

TOWN OF WEST NEW YORK

ORDINANCE #15/21

AN ORDINANCE TO AMEND CHAPTER 414, ZONING, OF THE CODE OF THE TOWN OF WEST NEW YORK WITH RESPECT TO BUSINESSES AUTHORIZED AND PROHIBITED UNDER THE “NEW JERSEY CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE, AND MARKETPLACE MODERNIZATION ACT”

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, Public Question No. 1 was approved by the voters 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 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 (6) marketplace classes of licensed businesses, consisting of:

1. Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
2. Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
3. Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
4. Class 4 Cannabis Distributor license, for businesses involved in transporting cannabis plants in bulk from one licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
5. Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and,
6. 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 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer;” and,

WHEREAS, Section 31a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and,

WHEREAS, Section 31a of the Act also authorizes municipalities to adopt by ordinance regulations governing the local licensing endorsement, location, manner and times of operation of cannabis establishments and cannabis distributors, and the location and manner of cannabis delivery services, and establishing civil penalties for the violation of any such regulations; and,

WHEREAS, Section 31b of the Act authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality, except for the delivery of cannabis items and related supplies by a delivery service based and initiated from outside of 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 21, 2021); and,

WHEREAS, pursuant to Section 31b of the Act, the failure to adopt a municipal regulation or prohibition shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of 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, in 2026, 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 with appropriate approvals within the municipality; and,

WHEREAS, section 40 of the Act permits a municipality to adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality on receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof and to set its own rate or rates, but in no case exceeding: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer; and,

WHEREAS, the Board of Commissioners of the Town of West New York desire, at this time, to allow for certain classes of cannabis establishments now permitted by State law to form within the Town of West New York in a strictly limited and controlled manner that protects the interests of the residents and businesses of the Town, while prohibiting all other classes of cannabis establishments.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK, as follows:

Section 1:

Chapter 414 of the Code of the Town of West New York, “Zoning,” shall hereby be amended to establish a Cannabis Retail Overlay Zone (CROZ), as further provided in this Ordinance.

Section 2:

Chapter 414-11, Article III, of the Code of the Town of West New York, “Definitions” shall hereby be amended to add the following terms and definitions:

CANNABIS

All parts of the plant *Cannabis sativa* L., 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 P.L. 2016, c. 16 for use in cannabis products as set forth in this 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 “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et seq.) and P.L. 2015, c. 158 (C.18A:40-12.22 et seq.); marijuana as defined in N.J.S. 2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L. 2001, c. 114 (C.2C:35B-1 et seq.), or marijuana as defined in section 2 of P.L. 1970, c. 226 (C.24:21-2) and applied to any offense set forth in the “New Jersey Controlled Dangerous Substances Act,” P.L. 1970, c. 226 (C.24:21-1 et seq.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the “New Jersey Hemp Farming Act,” P.L. 2019, c. 238 (C.4:28-6 et seq.).

CANNABIS CULTIVATOR

Any licensed person or entity that grows, cultivates, or produces cannabis in this State, 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 SERVICE

Any licensed person or entity 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 licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports 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

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

CANNABIS GROWER

Any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells, and 17 may transport, this cannabis to other cannabis growers, cannabis processors, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Grower license. A cannabis grower may also be referred to as a "cannabis cultivation facility."

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 "Jake Honig Compassionate Use Medical Cannabis Act," P.L. 2009, c.307 (c.24:6i-1 et seq.) and P.L. 2015, c.158 (c.18a:40-12.22 et seq.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L. 2019, c. 238 (c. 4:28-6 et seq.).

CANNABIS LEAF

The leaf of the plant *Cannabis sativa* L. within the plant family Cannabaceae.

CANNABIS MANUFACTURER

Any licensed person or entity 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 MANUFACTURING

The drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" with respect to cannabis does not include packaging or labeling.

CANNABIS PARAPHERNALIA

Any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing a cannabis item into the human body. "cannabis paraphernalia" does not include drug paraphernalia as defined in N.J.S. 2C:36-1 and which is

used or intended for use to commit a violation of chapter 35 or 362 of Title 2C of the New Jersey Statutes.

CANNABIS PRODUCT

A product containing usable cannabis, cannabis extract, or any other cannabis resin and other ingredients intended for human consumption or use, including a product intended to be applied to the skin or hair, edible cannabis products, ointments, and tinctures. “Cannabis product” does not include: (1) usable cannabis by itself; or (2) cannabis extract by itself; or (3) any other cannabis resin by itself.

CANNABIS RETAILER

Any licensed person or entity 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, USABLE

The dried leaves and flowers of the 5 female plant *Cannabis sativa* L., and does not include the seedlings, seeds, stems, stalks, or roots of the plant.

CANNABIS WHOLESALER

Any licensed person or entity 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.

Section 3:

A new Article XIX shall be added to Chapter 414 of the Code of the Town of West New York, to be entitled “Cannabis Retail Overlay Zone (CROZ)” and shall read as follows:

414-113- CANNABIS RETAIL OVERLAY ZONE (CROZ).

A. Purpose.

- (1) To permit the establishment of one (1) Cannabis Retailer establishment, as defined herein, within the Town of West New York, through the mechanism known as overlay zoning.
- (2) To establish appropriate controls for such establishment so as to protect and promote public safety and quality of life for persons residing and businesses existing in proximity to the establishment.



- (3) The CROZ shall be limited to those properties currently designated C-R, Retail Service Commercial in Block 84, 94, 96, 98, 104, 107, 108, 109, and 112 also known as Bergenline Avenue, between 49th and 55th Street.

B. Effect on Underlying Zoning.

- (1) As an overlay zone, the CROZ does not replace the existing, or “underlying,” zone(s).
- (2) Any person or entity that wishes to use or develop upon a property within the CROZ shall have the option to use or develop the property in accordance with the regulations of either the CROZ or the existing/underlying zone.

C. Conditional Uses. Any use that is not specifically identified in this subsection is prohibited in this zone.

- (1) Cannabis Retail Establishments fitting the Class 5 license category under P.L. 2021, c.16, also known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”).

D. Conditions.

- (1) Any and all storage associated with the establishment, including refuse and other solid wastes, shall be stored in a building in a secure fashion.
- (2) Refuse and solid waste shall be collected off of the property by a private hauler.
- (3) Signage
 - i. Shall not include imagery of or representing a marijuana leaf.
 - ii. Shall otherwise comply with the signage requirements established at §414-24.
- (4) Shall not include any indoor or outdoor seating or assembly areas for customers or the public, except for seating that may otherwise be required for health, safety, or accessibility for persons with disabilities.
- (5) Marijuana or cannabis consumption shall be prohibited on the premises.
- (6) No retail cannabis or cannabis paraphernalia shall be displayed in any storefront window.
- (7) The establishment shall not be engaged in growing (cultivating), manufacturing, business to business distribution, wholesale, or delivery to consumer operations from the facility.

- (8) If located in a multi-tenant or mixed-use building, no part of the retail space where cannabis is stored shall be directly accessible from any common area within the building such as common stairways or hallways.
- E. Bulk, height, and setback requirements shall be the same as the requirements for commercial retail and service uses in the underlying zoning.
- F. For the purpose of calculating parking in a manner consistent with Chapter 414-25, the use shall have a parking requirement of one (1) parking space per 1 square foot of gross floor area. A change of use shall not require parking.
- G. The establishment shall comply with the Act and with any regulations established and enforced by the Cannabis Regulatory Commission of New Jersey as well as any other lawful authority.

H. PROHIBITED USES IN ALL ZONE DISTRICTS IN THE TOWN OF WEST NEW YORK.

1. The following uses listed in Table 1 are not permitted, accessory or conditional uses and are prohibited in all zone districts in the Town of West New York. This list is not exhaustive of all uses that are prohibited.

**Table 1
Uses Specifically Prohibited**

Cannabis Establishments meeting one or more of the following criteria:

- “Cannabis Cultivator” as defined in §414-11B, except in any zone or overlay zone where such use is specifically permitted.
- “Cannabis Manufacturer” as defined in §414-11B.
- “Cannabis Wholesaler” as defined in §414-11B.
- “Cannabis Distributor” as defined in §414-11B.
- “Cannabis Retailer” as defined in §414-11B, except in any zone or overlay zone where such use is specifically permitted.
- Cannabis Delivery Service” as defined in §414-11B.

Section 4:

Fees/Taxation. §231 of the Town Ordinances is amended to further the purposes of this Ordinance and as permitted by the Act.

- A. The Town of West New York shall collect 2% (two percent) of the receipts from each sale by a cannabis retailer and the retailer shall submit audited receipts to the Town. The two-percent tax shall be payable quarterly.
- B. The cannabis retailer shall be required to submit an application for a license, to be accompanied by a fee of \$6,000.00 (Six Thousand Dollars), with all documentation as set forth in the application as required by the Town of West New York.
- C. The annual license renewal fee, payable on the first day of January of each calendar year, is \$15,000.00 (Fifteen Thousand Dollars).

Section 5:

All other provisions of Chapter 414 of the Code of the Town of West New York shall remain unchanged.

Section 6:

Pursuant to N.J.S.A. 40:55D-26 and/or 40:55D-64, after introduction of this Ordinance, it shall be referred to the West New York Planning Board for the review required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., prior to the hearing on adoption of this Ordinance.

Section 7:

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

Section 8:

Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason is 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 remain in effect; it being the legislative intent this Ordinance shall stand notwithstanding the invalidity of any part.

Section 9:

The Town Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this ordinance to the Hudson County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon adoption of this ordinance, after public hearing thereon, the Town Clerk is further directed to publish notice of the passage thereof and to file a copy of this ordinance as finally adopted with the Hudson County Planning Board, as required by N.J.S.A. 40:55D-16, and with the Town's Tax Assessor.

Section 10:

Codification. This Ordinance shall be a part of the Code of the Town of West New York as though codified and fully set forth therein. The Municipal Clerk shall have this ordinance codified and incorporated in the official copies of the Code. The Municipal Clerk and Town Attorney are

authorized and directed to change any Chapter, Article and/or Section number of the Town 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 possible accidental repealers of existing provisions not intended to be repealed.

Section 11:

This Ordinance shall take effect immediately upon publication and final passage according to law.

Introduced: July 14, 2021

Notice

The foregoing Ordinance was adopted for first reading by the Mayor and Board of Commissioners of the Town of West New York, New Jersey, on **July 14, 2021** and ordered published, and will be further considered before final passage at a public hearing on **August 4, 2021 at 12:30 p.m.** held remotely. Instructions regarding attendance and participation in the meeting will be posted on the Town's website: <http://www.westnewyorknj.org> . A copy of this Ordinance has been posted on the bulletin board upon which public notices are customarily posted on in the Town Hall of the Town of West New York, and a copy (at no charge) is available up to and including the time of such meeting to the members of the public of the Town who shall request such copies, at the Office of the Town Clerk in said Town Hall in West New York, N.J.