

ORDINANCE #15-21

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTERS 25 “ZONING” AND 5 “LICENSES” OF THE CODE OF THE BOROUGH OF KEYPORT ESTABLISHING LAND USE REGULATIONS AND LICENSING REQUIREMENTS FOR CANNABIS BUSINESSES

WHEREAS, the Borough of Keyport (the “Borough”) is a public body corporate and politic of the State of New Jersey; and

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

WHEREAS, the Act establishes six marketplace classes of licensed businesses, including:

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributor license, for businesses involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and
- Class 6 Cannabis Delivery license, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchased items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

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

WHEREAS, the Borough Council wishes to create land use regulations and licensing requirements for cannabis businesses that can promote the health, safety, and general welfare of the community; and

WHEREAS, the State of New Jersey is presently reviewing applications and will be issuing licenses to cannabis businesses in the State of New Jersey; and

WHEREAS, inquiries have been made by persons and companies that operate or seek to operate cannabis facilities in New Jersey and that have expressed interest in establishing business operations in Keyport; and,

WHEREAS, these companies have applied or will apply to the State of New Jersey for licensing and are awaiting approval and issuance of a State license; and

WHEREAS, it is in the best interest of the Borough of Keyport to be proactive in establishing such local land use regulations and licensing requirements for cannabis businesses in advance of the issuance of additional licenses by the State to facilitate the opportunity for such businesses to establish operations in the Borough of Keyport; and

WHEREAS, the Mayor and Borough Council have determined that cannabis businesses present special concerns and should be regulated specifically to permit the uses where appropriate in the Borough; and

WHEREAS, the Borough has determined that all classes of cannabis businesses should be permitted in certain zones and in appropriate locations as delineated herein.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF KEYPORT AS FOLLOWS:

SECTION ONE: AMENDMENT TO ZONING ORDINANCE

Chapter 25 "Zoning" of the Code of the Borough of Keyport shall be amended as follows; additions to the current ordinance are noted in underline.

Section 25-1-15.20 Cannabis Businesses

a. Definitions. The terms and definitions as delineated in *N.J.S.A. 24:61-33* are incorporated herein.

b. State Licensed Cannabis Businesses are Permitted.

1. Any class of cannabis business duly licensed by the State of New Jersey to conduct legal adult use cannabis operations, as defined by State law, may operate within the noted zones so long as: (i) the entity maintains its State license in good standing; (ii) the entity maintains its Keyport Cannabis Business License in good standing; and (iii) 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 of Keyport shall be granted or renewed without such evidence as may be required by the Borough 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.

c. Zoning Districts Where Cannabis Businesses are Permitted.

1. Cannabis Retailers and Cannabis Delivery Services are permitted in the following areas, subject to all applicable provisions set forth herein, state law, and all other applicable codes and regulations, including but not limited to the Building Code in compliance with the area and bulk standards in the underlying zones and districts:

- a. Highway Commercial District (HC);
- b. Industrial District (I); and
- c. General Commercial District (GC) but only for those lots:
 - i. fronting West Front Street between Broad Street and Beers Street;
 - ii. fronting Broad Street between West Front Street and Third Street; and
 - iii. fronting Main Street between West Front Street and Barnes Street.

Two (2) Cannabis Retailers shall not be permitted in any one district.

2. Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, and Cannabis Wholesalers are only permitted in the Industrial District (I) in accordance with all applicable provisions set forth herein, state law, and all other applicable codes and regulations, including but not limited to the Building Code in compliance with the area and bulk standards in the Industrial District.

3. Curbside retail sales of Cannabis are not permitted in the General Commercial Districts.

d. Site Standards for Cannabis Businesses

1. There shall be no on-site sales of alcohol or tobacco products, and no on-site consumption of food, alcohol, tobacco, or cannabis by patrons at any cannabis business.

2. Entry onto the premises of a cannabis business by a person who is under the age of 21 is prohibited, unless the individual is accompanied by and supervised by a parent or legal guardian or is otherwise permitted by law.

3. Hours of public operation shall be limited to 8:00 a.m. through 10:00 p.m. daily. No licensed Cannabis Retailer, Cultivator, Distributor, Manufacturer, or Wholesaler shall be open to the public between the hours of 10:01 p.m. and 7:59 a.m. on any day. The hours of public operation of Cannabis Delivery Services shall be as regulated by the Cannabis Regulatory Commission.

4. For any licensed cultivation, processing, or similar operation, the facility 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.

5. For any licensed cultivation, processing, manufacturing, or similar operation, the facility shall provide for noise mitigation features designed to minimize disturbance from machinery, processing and/or packaging operations, loading, and other noise generating equipment or machinery. All licensed facilities must operate within applicable State decibel limitations.

6. To the extent not already required by the entity's State license, all sites must be equipped with security cameras covering 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 cannabis products. Footage must be maintained for the duration required under State law.

7. All licensed cannabis facilities must provide the Keyport Police Department with access to security footage immediately upon request by the Department.

8. To the extent not already required by the entity's State license, all licensed facilities must provide at least one security guard (or more if required by the State) during all times the facility is open to the public. At a minimum, the security guard shall be a State Certified Security Officer whose certification is in good standing.

9. For any licensed cultivation operation, the facility must mitigate lighting spillover into any residential neighborhoods, and must comply with all applicable State lighting limitations.

10. No Cannabis Business shall be located within the following distances, measured door-to-door, from the specified land uses listed below:

a. 250 feet of a licensed childcare facility or residential childcare facility;

b. 250 feet of any elementary school, middle school, high school, college or university either public or private;

c. 150 feet of any church, synagogue, temple, or other place used exclusively for religious worship.

11. No licensed Cannabis Retailer shall be located in or upon any premises in which a grocery store, delicatessen, indoor food market, or other store engaging in retail sales of food operates, or in or upon any premises in which a store that engages in licensed retail sales of alcoholic beverages operates.

12. Cannabis waste shall be stored, secured, and managed in accordance with applicable State laws.

13. Display of Cannabis and Related Paraphernalia: Cannabis plants, products, and paraphernalia shall be screened from view from any exterior windows.

14. All Cannabis Businesses shall conduct operations indoors. No Cannabis Cultivators shall be permitted to operate outdoors, e.g., grow canopies.

15. Cannabis consumption areas shall not be permitted in the Borough.

e. On-Site Signage

1. No State licensed cannabis business shall display signage containing text and/or images intended to promote excessive consumption of cannabis products.

2. Signage shall otherwise comply with the requirements of Article 25-1-17 (Signs) of the Keyport Land Use Regulations to the extent permissible by applicable State laws and regulations governing signage standards for licensed cannabis businesses.

3. No State licensed cannabis business shall place or cause to be placed any off-site advertising signage.

f. Penalties.

Any person violating any provision of this section shall, upon conviction be subject to the penalties stated in Chapter I, Section 1-5, General Penalty, except that the minimum penalty shall not be less than \$500 for a first offense, \$1,000 for a second offense, and \$1,500 for a third offense.

SECTION TWO: AMENDMENT AND SUPPLEMENT TO CHAPTER 5 GENERAL LICENSING AND BUSINESS REGULATIONS

Chapter 5 "General Licensing and Business Regulations" of the Code of the Borough of Keyport shall be amended and supplemented as follows; additions to the current ordinance are noted in underline.

Section 5-17 Cannabis Business Licenses.

a. Purpose. This section is enacted to regulate the cultivation, production, sale, and transportation of cannabis in the borough in accordance with the provisions of the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" comprising *N.J.S.A. 24:6I-31 et seq.*, and in accordance with the rules and regulations of the Cannabis Regulatory Commission.

b. Definitions. As used in this Chapter, words and phrases shall have the same meanings they have in *N.J.S.A. 24:6I-31 et seq.*, and in accordance with the rules and regulations of the Cannabis Regulatory Commission.

c. Cannabis Business Licenses.

1. **Laws Applicable.** All applications for licenses, all licenses issued, and all proceedings under this Chapter shall be in accordance with the Act, rules and regulations referred to in Section 25-1-15.20 and all other applicable laws of the State of New Jersey.

2. **Issuing Authority.** All licenses required by this Chapter, including renewal licenses, shall be issued by the governing body of the Borough, which shall also administer the provisions of this Chapter. The granting of any license permitted by this Chapter shall be at the sole and absolute discretion of the governing body of the Borough.

3. **Cannabis Business License Required.** No person shall cultivate, sell, or distribute cannabis within the Borough without having obtained a license in accordance with the Act referred to in Section 5-17(a) and the provisions of this Chapter.

4. **Cannabis Business License Fees--Maximum Number.** The annual license fee and maximum number of licenses for the Cannabis Businesses in the Borough shall be as follows:

Class of License	Annual License Fee	No. of Licenses
Class 1 Cannabis Cultivator	\$10,000	2
Class 2 Cannabis Manufacturer	\$10,000	2
Class 3 Cannabis Wholesaler	\$5,000	2
Class 4 Cannabis Distributor	\$5,000	2
Class 5 Cannabis Retailer	\$5,000	2
Class 6 Cannabis Delivery	\$5,000	2

The governing body of the Borough shall not be required to issue the maximum number of licenses. The grant of a license to any Cannabis Microbusiness shall be considered as counting towards the maximum number of licenses.

d. **Cannabis Business License Conditions.** In order to be granted a business license for the operation of any Cannabis Business the following conditions must be satisfied:

1. Completion of all forms, checklists, and other submissions as may be required by the Borough 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. Submission of emergency contact information to be utilized by police, fire, and EMT personnel in the event of an on-site emergency;
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); and
7. Submission of application fee of Five Thousand (\$5,000.00) Dollars. The Borough shall refund eighty (80%) percent of the application fee for any applicant not granted a license.

e. **Cannabis Subcommittee.** There shall be standing Cannabis Subcommittee, which shall review all completed submissions for any Cannabis license and submit a recommendation to the entire governing body regarding the grant or denial of a license. The members of the subcommittee shall be as follows: (i) Two (2) members of council to be chosen by it; (ii) the Keyport Chief of Police; and (iii) the Business Administrator of the Borough. The terms of the councilmembers shall be for one (1) year. It is recommended that at least one council member remain from the previous year's subcommittee.

f. **Regulation of Cannabis Business Licenses.** Any license issued under this Chapter shall conform to the requirements of Section 25-1-15.20 of the Borough Code with regard to operation.

g. **Revocation of Cannabis Business Licenses.**

1. Any license issued under this Chapter may be suspended or revoked for violation of any of the provisions of this Chapter or any provision of any applicable statute or any of the rules and regulations of the Cannabis Regulatory Commission.

2. Notice of a hearing for the suspension or revocation of a license shall be given in writing by the Borough Clerk. The notice shall specifically set forth the grounds upon which the proposed revocation is based and the time and place of the hearing. It shall be served by mailing a copy to the licensee at his or her last known address by certified mail, return receipt requested, at least five (5) days prior to the date set for the hearing.

3. At the hearing, the licensee shall have the right to appear and be heard, to be represented by an attorney, to present witnesses in his or her own behalf, to cross-examine opposing witnesses and to have a permanent record made of the proceedings at his or her own expense. The Council shall revoke or suspend the license if they are satisfied by a preponderance of the evidence that the licensee is guilty of the acts charged.

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

h. Penalties.

In the absence of State specified penalties, the Borough may issue fines to any person violating any provision of this section, upon conviction, up to \$2,500 for a first offense, \$5,000 for a second offense, and \$10,000 for a third offense.

SECTION 3: AMENDMENT AND SUPPLEMENT TO CHAPTER 2 ADMINISTRATION

Chapter 2 "Administration" of the Code of the Borough of Keyport shall be amended as follows; additions to the current ordinance are noted in underline.

Chapter 2-27 Cannabis Business Sales Tax

a. A tax is hereby imposed upon all persons engaged in the business of selling cannabis as a Cannabis Cultivator, Cannabis Manufacturer, or Cannabis Retailer in the Borough of Keyport, at the rate of two percent (2%) of the gross receipts from such sales made in the course of that business. Retailers may reimburse themselves for their tax liability hereunder by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with any State tax that retailers are required to collect.

b. A tax is hereby imposed upon all persons engaged in the business of selling cannabis as a Cannabis Wholesaler in the Borough of Keyport, at the rate of one percent (1%) of the gross receipts from such sales made in the course of that business. Wholesalers may reimburse themselves for their tax liability hereunder by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with any State tax that wholesalers are required to collect. Each person required to collect the tax herein imposed shall be personally liable for the tax imposed, collected, or required to be collected hereunder.

c. The imposition of the tax imposed by this Chapter is in accordance with the provisions of State law and is in addition to any and all other taxes and charges.

i. A user tax shall be levied on any Cannabis Business operating more than one business, regardless of whether the second business location is in a different municipality. Such

user tax rate shall be equivalent to the sales tax rate set forth in sections (a) and (b) of this Chapter 2-27 (as applicable) and imposed on the value of each transfer or use of cannabis between one business location and another business location.

d. The tax imposed by this Section, and all civil penalties that may be assessed as an incident thereto, shall be remitted to, collected by and enforced by the Borough's Chief Financial Officer, who shall have the full power to administer and enforce the provisions of this Chapter.

e. The failure to timely collect or remit all taxes due pursuant to this Chapter is a violation of this Code and may be subject to the penalties hereunder.

f. Penalties.

Any person violating any provision of this section shall, upon conviction be subject to the penalties stated in Chapter I, Section 1-5, General Penalty, except that the minimum penalty shall not be less than \$500 for a first offense, \$1,000 for a second offense, and \$1,500 for a third offense.

SECTION FOUR: All ordinances, or parts of ordinances, in conflict with the provisions of this Ordinance, to the extent of such conflict, are repealed.

SECTION FIVE: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIX: This Ordinance shall take effect after publication and passage according to law.

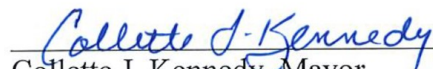
Introduced: October 19, 2021

Public Hearing: November 9, 2021

Adopted: November 9, 2021



Michele Clark, RMC
Borough Clerk



Collette J. Kennedy, Mayor
Borough of Keyport