

ORDINANCE #2641-21-0621

**CREATING CHAPTER 61 OF THE BOROUGH CODE ENTITLED
“CANNABIS” PERMITTING THE OPERATION OF CLASS 5 CANNABIS
RETAILER LICENSE WITHOUT CONSUMPTION AND PROHIBITING
CLASSES 1, 2, 3, 4 AND 6 OF CANNABIS LICENSED ESTABLISHMENTS
AND ESTABLISHING LICENSING REQUIREMENTS FOR THE ISSUANCES
OF CLASS 5 CANNABIS RETAILER LICENSE(S)**

WHEREAS, the Borough Council of the Borough of Somerville, in the County of Somerset, New Jersey (the “Borough”), a public body corporate and politic of the State of New Jersey (the “State”), wishes to create land use regulations and licensing requirements for regulated cannabis establishments that also protect the health, safety and general welfare of the community; and

WHEREAS, in light of the enactment of the Act on July 2, 2019, expanding the New Jersey Medicinal Marijuana Program, and the passage of Public Question No. 1 on November 3, 2020, it is in the best interest of the Borough to proactively establish licensing requirements for regulated cannabis establishments and imposing a municipal tax to support enforcement activities.

NOW THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF SOMERVILLE, NEW JERSEY AS FOLLOWS:

CHAPTER 61

CANNABIS

ARTICLE I

61-1 Purpose

The purpose of this Article is to regulate the sale and distribution of Cannabis in the Borough of Somerville, Somerset County, New Jersey and to provide for the issuance of licenses thereof and fix license fees, in accordance with the provisions established by the State of New Jersey.

61-2 Definition of Classes.

CLASS 1 – CANNABIS CULTIVATOR - establishment involved in growing and cultivating cannabis.

CLASS 2 – CANNABIS MANUFACTURER - establishment involved in the manufacturing, preparation and packaging of cannabis items.

CLASS 3 – CANNABIS WHOLESALE - establishment involved in obtaining and selling cannabis items for later resale by other licenses.

CLASS 4 – CANNABIS DISTRIBUTOR - establishment involved in transporting cannabis plants in bulk from one license cultivator to another cultivator or cannabis items in bulk from any type of licensed cannabis business to another.

CLASS 5 – CANNABIS RETAILER - establishment involved in the sale of cannabis and cannabis

related items. The dispensation, sale, or distribution of cannabis or cannabis-derived or infused products and/or related clinical research, provided that such facility shall not cultivate, manufacture, process, or wholesale cannabis or cannabis products from such facility.

CLASS 6- CANNABIS DELIVERY- 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, which service would include the ability of a consumer to make purchase directly through a cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to the consumer.

61-3 Use of Cannabis

It is hereby unlawful for any person to consume cannabis products, to smoke, vape, aerosolize, ingest or otherwise consume in any public place, any cannabis products on a public street, highway, avenue, alley or road of the Borough; or upon any public or quasi-public parking lots, or other parking facilities in the Borough; or on any public grounds, parks, sidewalks, waterway or quasi-public areas; or any shopping center common areas; or in an automobile, or other vehicle or on any means of transportation on a public street, highway, alley, avenues, grounds or sidewalks. Any unlawful consumption shall be a disorderly person's offense and subject to penalties provided by law. Consumption shall not be allowed in any cannabis retail licensed establishments.

61-4 Classes prohibited.

This ordinance prohibits the issuing of licenses for Classes 1,2,3,4 and 6.

- a. The Borough of Somerville shall not issue any licenses for Classes 1,2, 3,4, & 6 as defined in Section 61-2 of this ordinance and further identified and defined by the State of New Jersey.

61-5 Classes permitted.

This ordinance shall permit the issuing of Class 5 license(s) Cannabis Retailer License without consumption.

Class 5 license(s) shall be allowed in the Borough of Somerville accordance with the Land Use Laws of the Borough of Somerville. The Land Use Law shall define the geographical boundaries in which Class 5 establishments may operate. The Class 5 Retailer License establishment may only operate in strict compliance with the Zoning Laws adopted by the Governing Body.

In addition to complying with the Borough of Somerville Land Use Law establishments must comply with the following: Class 5 license(s) shall be permitted, pursuant to this Chapter, only if the following requirements are complied with:

- a. The regulations of this Section are subject to the enabling authority of the State of New Jersey and are subject to compliance with all statutes and/or regulations adopted by the State of New Jersey or its instrumentalities. If any provision of this Section is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail.

- b. Prior to the operation of any Class 5 establishment, a permit or license must be obtained from the State of New Jersey and from the Borough of Somerville for the applicable type(s) of cannabis establishment. No Class 5 Retailer License establishments shall be permitted to operate without State and municipal permits or licenses.
- c. Permitted uses shall, at all times, comply with the terms and conditions of the licensee's cannabis establishment license for permits or licenses issued by the State of New Jersey and the Borough of Somerville.
- d. No Class 5 establishment shall be allowed as a Home Professional Occupation.
- e. No Class 5 establishment shall be housed in a vehicle or any movable or mobile structure.
- f. No Class 5 establishment shall allow consumption. And all additional requirements of the Borough's Land Use law. It is hereby unlawful for any person to consume cannabis products, to smoke, vape, aerosolize, ingest or otherwise consume any cannabis products in the establishment.
- g. Noise. 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. And all additional requirements of the Borough's Land Use Law.
- h. Security. All cannabis establishments shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock video surveillance system, 365 days a year; and shall have trained security personnel onsite at all times during operating hours.
- i. Hours. No cannabis retailer may open to customers for business before 10:00 am or remain open to customers for business after 10:00 pm. Monday through Friday. Saturday 10:00 a.m. – 10:00 p.m. and Sunday from noon to 6:00 p.m.

61-6 ESTABLISHMENT OF CANNABIS TRANSFER TAX AND USER TAX

1. The cannabis transfer tax in the Borough of Somerville shall be fixed at a uniform percentage rate of two percent (2%) on all sales or transfers of cannabis products from any of the cannabis establishments that are located within the geographical boundaries of the Borough of Somerville. This tax shall be imposed on: Receipts from the sale of cannabis by a cannabis retailer.
2. A user tax is hereby also established at the same rate of the transfer tax as contained herein and 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 Section 1 above, from any licensed establishment that transfers cannabis products.
3. The transfer tax or user tax imposed by this ordinance shall be in addition to any other tax imposed or could be imposed, pursuant for this section, other than those which generate from retail receipts from the retail sales by cannabis retailers, shall be

exempt for the tax imposed under the “Sales and Use Tax Act” (NJSA 54:32B-1 et seq.). The transfer tax or user tax will be assessed and collected pursuant to established State law and administrative rules and regulations.

61-7 LICENSING, REGISTRATION, FEES, MULTIPLE APPLICANTS

61-7 Licensing

1. Local licensing authority. The Governing Body is hereby designated to act as the local licensing authority for the Borough for all Class 5 Cannabis Retailer Licensed establishments. Under all circumstances in which State law requires communication to the Borough by the 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 and granting such approvals shall be exercised by the Governing Body. The Clerk-Administrator shall serve as the administrator and secretary for all correspondence.
2. Under no circumstances shall a local license for a Class 5 Cannabis Retailer Licensed establishment issued by the Governing Body be effective until or unless the State has issued the requisite permits or licenses to operate such a facility. It is the intent of this Chapter that no cannabis establishment may lawfully operate in the Borough of Somerville without the issuance of a State permit or license and full regulatory oversight of the cannabis establishment by the Cannabis Regulatory Commission or other state licensing authority as well as oversight and issuance of a license by the Borough.
3. Classification of licenses. The Borough, subject to land use approval and State licensure, may issue the following municipal licenses to operate a cannabis establishment:
Class 5: Cannabis Retailer License
4. Maximum number of licenses. The Borough may issue a maximum of two (2) Class 5 Cannabis Retailer licenses.
A Licensure an entity may not hold more than one cannabis retailer license. Any license conditionally issued by the Borough is contingent upon the locally licensed entity's or individual's subsequent recipient of a State permit or license of the same class or type of regulated cannabis activity.
5. Location of licenses. The Cannabis Retailer License shall only operate in the B-5 Zoning District. The Borough shall not issue a permit to any retailer within 600 feet of existing Class 5 Cannabis Retailer License.

61-7.1 Licensing Process

1. Application. Persons wishing to obtain a Class 5 Cannabis Retailer License shall file a license application with the Clerk-Administrator, on a standardized form established

by the Clerk-Administrator and available in the Clerk-Administrator's office. The Clerk-Administrator shall establish a reasonable application period and deadline for all applications. An application shall be deemed incomplete, and shall not be processed by the Clerk-Administrator until all documents and application fees are submitted. To be deemed complete, all applications shall be accompanied by the following:

- a. 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, a 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 entrant contingent upon successful licensing.
- b. The applicant 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 shall also certify under oath that they will not and shall not discriminate based on race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.
- c. The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws and the location restrictions set forth in this Code.
- d. The applicant shall submit, to the satisfaction of the Clerk-Administrator, proof of financial capability to open and operate the marijuana establishment for which the applicant is seeking a license. Standards for proof of financial capability shall be determined by the Clerk-Administrator, additional information may be requested by the Governing Body or Committee conducting the review.
- e. The applicant shall submit all required nonrefundable fees for the application and conditional license in accordance with the following fee schedule:

Class 5: \$2,000
- f. The applicant shall submit all annual registration fees required in accordance with the following fee schedule, which shall be refunded in the event the applicant does not receive a license:

Class 5: \$10,000 per year Cannabis Retail License
- g. 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 the State of New Jersey or a subdivision thereof within the preceding five (5) years.
- h. The applicant and the application shall otherwise comply with any, and all qualification standards set forth in the State and Borough laws or regulations.

61-7.2 Application review and Multiple Applicants

- a. In accordance with State Law, the applicant shall receive a letter of support from the Borough of Somerville. A Committee of the Governing Body, (selected by the Mayor) which shall include the Clerk-Administrator shall evaluate all applicants and recommend to the Governing Body that the Borough of Somerville issue a notification of award after consideration and evaluation of the following criteria, such criteria may not apply with all applicants, however the Committee shall use this as a guideline for evaluation.
 - i. Applicant's owners' or principals' qualifications and experience operating in highly regulated industries, including cannabis, healthcare, pharmaceutical manufacturing, and retail pharmacies, with preference to experience operating such businesses within the State of New Jersey and where the value of owners' experience shall outweigh the experience of non-owner principals.
 - ii. Applicant's qualifications and experience related to public safety and security, including any of the applicant's owners' or principals' experience in law enforcement and drug enforcement (not to exceed 1,000 words), and a summary of the applicant's plans for storage of products and currency, physical security, video surveillance, security personnel, and visitor management.
 - iii. Applicant's or its owners' 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 the regulated cannabis industry for at least one year prior to application for a Class 5 Cannabis Retailer License, in an effort to create well-paying jobs with employee benefits in the municipality.
 - iv. Summary of the applicant's environmental impact and sustainability plan (not to exceed 500 words); whether the applicant entity or its parent company has any recognitions from or registrations with federal or New Jersey state environmental regulators for innovation in sustainability; and whether the applicant entity or its parent company holds any certification under international standards demonstrating the applicant has an effective environmental management system or has a designated sustainability officer to conduct internal audits to assess the effective implementation of an environmental management system ;
 - v. Applicant's ties to the host community, demonstrated by at least one shareholder's proof of relationship and ties to New Jersey or Somerset County.
 - vi. Applicant's demonstrated commitment to diversity in its ownership composition and hiring practices and whether the applicant entity or its

parent company holds any certifications as a NJ minority-owned, women-owned, or veteran-owned business.

61.-7.3 Notification of Award and conditional municipal license

- a. Notwithstanding the foregoing competitive application process, a notification of award issued by the Governing Body and conditional municipal license shall entitle the recipient applicant to pursue a State permit or license in the appropriate classification for up to 12 months, which may be extended at its own discretion by the Governing Body for an additional 6 months for good cause. No license to operate shall issue until the applicant has received a State permit and satisfied other prerequisites of municipal licensure. If the recipient of a notice of award and conditional license has not received a State permit or license within 12 months from issuance, unless extended for good cause, the Clerk-Administrator shall issue a new request for applications and evaluation of licensure as established under the above criteria.

61-7.4 RESERVED

61- 7.5 Term of license and license renewals.

- a. Any local license issued pursuant to this Chapter shall be valid for a period of three (3) years from the date of issuance shall be renewed in accordance with the provisions of the Chapter.
- b. The Clerk-Administrator may, at his/her discretion, adjust the renewal date of the local license to correlate with an applicant's State licensing and renewal schedule and said renewals shall be approved by resolution of the Governing Body.
- c. 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.
- d. Transfer of ownership of any local license or change of location of any license or modification to expand a licensed premise shall be subject to the Borough Council approval and if required the appropriate Land Use Board and zoning approval. The appropriate escrows must be posted in order to review any application with the Borough's Land Use Boards.
- e. Except where the Clerk-Administrator has received a complete renewal application along with the requisite fees, and the Governing Body has issued a license renewal, it shall be unlawful for any person to operate after the date of license expiration.

61-8 RESERVED

61-9 Disciplinary Actions; Sanctions; Penalties

- a. Disciplinary actions. Procedures for investigation of license violations and for suspension, revocation, or other licensing sanctions as a result of any such violation shall be as follows:

1. First offense: Up to \$250 per violation per day;
2. Second offense: Up to \$500 per violation per day;
3. Third violation shall result in summary suspension.
 - b. Summary suspension. Notwithstanding the foregoing section, when the Clerk-Administrator 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 emergency action, the Clerk-Administrator may enter a summary suspension order for the immediate suspension of such license pending further investigation.
 1. The summary suspension order shall be in writing and shall State the reasons therefore. The licensee shall be afforded an opportunity for a hearing as outlined herein.
 2. The Clerk-Administrator shall convene a review panel consisting of the Clerk-Administrator, a second administrative officer designated by the Mayor, and the Chief of Police. The hearing shall be scheduled within 30 days of the date of the order.
 3. The review panel is authorized to impose any fines, conditions, restrictions, suspensions, or combination thereof authorized by the State of New Jersey. In the absence of State specified penalties, the Borough may issue fines up to, but not to exceed, \$2,500 per offense and/or suspension of license for a period not to exceed 6 months.
 - c. Inactive licenses. Following the commencement of retail sales of cannabis or cannabis products, the Governing Body may suspend or revoke any license if the licensed premises have been inactive or unoccupied by the licensee for at least 6 months.
 - d. State license. The Governing Body may suspend or revoke any license if the corresponding State license or permit for the subject location is expired, surrendered, suspended, or revoked.

SECTION 1. Any and all ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION 2. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 3. This Ordinance shall take effect upon passage and publication as provided by law.

SECTION 4. This Ordinance shall be a part of the General Ordinances of the Somerville Borough as though codified and fully set forth therein. The Borough Clerk shall have this Ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and the Borough Attorney are authorized and directed to change any Chapter, Article and/or Section number of the General Ordinances of the Borough of Somerville 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 possible accidental repeal of existing provisions not intended to be repealed.

Introduction: June 21, 2021

First Publication: June 29, 2021

Adoption: July 19, 2021

Final Publication: July 27, 2021



Dennis Sullivan, Mayor



Kevin Sluka, Clerk/Administrator