

ORDINANCE NO. 3566-21

AN ORDINANCE BY THE BOROUGH OF RUTHERFORD, BERGEN COUNTY, NEW JERSEY PERMITTING THE OPERATION OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES, CREATING A MUNICIPAL TAX RELATIVE TO CANNABIS SALES, SETTING ZONING REGULATIONS FOR CANNABIS BUSINESSES, AND OTHER REGULATIONS RELATING TO 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, Governor Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

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

- Class 1 Cannabis Cultivator license, 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 Distributer 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 purchases 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, Section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, or distributors, anywhere in the municipality; and

WHEREAS, Section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, pursuant to Section 31b of the Act, the failure to do so shall mean that cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

WHEREAS, the Mayor and Council of the Borough of Rutherford has determined it is appropriate to regulate all permitted types of Cannabis businesses so that the businesses are subjected to reasonable and appropriate zoning regulations and other conditions; and

WHEREAS, Municipalities are permitted to impose a municipal tax on the sale of cannabis products;

SECTION 1. NOW THEREFORE, BE IT ORDAINED, by the Borough of Rutherford, in the County of Bergen, State of New Jersey, Chapter 19A of the Borough Code entitled “Cannabis” is hereby added as follows:

CHAPTER 19A CANNABIS

§19A-1 PERMITTED AND PROHIBITED LICENSES

- A. **PERMITTED LICENSES:** Those businesses possessing either a Class 1, Class 2, Class 3, or Class 4, license Pursuant to Section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), may operate within the Borough of Rutherford subject to all of the provisions of this ordinance and all applicable State standards and regulations.

- B. **PROHIBITED LICENSES:** Class 5 and Class 6 licenses are prohibited in the Borough of Rutherford, except for the purpose of delivering cannabis items and related supplies from a Class 6 license holder located outside of the Borough of Rutherford.

§19A-2 ZONING

- A. A business with a Class 1, Class 2, Class 3, or Class 4 license may operate within the lots set forth on Exhibit "A" attached hereto and made a part hereof, as a conditional use. Bulk standards associated with the ORD shall apply subject to the conditions set forth below.
- B. In order to qualify for conditional use approval to operate a business with a Class 1, Class 2, Class 3, or Class 4 license, the licensee must meet the following conditions:
- (1) Possess the appropriate State license.
 - (2) The applicant will implement an odor mitigation infrastructure so that odors emanating from the facility are not detectable by a person on adjacent properties, rights-of-way, or other units with a building on the same lot.
 - (3) Outdoor generators and other mechanical equipment shall be enclosed and have noise reduction systems to mitigate noise pollution. All facilities must operate within applicable State sound limitations. Sound mitigation equipment shall be screened from view from adjacent properties.
 - (4) All activities associated with the production of cannabis, including cultivation, manufacturing, and processing, shall occur within an enclosed building.
 - (5) Landscape buffers of at least three feet high at the time of installation, or other equivalent method of buffering, shall be installed adjacent to any property line shared with a residential property.
 - (6) Cannabis or cannabis related products must not be visible from the adjacent sidewalk, right of way, or street.
 - (7) The lot shall front on a collector or arterial road as specified in the Borough Master Plan, and all ingress and egress shall be limited to such roads.
 - (8) A minimum buffer area of 50 feet shall be provided along any common property line with a residential district or use.

- (9) A landscaping strip of a minimum width of 10 feet shall be provided along front and side street lot lines. All landscaped areas shall be curbed with concrete or granite block curbing.
- (10) All garbage receptacles or other outside appurtenances shall be screened by means of adequate landscaping or fencing.
- (11) Compliance with the signage standards of the ORD zone, except that:
 - (a) No sign shall be placed on the roof of a building nor placed on its walls so as to exceed in height the roof of a building.
 - (b) No illuminated signs shall be permitted.
 - (c) No freestanding signs shall be permitted.
 - (d) There shall only be one sign.
 - (e) The content of signage shall be restricted to text on a solid background. The logo of the business may be included provided the logo does not include a cannabis plant leaf or image of other cannabis paraphernalia or products.

§19A-3. CREATION AND IMPOSITION OF A MUNICIPAL TAX

- A. There is hereby created a municipal tax upon the gross sales of all licensed business as follows:
 - (1) A 2% tax applied to businesses operating with a Class 1, Class 2, or Class 4 license.
 - (2) A 1% tax applied to businesses operating under a Class 3 license.
- B. Taxes to be paid to the Borough shall be paid quarterly.
- C. The Borough shall have the right to audit the financial records of the licensee.

§19A-4 PENALTIES; ENFORCEMENT

Violations of any provisions of this ordinance shall be punishable by fines of \$1,000 for the first offense, and \$2,000.00 for each and every offense thereafter. This ordinance shall be enforced by either the Rutherford Police, the Rutherford Building Department, the Borough Administrator or the Rutherford Health Department.

§19A-5 HOURS OF OPERATION:

There shall be limit on the hours of operation for a holder of a Class 1, Class 2, Class 3, or Class 4 license.

§19A-6 LIMITATIONS ON THE NUMBER OF LICENSES:

There shall only be three of each type of Class 1, 2, 3, or 4 licenses permitted within the Borough of Rutherford.

§19A-7 ONSITE CANNABIS CONSUMPTION:

Onsite cannabis consumption shall not be permitted within the Borough of Rutherford.

§19A-8. SECURITY

All facilities shall be secured in accordance with State of New Jersey statutes and regulations. Facilities shall have video surveillance systems operating 24 hours a day, 365 days a year, and have trained security personnel on-site during operating hours. Facilities permitted herein shall submit, as a component of their Site Plan Application, a security plan to be approved by the Rutherford Police Department.

§19A-9. WATER AND ENGERGY CONSUMPTION

SECTION 1. Any facility operating a Class 1, Class 2, Class 3, or Class 4 facility shall submit, as a component of their Site Plan Application, a water and energy consumption plan detailing at minimum, anticipated water and energy consumption.

SECTION 2. INCONSISTENT ORDINANCES REPEALED: Any article, section, paragraph, subsection, clause, or other provision of the Borough of Rutherford inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.


SECTION 3. 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.

This ordinance shall take effect upon its passage.

ATTEST:


Margaret M. Scanlon, Borough Clerk

BOROUGH OF RUTHERFORD


Mark Goldsack, Acting Mayor

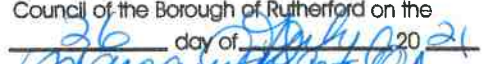
I hereby certify that this is a true and exact copy of an ordinance adopted by the Mayor and Council of the Borough of Rutherford on the 26 day of July, 2021

Margaret M. Scanlon

EXHIBIT "A" TO
§19A-2 A ZONING

Properties identified by Block and Lot upon which Class 1, Class 2, Class 3, or Class 4 Cannabis License holder may operate

Block	Lot
219	1
219	2
219	3
219	55
219	56.02
219	57
219	58.01
219	67.07
219	68.08
219	69.03
219	69.04
219	69.05
219.02	66.06
219.02	66.07
219.02	66.08
219.02	67.07
219.02	79
219.04	1
219.04	2.01
219.04	2.02
219.04	3
219.04	61
223	6.04
223	6.05
223	6.06
223	6.08
223	6.11
223	7
223	7.03
224	3.04
224.01	1.01
224.01	1.04
227	3