cannabis Regulatory Commission or other state licensing authority as required by law as well as the appropriate land use approvals, oversight and issuance of a license by the Borough.

- C. Municipal licensing for cannabis businesses shall follow the nomenclature of the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” as indicated in the definitions in this article.

- D. Maximum number of licenses and fees. Subject to the land use and location requirements of the Borough of East Rutherford Municipal Code, the Borough may issue up to and including the following number of licenses which shall require the associated license application and annual renewal fee:

BOROUGH OF EAST RUTHERFORD CANNABIS LICENSE AND FEE SCHEDULE

License	Class	Maximum Number of Licenses to be Issued	Nonrefundable Application Fee	Annual License Renewal
Cannabis Cultivator	1	5	\$10,000.00	\$25,000.00
Cannabis Manufacturer	2	5	\$10,000.00	\$25,000.00
Cannabis Wholesaler	3	5	\$10,000.00	\$25,000.00
Cannabis Distributor	4	5	\$10,000.00	\$25,000.00

Cannabis Retailer	5	5	\$10,000.00	\$25,000.00
Cannabis Delivery	6	0	\$10,000.00	\$25,000.00
Cannabis Consumption Area/Lounge	n/a	1	\$20,000.00	\$30,000.00

Notwithstanding the foregoing, only 1 retail, 1 manufacturing, 1 cultivation and 1 consumption area license shall be issued for the American Dream Complex. The amount of the non-refundable application fee, annual renewal fee and number of licenses may be modified from time to time by a subsequent duly adopted resolution of the Borough Council.

E. A resolution of support issued by the Borough Council pursuant to N.J.A.C. 17:30-5.1(g)1 to a cannabis business shall expire within Twelve (12) months unless the business has secured at least one of the annual State issued cannabis licenses for operation of a Class 1 through 6 business within the Borough of East Rutherford. The Borough Council may extend the resolution of support at its discretion for an additional period of six (6) months for good cause, including but not limited to delays in the processing of approvals required from State, county or other local agencies. There shall be a fee of \$2,500 for each extension request.

F. Additional licensing regulations.

(1) Hours of operation.

(a) No cannabis retail Class 5 dispensary may open to customers for business before 8:00 a.m. or remain open to customers for business after 12:00 a.m. This time restriction does not apply to Class 1-4 cannabis establishments, which shall be subject to all other applicable Municipal Ordinances.

(b) Such hours shall be construed to mean Eastern Standard Time or Eastern Daylight Savings Time; whichever time shall be in effect within the Borough of East Rutherford.

(2) Prohibited consumption. The consumption of cannabis items through smoking, vaping, aerosolizing or other means (e.g., edibles) is prohibited within or on the grounds of any licensed cannabis establishment within the Borough of East Rutherford unless a Class 5 Cannabis Retailer has obtained a Consumption Area endorsement/license from the State, a consumption license from the Borough of East Rutherford and approval from the East Rutherford Planning Board or the New Jersey Sports and Exposition Authority's (NJSEA) Land Use Management (LUM) Division as applicable.

(3) Security. All structures shall be designed, using safety and security barriers, to prevent the unlawful and unauthorized entry into the structures as prescribed by State law.

(a) There shall be controlled access to the site, with 24/7 on-site video monitoring of the exterior and interior of the facility. Video records shall be retained and stored for the period prescribed by State law, but in no case shall such video be retained and stored

for less than 30 days.

- (b) Any site plans, construction plan, reports and similar documents depicting or describing access and security details information concerning the facility shall be deemed and protected as confidential security documents and exempt from disclosure as public records.
- (4) Emergency power. All licensed cannabis establishments services shall have a backup generator, capable of maintaining, at a minimum, all electronic security systems and odor control systems in the event of a power failure for a period of at least forty-eight (48) hours.
- (5) Enclosed building. Except for an establishment located in the American Dream Complex, all cannabis establishments, as may be permitted within the Borough, shall take place within an enclosed building. Any facility that is not the sole occupant of its building shall have no internal doorways, windows, or utility chases in common with other spaces in the building and shall have a separate HVAC system (which incorporates odor control) solely for the cannabis business.
- (6) Pollen and seed control. Any cannabis cultivation business shall implement measures to prevent cross-pollination and to prevent cannabis pollen and seeds from leaving the premises, which may include, but not limited to, use of pollen screens, ultraviolet light and other methods to ensure that employees, customers, vendors and other persons on site do not leave the premises while carrying any cannabis pollen or seeds knowingly or unknowingly.
- (7) Fencing. All fencing or walls installed for security purposes shall be at least six (6) feet in height. Such security structure may be extended in height as approved on a site plan by the Planning Board.
- (8) Site management. Any cannabis business shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations. No cannabis business shall dispose of cannabis or cannabis products unless they have been made unusable and unrecognizable.
- (9) Noise. All cannabis business facilities shall operate in compliance with state, county, and local noise laws and regulations, except in emergency situations requiring the use of a backup generator.
- (10) Odor. All cannabis business facilities shall utilize available technology to filter and recirculate air, so that odors are not discernable by a reasonable person beyond the property line. Such determination shall be supported by such exhibits, submissions and expert testimony in a development application before the East Rutherford Planning Board or the New Jersey Sports and Exposition Authority's (NJSEA) Land Use Management (LUM) Division for site plan approval to which the approving authority may attach reasonable conditions. The Planning Board or NJSEA may engage such experts as needed to evaluate the submissions made by the applicant in accordance with the procedures set forth in

N.J.S.A. 40:55D-1, et seq.

- (11) Site Plan and other necessary land use approvals. All applicants for a local license to operate a cannabis business within the Borough shall be required to apply for and obtain site plan approval and any other necessary land use approvals from the New Jersey Sports and Exposition Authority's (NJSEA) Land Use Management (LUM) Division or the East Rutherford Planning Board as applicable. This requirement is not a pre-requisite to a cannabis business obtaining an endorsement from the Cannabis Advisory Committee or a Resolution of Support from the Governing Body.
- (12) Host Community Agreement. Any applicant for a license to operate a cannabis business within the Borough shall be required to enter into a Host Community Agreement with the Borough after obtaining all approvals to (i) address on- or off-site impacts reasonably anticipated because of the nature of the business and/or the property on which such business is proposed to be located as a condition of local land use approval, and (ii) memorialize an applicant's commitment to the community and the borough.
- (13) Sales Restricted to Persons Over Age 21. No sales of cannabis items shall be permitted to persons who are under the age of twenty-one (21) years.
- (14) Class 5 Retail Dispensary. Any retail facility:
 - (a) shall contain video equipment to record all persons as they enter and leave the facility and as they shop within the facility. The video equipment must also record all vehicles in the parking areas.
 - (b) uniformed East Rutherford police officers must be present on premises within the jurisdiction of East Rutherford at all times when the facility is open for business. The Borough of East Rutherford shall be reimbursed for the cost of these officers at the contractor rate specified in the police contract. This requirement does not apply to the New Jersey Sports and Exposition Authority's (NJSEA) American Dream Mall property.
- (15) All operations of cannabis businesses shall occur within a single, or series of, completely enclosed buildings. No outdoor storage shall be permitted.
- (16) A cannabis retail Class 5 dispensary shall not be located within 500 feet of a public or private school or childcare facility measured from the front door of the cannabis establishment to the front door of the school or childcare facility; a house of worship; YMCA; the front door of the cannabis establishment to the property lot line of a public or private playground; or an athletic field. This prohibition shall not include Met Life Stadium or the American Dream Complex.
- (17) State and municipal licenses shall be prominently displayed inside the permitted premises in a location where it can be easily viewed by law enforcement and administrative authorities.
- (18) Outside generators and other mechanical equipment used for any kind of power supply,

cooling, or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.

- (19) No pictures, photographs, or drawings of cannabis or cannabis paraphernalia shall appear on the outside of any licensed premises nor be visible outside of the licensed premises on the licensed property. ~~The word "marijuana," and any other words used or intended to convey the presence or availability of marijuana, shall not appear on the outside of the licensed premises nor be visible outside of the licensed premises on the licensed property.~~ Any signage must first be approved by the Building Department, and must comply with the Borough Sign Ordinance.

§ 181-23. Cannabis Advisory Committee.

The Borough Cannabis Advisory Committee (CAC or Committee) as appointed below will function as the body for local review for the Borough for all cannabis establishments but the authority and responsibility to adopt a resolution of support remains with the Borough Council. Under all circumstances in which State law requires communication to the Borough by the New Jersey Cannabis Regulatory Commission or any other State agency with regard to the licensing of cannabis establishments by the State, or in which State law requires any review or approval by the Borough of any action taken by the State licensing authority, the exclusive authority for receiving such communications shall be communicated through the Mayor's designee with advice and consent from the Borough Council and upon consultation with by the Borough's Cannabis Advisory Committee and authorized by the Borough's Governing Body.

- a. Members of said CAC shall include the following individuals:

- (1) Mayor's Designee with the advice and consent of the council
- (2) The Chief of Police or his designee
- (3) The Borough Attorney or Special Cannabis Counsel
- (4) The Borough Economic Development Coordinator

b. To the extent necessary and in their sole discretion, the Committee shall be supported by other legal and planning professionals. The Committee may request additional resources as necessary to effectuate the responsibilities of the Committee. The applicants shall deposit and fund an escrow in the amount of \$5,000.00 for the costs of said professionals. If the Borough must hire one or more consultants to evaluate a first-time or renewal application for a license, the applicant will be responsible for the review fees of the Borough's hired consultant(s). To the extent that the escrow is exhausted, the applicant shall provide any replenishment amount required by the Committee within ten (10) days of a replenishment request by the Committee.

c. Duties of the Committee will be to advise the Borough's Governing Body as to the issuance of a Resolution of Support and local cannabis license within the Borough. The committee's work shall be made consistent with the criteria outlined in this Chapter but has discretion to deviate from same. All applications shall be evaluated by the Cannabis Advisory Committee. The Committee shall evaluate all applications and issue to the Borough Council a recommendation as to the issuance of a resolution of support or a rejection of the application. The

Cannabis Advisory Committee pursuant to this subsection shall prepare a memorandum addressed to the Mayor and Council recommending whether to grant or deny each completed application. The recommendation shall be made after consideration and evaluation of the following criteria:

- (a) The applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including cannabis, healthcare, pharmaceutical manufacturing, or retail pharmacies, with preference to experience operating such businesses within the State of New Jersey and where the value of the owners' experience shall outweigh the experience of non-owner principals.
 - (b) The applicant's qualifications and experience related to public safety and security, including any of the applicant's owners' or principals' experience in securing controlled substances or valuable items.
 - (c) The status of the applicant's control over the premises at the proposed location, and specifically whether the applicant owns or has executed an agreement to lease or purchase the site.
 - (d) The extent of the applicant's ties to the community as measured by residency in East Rutherford by employees, managers and/or shareholders, historical operation of a local business, historical ties to East Rutherford or area civic organizations and/or charities.
 - (e) Applicant's demonstrated commitment or sufficient experience as responsible employers, defined as the applicant entity being a party to a labor peace agreement or the applicant entity or its parent company being a party to a collective bargaining agreement in an effort to create well-paying jobs with employee benefits in the municipality.
 - (f) The applicant's financial stability, environmental impact and sustainability plan.
 - (g) Any other information that the applicant may wish to highlight and bring to the Borough's attention regarding the proposed cannabis business operation and/or the owners, principals, or employees of the business.
- (d) The Borough Council shall act on the recommendations made by the Cannabis Committee within 60 days of the committee issuing its recommendations to issue a resolution of support or to not issue a resolution of support of a municipal cannabis license. The Borough Council shall not issue resolutions of support in excess of the number of local cannabis licenses permitted in accordance with the BOROUGH OF EAST RUTHERFORD CANNABIS LICENSE AND FEE SCHEDULE. The Mayor's designee, with advice and consent from the Borough Council shall engage with an applicant granted a resolution of support and after all other approvals for a Host Community Agreement which must be approved by the Borough Council.

§ 181-24. License Application requirements.

A. No one may operate a cannabis establishment ("establishment") in the Borough without a municipal license. A license must be requested and obtained annually upon approval of the Borough Council for the establishment prior to, and as a condition of, permit or license renewal pursuant to CREAMMA, the regulations at N.J.A.C. 17-30, et seq. and this Chapter. Only the municipal license, annually renewed pursuant to the cited authority herein, shall constitute the annually required written municipal approval required for the establishment pursuant to the regulations of the Cannabis Regulatory Commission ("CRC"). Other written statements, letters, resolutions or other documents issued by the Borough or any official, employee, or other representative shall not constitute annual or renewed "written municipal approval" for purposes of the CRC.

B. In addition to a municipal license, in order to operate a cannabis establishment in the Borough of East Rutherford, the appropriate state licenses are required. All applications for permits and licenses, all permits and licenses issued and all proceedings under this section shall be in accordance with all applicable laws of the state and Borough.

C. In order to operate a cannabis establishment, the applicant shall be in possession of all applicable land use/zoning approvals and all construction permits and approvals from all municipal and state entities having jurisdiction over same.

D. Persons seeking to obtain any classification of municipal cannabis license shall file an application with the Borough Clerk or the Mayor's designee with advice and consent of council on a standardized form established by the Borough and available in the Borough's Clerk's office. The Borough Clerk or the Mayor's designee with advice and consent of council shall establish a reasonable application period, deadline for all applications or a "rolling" application process. An application shall be deemed incomplete and shall not be processed by the Borough until all documents and application fees are submitted. The applicant may be required to appear for a meeting with the Cannabis Advisory Committee.

- (1) The Borough Clerk or the Mayor's designee with advice and consent of council, after consulting with the Committee, may deny any application that is lacking any required element or exhibit.
- (2) The Borough Clerk or the Mayor's designee with advice and consent of council, after consulting with the Committee, may deny any application due to an applicant's non-responsiveness to the Borough's request for additional information.

E. To be deemed complete, all applications shall be accompanied by the following:

- (1) Every applicant shall specify the location where the cannabis facility will operate. Name, address of owner, applicant, property location, including address and lot and block on the official tax map and zone identification. A separate application

shall be required for each location at which a cannabis facility operates. The Borough shall permit the co-location of cannabis businesses at the same location subject to State statute and regulations. Such co-location shall constitute one (1) license for the calculation of limitation on the number of licenses only. All other requirements and fees apply.

- (2) The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, which proof may consist of a deed, lease, a real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises to the applicant contingent upon applicant's receipt of a license from the State of New Jersey.
- (3) The applicant and/or owner, as may be applicable, shall submit an affidavit and documentary proof of compliance with all state and local laws regarding affirmative action, anti-discrimination and fair employment practices. The applicant and/or owner, as may be applicable, shall also certify under oath that they will not discriminate based on race, color, religion (creed), gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.
- (4) The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in the land development portion of the Borough of East Rutherford Municipal Code. A letter from the appropriate zoning official indicating that the location proposed for licensing by the applicant complies with all applicable Borough zoning laws and the location restrictions set forth herein. The fee for the letter from the zoning official is \$100.
- (5) The applicant, owner and its principals, as may be applicable, shall submit, to the satisfaction of the Borough Council, proof of financial capability to open and operate a cannabis establishment for which the applicant is seeking a license. Standards of proof of financial capability from the cannabis business shall be Profit and Loss Statements and sixty (60) days of the most recent bank statements. Completed applications shall include a business plan outlining the proposed operations of the cannabis business.
- (6) The applicant shall submit all required nonrefundable fees for the application and license in accordance with the BOROUGH OF EAST RUTHERFORD CANNABIS LICENSE AND FEE SCHEDULE.
- (7) In addition to complying with any state requirement related to good character and criminal background, any person proposed to have an ownership interest in the license shall not have had any cannabis license or permit revoked for a violation affecting public safety in any state.

- (8) Applicant shall submit a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management as well as training plans.

F. Terms of local cannabis license and cannabis license renewals:

- (1) Before the occupancy of a building or buildings where the local cannabis license will be used to operate the cannabis business, the license holder shall obtain site plan approval, along with any and all other land use approvals deemed necessary, from the East Rutherford Planning Board, along with any additional outside governmental agency approval(s) which may be required, including the NJSEA.

- (2) Any local license issued pursuant to this Article shall be valid for a period of one (1) year from the date of issuance and shall be renewed in accordance with the provisions of this Article.

- (3) The Mayor's designee with advice and consent from the Borough Council may, at the official's discretion, adjust the renewal date of the local license to correlate with an applicant's State licensing and renewal schedule.

- (4) Renewal of any license shall be governed by any code amendments, additional restrictions or changes in regulations adopted since the previous license was issued or renewed.

- (5) Transfer of ownership of any local license or change of location of any license or modification to expand a licensed premises shall be subject to joint Borough Council and Planning Board or NJSEA review and approval as well as a new license application.

- (6) Except where the Borough Clerk or the Mayor's designee with advice and consent from the Borough Council has received a complete renewal application along with the requisite fees, and has issued a license renewal, it shall be unlawful for any person to manufacture, sell, distribute, transfer, transport, or otherwise remove cannabis or cannabis products from the premises of any licensee after the expiration date recorded on the face of the license, except for the closure of the business.

- (7) Subject to the requirements and limitations of state law, the municipality shall have the reasonable right to inspect the premises of any approved cannabis establishment during its regular hours of operation to ensure compliance with local ordinances and regulations. It shall be unlawful for any cannabis business to refuse to allow such inspection or to hinder such an inspection.

§ 181-25. Cannabis Consumption Areas.

A. General. East Rutherford may authorize the operation of locally endorsed cannabis consumption areas that are within its jurisdiction or the NJSEA's jurisdiction:

- a. Operated by medical cannabis dispensaries, including any alternative treatment centers deemed

to hold a medical cannabis dispensary permit pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7), and clinical registrants within its jurisdiction, at which areas the on-premises consumption of medical cannabis may occur; or

b. Operated by cannabis retailers, at which areas the on-premises consumption of personal use cannabis may occur; or

c. Operated by medical cannabis dispensaries, including any alternative treatment centers deemed to hold a medical cannabis dispensary permit pursuant to section 7 of P.L.2009, c.307 (C.24:6I-7), that are also deemed to have, pursuant to that section, one or more Class 5 Cannabis Retailer licenses and for which the commission has correspondingly issued one or more licenses following receipt of the East Rutherford's and Commission's approval to operate as a cannabis retailer pursuant to subparagraph (a) of paragraph (3) of subsection a. of section 33 of P.L.2021, c.16 (C.24:6I-46), or medical cannabis dispensaries and alternative treatment centers otherwise issued a license by the commission pursuant to P.L.2021, c.16 (C.24:6I-31 et al.), to simultaneously operate as a cannabis retailer, at which areas the on-premises consumption of both medical cannabis and personal use cannabis items may occur.

B. Local endorsement.

a. No cannabis consumption area may be operated within East Rutherford or within the jurisdiction of the New Jersey Sports and Exposition Authority without endorsement from the State of New Jersey and the Borough of East Rutherford. The applicant must obtain support from East Rutherford Cannabis Advisory Committee, a Resolution of Support from the Governing Body, any other necessary land use approvals from the New Jersey Sports and Exposition Authority's (NJSEA) Land Use Management (LUM) Division or the East Rutherford Planning Board as applicable.

b. Local endorsements shall be valid for one year and must be renewed annually.

c. The Cannabis Advisory Board shall notify the State of its endorsement and approval of the cannabis consumption area license, in the form of a board resolution.

C. Cannabis Consumption Area license.

1. Cannabis Consumption Area licenses must be granted by the Cannabis Advisory Board and shall be valid for one year.

2. The annual fee for this license shall be as provided in the BOROUGH OF EAST RUTHERFORD CANNABIS LICENSE AND FEE SCHEDULE and as modified from time to time by a subsequent duly adopted resolution of the Borough Council.

3. The Cannabis Advisory Board may approve a Cannabis Consumption Area license, but the Cannabis Consumption license will not be issued or become effective until the applicant can show proof of State endorsement, zoning approval and a Resolution of Support from the Governing Body.

4. Applications shall be filed with the Borough Clerk or the Mayor's designee with advice and consent from the Governing on forms approved by the Governing Body. The application shall contain the following:

a. Names and residences of all persons financially interested in the business, and the nature and extent of this interest; and, if a corporation, the names, residences and citizenship of the officers, directors and stockholders, and shall disclose whether the applicant has been convicted of any criminal or quasi-criminal offense, and if so, the date and place of such conviction and the nature of the offense;

5. Odor mitigating practices;

a. A description of the proposed location, including the surrounding area and the suitability or advantages of the proposed location, along with a floor plan and optional renderings or architectural or engineering plans;

6. All relevant land use approvals, including approved site plans;

a. A copy of the Class 5 Cannabis Retailer license associated with the proposed consumption area;

b. Safety and security plans and procedures; and

7. Any other documents and information the Borough deems necessary.

8. The proposed premises may be inspected by the Borough for compliance with relevant laws and regulations.

D. Denial or revocation of endorsement or Cannabis Consumption Area license.

1. The Cannabis Advisory Board may deny or revoke the endorsement and/or the Cannabis Consumption Area license at any time for good cause. Good cause shall mean:

a. The endorsed license holder or applicant has violated, does not meet, or has failed to comply with, any of the terms, conditions or provisions of this chapter or related rules and regulations, any supplemental local laws, rules or regulations;

b. The endorsed license holder or applicant has failed to comply with any special terms or conditions that were placed on its endorsement by the State or East Rutherford; and

c. The premises have been operated in a manner that adversely affects the public health or the safety of the immediate neighborhood in which the consumption area is located.

2. A cannabis consumption area is prohibited from operating if either its endorsement or Cannabis Consumption Area license is revoked.

E. Location; time of operation; odor; and signage.

1. Indoor cannabis consumption areas shall be permitted to operate daily between the hours of 10:00 a.m.—2:00 a.m., the following day.
2. Outdoor cannabis consumption areas shall not be permitted.
3. Cannabis consumption areas must comply with the Borough's odor and security requirements.
4. All cannabis consumption areas must be designed by conspicuous signage, which shall indicate whether the consumption area may be used for the on-premises consumption of medical cannabis, personal use cannabis items, or both.

§ 181-26. Enforcement and Penalties.

- A. This ordinance shall be enforced by the Code Enforcement Officer and/or their designee.
- B. Jurisdiction. Violations of this ordinance shall be adjudicated in the East Rutherford Municipal Court. This ordinance shall not affect the judicial proceedings of any other aspect of cannabis use in the Borough of East Rutherford.
- C. Penalties. Convictions shall result in the following penalties:
 - (1) First offense and subsequent offenses: A mandatory fine shall be imposed in an amount of \$5,000.00 per day per violation. In addition to the mandatory fine, the following penalties may be imposed in the discretion of the Municipal Court Judge:
 - (a) Imprisonment in the Bergen County Jail for any term not exceeding 90 days; or
 - (b) Imposition of a period of community service for a period not exceeding 90 days.
 - (2) Each and every day of the violation shall be construed as a single and separate offense.
 - (3) Summary suspension. Notwithstanding the foregoing, when the Mayor's designee with advice and consent from the Borough Council has been notified of a conviction by a licensee, has reasonable grounds to believe that a licensee has engaged in 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 immediate action, or in circumstances where the licensee has failed to reimburse the municipality for outside third party consultant fees in a timely manner as set forth herein or if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked, the Mayor's designee with advice and consent from the Borough Council and in consultation with the

Cannabis Advisory Committee may enter a summary suspension order which immediately suspends the licensee's license to operate and schedule a hearing as follows:

- (a) The summary suspension order shall be in writing, shall state the reasons therefor, and shall schedule a hearing not less than ten (10) nor more than thirty (30) days from the date of the order. The order shall be served upon the licensee immediately.
- (b) The Mayor's designee with advice and consent from the Borough Council shall convene the Cannabis Advisory Committee to conduct the hearing. The licensee shall be permitted to appear at the hearing, along with counsel, if so desired. The licensee must notify the Mayor's designee with advice and consent from the Borough Council at least five (5) days prior to the hearing if the licensee plans to bring counsel to the hearing. At the conclusion of the hearing, the East Rutherford Advisory Cannabis Committee may lift the suspension order and reinstate the license in cases where the licensee has taken sufficient immediate actions to rectify the violation(s) which were the cause of the summary suspension order. Alternatively, the East Rutherford Cannabis Advisory Committee may impose any fines, conditions, restrictions, suspensions, revocations or combination thereof as warranted.
- (c) Inactive licenses. Following the commencement of operations by a cannabis business, the Mayor's designee with advice and consent from the Borough Council may suspend or revoke any license if the licensed premises has been inactive or unoccupied by the licensee for at least six (6) months.
- (4) State license. The Mayor's designee, with advice and consent from the Borough Council may suspend or revoke any locally-issued license if the corresponding State license for the subject location is expired, surrendered, suspended, or revoked.

§ 181-27. Public Nuisance Declared.

Operation of any prohibited or unpermitted cannabis business operation within the municipality in violation of the provisions of this Chapter is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

§ 181-28. Prohibition of Unregulated Sale of Cannabis.

A. No person shall sell cannabis in the Borough of East Rutherford without a state cannabis license and a Borough local cannabis license and shall be abated pursuant to all available remedies.

B. No person shall gift cannabis in the Borough of East Rutherford as part of a sale of another item or items and shall be abated pursuant to all available remedies. Gifting is the knowing circumvention of the state's cannabis laws by "gifting" cannabis in exchange for non-cannabis-related purchases such as overpriced cookies, brownies, jars, stickers and any other items.

Section 2. Section 263-6A(3), entitled “General provisions” of Chapter 2, “Cannabis Transfer and User Tax,” of the “Borough of East Rutherford Municipal Code,” is hereby amended and supplemented as follows (additions are shown with underline):

(3) A user tax shall be imposed on any concurrent license holder, as permitted by Section 33 of P.L. 2021, c. 16 (N.J.S.A. 24:61-46), 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, from the license holder's establishment that is located in the Borough of East Rutherford to any of the other license holder's establishments, whether located in the municipality or another municipality. The value of each transfer or use of cannabis or cannabis items for user tax computation shall equal the statewide average retail price of an ounce of usable cannabis for consumer purchase, as determined by the Cannabis Regulatory Commission, less ten percent (10%) or the third-party dispensary wholesale price, whichever is less.

Section 3. Chapter 389, entitled “Zoning” of Article IV, “Use Regulations” of the “Borough of East Rutherford Municipal Code,” specifically §389-20.1 Cannabis is hereby amended and supplemented as follows (All additions are shown with underlines. The deletions are shown as strikeovers):

~~A. The retail sale or delivery of cannabis for recreational use and/or the paraphernalia that facilitates the use of such cannabis pursuant to a Class 5 cannabis retailer license or a Class 6 cannabis delivery license is prohibited in all zones established in the Borough as set forth in the Land Use Code of East Rutherford Chapter 389, entitled "Zoning," Article IV, Use Regulations.~~

~~B. No land or building in any zoning district within the Borough of East Rutherford shall be used or shall be allowed to be used by a cannabis delivery service or a cannabis retailer for the recreational retail sale or delivery of cannabis or any substitute thereof producing an intoxicating effect except as expressly authorized in Chapter 96 of the Borough Code of the Borough of East Rutherford.~~

D. Use and zone regulations. Cannabis establishments or distributors, with Class 1, Class 2, Class 3 or Class 5 licenses shall be permitted as a conditional use within the Borough of East Rutherford in the area between the center median of State Highway Route 17 North and East to the Hackensack River. Commercial Park Zone, the Light Industrial Zone east of the railroad tracks and within the jurisdiction of the New Jersey Sports and Exposition Authority (NJSEA), the Sports & Expositions Zone, and the Paterson Plank Road Redevelopment Area, as defined in the regulations of the New Jersey Sports and Exposition Authority (NJSEA), N.J.A.C. 19:4-5. Except as specifically modified herein, cannabis establishments, and distributors, shall comply with underlying zoning regulations, including if applicable, as set forth in N.J.A.C. 19:4-5 and as otherwise required by the NJSEA. Cannabis establishments shall maintain a license issued by the New Jersey Cannabis Regulatory Commission to operate the establishment. Cannabis establishments shall comply with all other applicable state standards and regulations. The provisions of this section shall not apply to alternative treatment centers, which are governed by Chapter 96 of the Borough Code of the Borough of East Rutherford.

E. Conditional use standards. Cannabis establishments or distributors permitted under this article shall comply with the following conditions:

(1) Location. ~~No part of the lot or premises on which a cannabis establishment, distributor, or a delivery service is located shall be within 1,000 feet of a lot consisting of a public or private school; a public or private playground; a house of worship; a public park, playground, YMCA, or an athletic field. This prohibition shall not include Met Life Stadium.~~ No cannabis business shall be located within 500 feet of a school or childcare facility measured from the front door of the cannabis establishment to the front door of a public or private school; a house of worship; YMCA; the front door of the cannabis establishment to the property lot line of a public or private playground; or an athletic field. This prohibition shall not include Met Life Stadium or the American Dream Complex.

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

Section 5. Severability. 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. Enactment. This ordinance shall become effective immediately after publication in the manner provided by law.

Section 7. Continuation and codification. This ordinance shall be a part of the “Borough of East Rutherford Municipal Code,” as through codified and fully set forth herein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and Borough Attorney are authorized and directed to change any chapter, article and/or section number of the “Borough of East Rutherford Municipal Code” in the event that the codification of this ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and accidental repeal of existing provisions not intended to be repealed.

Introduction: April 23, 2024

Adoption: May 21, 2024

ATTEST:

MUNICIPAL CLERK

MAYOR