

**ORDINANCE NO. 1135-18**

**AN ORDINANCE TO FURTHER AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF OLD TAPPAN SO AS TO AMEND CHAPTER 255, ENTITLED "ZONING", BY CREATING A NEW SECTION 255-55, PROHIBITING BUSINESSES FROM THE SALE, DISTRIBUTING, CULTIVATING, MANUFACTURING AND/OR TESTING OF MEDICINAL AND RECREATIONAL CANNABIS OR PARAPHERNALIA AND THE CREATION OF ESTABLISHMENT FOR THE SALE, USE, RENTAL OR OTHER DISTRIBUTION OF ELECTRONIC VAPOR SUBSTANCE INHALATION DEVICES IN ANY ZONING DISTRICT**

**WHEREAS**, the Legislature of the State of New Jersey is considering legislation that would allow for the sale, distribution, cultivation, manufacture and/or testing of cannabis in the State of New Jersey; and

**WHEREAS**, the Municipal Council has taken note of the rapid growth of the sale of electronic vapor inhalation devices; and

**WHEREAS**, the Municipal Council of the Borough of Old Tappan believes that the establishment of businesses engaged in the sale, distribution, cultivation, manufacture and/or testing of medicinal and recreational cannabis and electronic vapor inhalation devices and related products in the Borough presents special concern for public safety, security and general welfare of the residents of Old Tappan, particularly since cannabis is deemed an illegal substance under federal law; and

**WHEREAS**, the Borough of Old Tappan consists of 3.33 square miles and over 6,000 residents with residences, schools, churches and recreational facilities and located throughout the entire community and, in particular, surrounding the business districts within the Borough; and

**WHEREAS**, the Borough of Old Tappan abuts the New York State line which, at the present time, has not legalized cannabis and, as a result, it would be possible for people to cross the state line to buy cannabis if it were legalized in New Jersey; and

**WHEREAS**, the Municipal Council desires to prohibit the establishment of any business engaged in the sale, distribution, cultivation, manufacture and/or testing of medicinal or recreational cannabis and/or electronic vapor inhalation devices and related products to ensure that no such use is established within 1/4 mile of any residential, educational, religious, recreational use or zoning district permitting the same; and

**WHEREAS**, the Municipal Council has determined that there is no area in the Borough that can safely house a business engaged in the sale, distribution, cultivation, manufacture and/or testing of medicinal or recreational cannabis and paraphernalia and electronic vapor inhalation devices and products associated therewith.

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and Council of the Borough of Old Tappan, in the County of Bergen and State of New Jersey that:

**Section 1.** ARTICLE XI, entitled “Supplementary Regulations” of Chapter 255, entitled “Zoning”, of the Borough Code, is hereby amended to add a new Section 255-55, entitled, “Cannabis and Electronic Vapor Inhalation” prohibiting the establishment of any business selling, distributing, cultivating, manufacturing and/or testing of medicinal or recreational cannabis or paraphernalia and/or electronic vapor inhalation devices and products associated therewith, to read as follows:

**§255-55 A. Purpose:**

The purpose of this Article is to prohibit the establishment, location and operation of any business engaged in the sale, distribution, cultivation, manufacture and/or testing of cannabis and cannabis products, electronic vapor devices, electronic vapor inhalation substances, and electronic/vapor substance inhalation shops and lounges in the Borough of Old Tappan, Bergen County, in order to maintain and protect the Borough’s safety, security and general welfare.

These regulations will rely on all definitions in this Chapter and the Code of the Borough of Old Tappan.

**§255-55 B. Definitions:**

**Business** - any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes, including, but not limited to, retail and wholesale establishments where goods and/or services are sold, manufactured, distributed, cultivated or tested.

**Cannabis** - all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not, including the seeds or resin thereof, whether extracted or not from any part of the plant. This includes every compound, manufacture, salt, derivative, mixture, concentrate, or preparation of the plant, its seeds, resin, and including edible or topical products containing any of the above.

**Cannabis Retailer, Wholesaler, Distributor and Manufacturer** - any person or entity that operates any facility, business, property, store, stand, booth, concession or other place at which the growing, preparation, assemblage, packing, delivery, testing, sales, rentals, or other distributions, including give-aways, of Cannabis and Cannabis products are made to entities or persons for the purpose of introducing Cannabis or Cannabis products into the consumer

market in any manner for the eventual consumption or use by people.

**Creation of Cannabis or Smoke Shop Establishment shall mean:**

- (1.) The opening of any such establishment as new when it did not exist before;
- (2.) The conversion of any such establishment as new when it did not exist before;
- (3.) The relocation of any such establishment from one location to another.

**Electronic/Vapor Substance Inhalation Shops** - those businesses where customers can purchase and/or use electronic/vapor substance inhalation products and/or devices, commonly known as “electronic cigarettes”, “e-cigarettes”, “e-cigars”, “e-cigarellos” “e-pipes”, “e-hookahs”, “electronic nicotine delivery systems” and other similar devices.

**Smoke Shop** - any store, stand, booth, concession or other place that either devotes a substantial portion of its display area (15% or more space) to hookahs, electronic vapor devices, electronic inhalation substances or drug paraphernalia to purchasers for consumption or use.

**Transfer of Ownership or Control of Cannabis Retailer or Smoke Shop:**

- (1.) The sale, lease or sublease of such establishment;
- (2.) The transfer of securities which constitute a controlling interest in such establishment, whether by sale, exchange, or similar means; or
- (3.) The establishment of a trust, gift, or other similar legal device which transfers ownership or control of such establishment, except for the transfer by bequest or other operation of law upon death of the person possessing such ownership of controlling interest.

**§255-55 C. Prohibition:**

No person or entity shall cause or permit the creation, enlargement or transfer of ownership or control of any cannabis or marijuana retailer, wholesaler, distributor, grower, tester or manufacturer selling cannabis or cannabis related paraphernalia, smoke shop or electronic/vapor inhalation shop or lounge within one-quarter (1/4) mile of any residential, educational, religious or recreational use, or zoning district permitting such uses, within the Borough of Old Tappan.

**§255-55 D. Measure of Distance:**

Distance, without regard to intervening structures, shall be a straight line measured from the closest exterior structural wall of a cannabis retailer, wholesaler, distributor, tester or manufacturer, smoke shop or electronic/vapor substance inhalation shop or lounge to the closest property line of a residential, educational, religious or recreational use, or zoning district permitting such uses, within the Borough of Old Tappan.

**§255-55 E. Violation-Penalty:**

- a. Any person or entity violating any of the provisions of this chapter shall be subject to a fine of not more than \$1,000.00.
- b. Each person or entity found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which a violation of any section of this chapter is committed, continued or permitted by such person. Any use or occupation of any building or structure maintained contrary to the provisions of this title, shall constitute a public nuisance.
- c. Notwithstanding any other penalty for violating any of the provisions of this Chapter, the Borough of Old Tappan may, but shall not be required to, seek to enjoin such violation in a court of competent jurisdiction.

**§255-55 F. Enforcement:**

Enforcement of the provisions of this Chapter may be enforced by the Borough Health Officer, members of the Police Department, Borough Building Department, the Borough Code Official and any other person so designated by the Borough of Old Tappan.

**Section 2.** If any section, subsection or part of this ordinance is adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not impair or invalidate the remainder of this ordinance.

**Section 3.** This Ordinance shall take effect immediately upon final adoption publication as provided by law.