

ORDINANCE NO. 2021 –13

AN ORDINANCE TO AMEND CHAPTER 360 “ZONING,” OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF PEQUANNOCK TO PROHIBIT CERTAIN CLASSES OF CANNABIS ESTABLISHMENTS AS USES WITHIN THE TOWNSHIP AND LIMIT AND REGULATE CANNABIS CULTIVATION ESTABLISHMENTS AS CONDITIONAL USES AND TO ESTABLISH A CANNABIS TRANSFER TAX WITHIN THE TOWNSHIP.

WHEREAS, the Legislature of the State of New Jersey recently enacted P.L.2021, c.16, known as the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act (hereinafter referred to as “Act”); and

WHEREAS, Section 31 of the Act authorizes a municipality to prohibit the operations of any one or more classes of cannabis establishments that may operate within the municipality subsequent to the adoption of the Act; and

WHEREAS, the Township Council of the Township of Pequannock believes it is appropriate to prohibit the operations of certain classes of cannabis establishments within its jurisdiction, to permit cultivation establishments with limited processing subject to appropriate regulations, and to establish a cannabis transfer tax as permitted under the Act.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Pequannock, in the County of Morris, and State of New Jersey, as follows:

SECTION 1. Chapter 360, “Zoning”, Article VII, “Supplemental Regulations”, Section 360-43, “Regulations pertaining to all districts”, is hereby amended to include a new paragraph “M” to read in its entirety as follows:

“§ 360-43

M. Cannabis establishments prohibited. The operation of all classes of cannabis establishments as defined by P.L.2021, c. 16, including but not limited to, cannabis retailers, cultivators, manufactures, distributors, wholesalers, testing facilities, delivery services, medical cannabis dispensaries, alternative cannabis treatment centers, including such operators holding a medical cannabis dispensary permit pursuant to P.L.2009, c.307 (C. 24:61-7), are expressly prohibited uses within the jurisdictional boundaries of the Township of Pequannock except that the cultivation of cannabis products and related limited cannabis processing activities shall be permitted as conditional uses pursuant to N.J.S.A. 55D-67 in the I-3 and R-87 Districts subject to the express conditions and limitations provided in this Chapter.”

SECTION 2. Chapter 360, “Zoning”, Article I, Genera Provisions, Section 360-5, “Definitions and Word Usage” is hereby amended to include the following additional definitions in subsection B:

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 the New Jersey Cannabis Regulatory Enforcement Assistance, and Marketplace Modernization Act, P.L. 2021, c16 (the "Act") for use in cannabis products as further defined in the Act.

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 Establishment

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer or a cannabis distributor as defined in the New Jersey Cannabis Regulatory Enforcement Assistance, and Marketplace Modernization Act, P.L. 2021, c16 (the "Act")

Cultivation

The growing, cultivation, or production of cannabis. Cannabis cultivation may include limited cannabis processing provided that the cannabis cultivator possesses the required State cannabis manufacturers license and subject to the limitations contained within this Chapter.

Limited Cannabis Processing

The drying, compounding, extraction, and/or conversion of usable cannabis into cannabis resins as an activity accessory to and performed in conjunction with a principle cannabis cultivation use on or at the same facility. It is recognized that Limited Cannabis Processing requires a State of New Jersey cannabis "manufacturing" license, however, Limited Cannabis Processing is the only "manufacturing" activity permitted in the Township.

SECTION 3. Chapter 360, "Zoning", Article VII, "Supplemental Regulations", Section 360-42, "Regulations pertaining to nonresidential districts", is hereby amended to include a new paragraph "V" to read in its entirety as follows:

"V. Cultivation of Cannabis. Cultivation of cannabis shall be permitted in the I-3 District only where the following conditions are met:

(1) Bulk Regulations.

- (a) Lot Size. A lot area of no less than 4 acres
- (b) Lot Width. The minimum lot width shall be 200'
- (c) Front Yard Setback. All cultivating structures shall have a minimum front yard setback of 175'
- (d) Side Yard Setback. All cultivating structures shall have a minimum side yard setback of 50'

- (e) Rear Yard Setback. All cultivating structures shall have a minimum rear yard setback of 50'
 - (f) Building Coverage. The maximum building coverage for permanent buildings shall be 75%
 - (g) Impervious Coverage. The maximum impervious coverage shall be 80%.
 - (h) Fencing. All structures used for the cultivating of cannabis shall be enclosed by a chain link fence that is at least 7' in height.
 - (i) Maximum Building Height. The maximum permitted cultivating/growing building height shall not exceed 35'
- (2) Security. All structures shall be designed, using safety and security barriers to prevent the unlawful and unauthorized entry into the cultivating/growing structures in accordance with the licensee's State issued permit requirements.
- (3) Eligible Locations.
- (a) Cultivating facilities shall be located at least 1000' from the property line of any schools as depicted on the Township's most current Drug Free School Zones map.
 - (b) Cannabis cultivation shall take place and be restricted to permanent structures including greenhouses. The use of temporary structures shall not be permitted for the cultivation of cannabis.
- (4) Odor Control. The cultivating facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust system such that any odor generated inside the facility is not detectable by a person or reasonable sensitivity at the property line of the subject property. The operator of any cannabis facility shall submit an annual odor monitoring report for the life of their applicable State permit.
- (5) Noise Control. All cannabis cultivating operations shall operate in compliance with State and local noise laws and regulations.
- (6) Generator. All cannabis cultivating operations shall have a back-up generator which shall be sufficient in output to maintain all operating and electronic security systems in the event of a power failure.
- (7) Lighting. No light generated by any cannabis cultivating/growing structures shall result in measurable light changes at the nearest property boundary to each structure. Interior light shades may be required by the Board on greenhouse structures to manage potential light impacts. On-site security lighting, whether or not indoor or outdoor, and hydroponic or other lighting used in indoor cultivation areas shall be exempt from this provision.
- (8) Site Plan Approval. Site Plan approval shall be required as per §360-56-. In addition to the general site plan submission requirements, the applicant shall

submit, including but not limited to, a safety and security plan, emergency service access plan, hazardous material inventory, environmental impact statement and waste control plan.

- (9) Limited cannabis processing shall be permitted as accessory to cannabis cultivation provided that no more than 20% of the cultivation facility may be used for processing. "

SECTION 4. Chapter 360, "Zoning", Article VII, "Supplemental Regulations", Section 360-41, "Regulations pertaining to residential districts", is hereby amended to include a new paragraph "X" to read in its entirety as follows:

"X. Cultivation of Cannabis. Cultivation of cannabis shall be permitted in the I-3 District only when associated with a pre-existing farming use and only when each of the conditions for the cultivation of cannabis set forth in Section 360-42(V) for this use in the I-3 District are met."

SECTION 5. Chapter 360, "Zoning", Article VII, "Supplemental Regulations", Section 360-41, "Regulations pertaining to residential districts", is hereby amended to include the following revision to Paragraph B which shall read, in its entirety, as follows:

B. Sale of farm products. In conjunction with a farm as a permitted use in the Township, produce and other products of the farm may be sold on the premises. Any sales of produce or farm products must take place from a structure located at least 35 feet from the street upon which the lot fronts. Parking shall be provided for at least one car for each acre of land or 5,000 square feet of greenhouse or propagating house under cultivation and shall be constructed of a dust-free material. Products sold shall be limited to the extent that at least 75% of the products sold at any time must be produced on the property. Sale or advertisement of cannabis products shall not be permitted.

SECTION 6. The Revised General Ordinances of the Township of Pequannock shall be amended by the inclusion of new Chapter 120 which shall be entitled "Cannabis Transfer Tax" and shall read, in its entirety, as follows:

"Chapter 120

Cannabis Transfer Tax

§120-1 Transfer Tax Imposed.

There is hereby imposed a transfer tax of two (2) percent on receipts from the sale of cannabis by a cannabis establishment to another cannabis establishment. Such tax shall be collected or paid, and remitted to the municipality by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item. The transfer tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable, or equivalent value of the

transfer, for the cannabis or cannabis item. No cannabis establishment required to collect a transfer tax imposed hereunder shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment, or that the transfer tax will be refunded to the cannabis establishment.

§120-2 Tax Liability.

Every cannabis establishment required to collect a transfer tax imposed pursuant to this section shall be personally liable for the transfer tax or user tax imposed, collected, or required to be collected under this section. Any cannabis establishment shall have the same right with respect to collecting the transfer tax from another cannabis establishment as if the transfer tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment, as if the transfer tax was a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the chief fiscal officer of the municipality shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

§120-3 Collection of Taxes and Lien.

All revenues collected from a transfer tax imposed by ordinance pursuant to this section shall be remitted to the chief financial officer in the manner prescribed herein. The chief financial officer shall collect and administer any transfer tax imposed by ordinance pursuant to this chapter. The municipality may enforce the payment of delinquent taxes or transfer fees imposed by ordinance pursuant to this section in the same manner as provided for municipal real estate property taxes. In the event that the transfer tax imposed by ordinance pursuant to this section is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year. The municipality shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

§120-4 Administration of Transfer Tax.

The chief financial officer is charged with the administration and enforcement of the provisions of this chapter, and is empowered to prescribe, adopt, promulgate and enforce

rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this chapter. Should a cannabis establishment fail or refuse to provide adequate information to the chief financial officer to determine the amount of tax due, the chief financial officer may use information provided to the chief financial officer from other sources (i.e., the Commission or Department of Treasury) to determine the amount of tax liability.

- A. It shall be the duty of the chief financial officer to collect and receive the taxes, fines, and penalties imposed by this chapter. It shall also be the duty of the chief financial officer to keep a record showing the date of such receipt. The chief financial officer is authorized to enter into agreements with the State of New Jersey to obtain information to facilitate administration of the tax. The chief financial officer is authorized to issue a ruling upon written request of a taxpayer or upon its own volition.
- B. The chief financial officer is hereby authorized to examine the books, papers and records of any taxpayer to verify the accuracy of any declaration or return, or if no declaration or return was filed, to ascertain the tax due. Every taxpayer is hereby directed and required to give to the chief financial officer, or to any agent designated by him/her, the means, facilities and opportunity for such examinations and investigations, as are hereby authorized.

§120-5 Recordkeeping.

Taxpayers liable for the transfer tax are required to keep such records as will enable the filing of true and accurate returns or the tax and such records shall be preserved for a period of not less than three (3) years from the filing date or due date, whichever is later, in order to enable the chief financial officer or any agent designated by him to verify the correctness of the declarations or returns filed. If records are not available in the municipality to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the chief financial officer either by producing them at a location in the municipality or by paying for the expenses incurred by the chief financial officer or his agent in traveling to the place where the records are regularly kept.

§120-6 Returns.

All cannabis establishments operating in the municipality are required to file a transfer tax return with the chief financial officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this chapter. Returns

shall be filed and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A taxpayer who has overpaid the transfer tax, or who believes it is not liable for the tax, may file a written request on an amended tax return with the chief financial officer for a refund or a credit of the tax. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the chief financial officer within two (2) years of the date of the payment.

§120-7 Confidentiality.

The returns filed by taxpayers, and the records and files of the chief financial officer respecting the administration of the transfer tax, shall be considered confidential and privileged and neither the municipality nor any employee or agent engaged in the administration thereof or charged with the custody of any such records or files, nor any former officer or employee, nor any person who may have secured information therefrom, shall divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the chief financial officer nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of the State Uniform Tax Procedure Law or of the tax law affected, or where the determination of the action or proceeding will affect the validity or amount of the claim of the municipality under the tax provisions of this chapter.

§120-8 Audit and Assessment.

The chief financial officer may initiate an audit by means of an audit notice. If, as a result of an examination conducted by the chief financial officer, a return has not been filed by a taxpayer or a return is found to be incorrect and transfer taxes are owed, the chief financial officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three (3) years to the date when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.

Upon proposing an assessment, the chief financial officer shall send the taxpayer an interim notice by certified mail, return receipt requested, which advises the taxpayer of additional taxes that are due. Should the taxpayer wish to dispute the assessment administratively by requesting a hearing with the chief financial officer, it must do so within thirty (30) days of the date of such interim notice. If, after the chief financial

officer sends an interim notice, a taxpayer fails to timely request a hearing with the chief financial officer or requests a hearing and after conducting a hearing, the chief financial officer determines that the taxes are due, the chief financial officer shall send the taxpayer by certified mail, return receipt requested, a final notice. Should the taxpayer wish to dispute the assessment set forth in the final notice, he or she must initiate an appeal in the New Jersey Tax Court within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder.

§120-9 Time Limitations.

The following periods of limitations shall apply to suits for collection of taxes: When a return has been filed but no tax paid, any suit brought to recover the tax due and unpaid shall be filed within two (2) years after the return was due or filed, whichever is later. Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes. Where, before the expiration of the time prescribed in this section for the filing a lawsuit against the taxpayer, both the chief financial officer and the taxpayer have consented in writing to its extension after such time, the suit may be filed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§120-10 Hearings.

Any person who receives an interim notice from the chief financial officer may within thirty (30) days after the date of an interim notice, request a hearing with the chief financial officer. Any person who fails to request a chief financial officer's hearing in a timely manner waives the right to administratively contest any element of the assessment. The chief financial officer shall accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with this section.

§120-11 Appeals.

Any aggrieved taxpayer may, within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder, or publication of any rule, regulation or policy of the chief financial officer, appeal to the Tax Court pursuant to the jurisdiction granted by N.J.S.A. 2B:13-2a(3) to review actions or regulations of municipal officials by filing a complaint in accordance with the New Jersey Court Rule 8:3-1. The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a final decision of the chief financial officer in respect to a determination of liability for the tax imposed by this chapter.”

SECTION 7. The Revised General Ordinances of the Township of Pequannock shall be amended by the inclusion of new Chapter 119 which shall be entitled "Cannabis Establishment License" and shall read, in its entirety, as follows:

"Chapter 119

Cannabis Establishment License

§ 119-1. Purpose.

This Article is enacted to regulate cannabis related business operations within the Township of Pequannock in accordance with the provisions of an Act of the Legislature of the State of New Jersey, entitled "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (hereinafter referred to as "Act") and its supplements and amendments. It shall be a violation of this Chapter for any person or entity to operate a cannabis establishment within the Township without possessing a license issued under this Chapter.

§ 119-2. Word usage.

For the purpose of this Article, words and phrases shall have the meanings given in the Act.

§ 119-3. Licenses.

- A. Laws applicable. All applications for licenses, all licenses issued and all proceedings under this Article shall be in accordance with the Act, rules and regulations referred to in § 119-1 and all other applicable laws of the State of New Jersey.
- B. Issuing authority. The Clerk of the Township is authorized and empowered to issue licenses for cannabis establishments.
- C. License applications; provisions. No license shall be issued except after written application presented by the proposed licensee in such form and upon complying with the provisions of this Chapter.
- D. License fees. The initial license fee shall be \$1,000.00. The annual license fee shall be \$500.00.

§ 119-4. Revocation of licenses.

- A. Any license issued under this Article may be suspended or revoked for violation of any of the provisions of this Chapter or any provisions of any applicable statute or any of the rules or regulations of the State of New Jersey.
- B. Unless the immediate suspension is necessary for preservation of public safety, proceedings for the suspension or revocation of any license issued under this Article, shall be commenced by the service of a five-day notice of charges preferred against the licensee by the Clerk and affording a reasonable opportunity for a hearing before the Township Council. Licenses may be suspended or revoked for any violation of this Chapter. Licensees shall have forty five (45) days from receipt of written notice to correct any and all noticed charges under this Article.
- C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this Article.
- D. Any license issued by the Township of Pequannock under this Article shall be suspended and/or revoked upon the suspension and/or revocation of the licensee's license issued by the State of New Jersey and/or the New Jersey Cannabis Regulatory Commission.

§119-5. License limited to Cannabis Cultivators.

The class of cannabis license permitted in the Township shall be for a cannabis cultivator. No license for any other class of cannabis establishment, including cannabis retailers, manufacturers, distributors, wholesalers, testing facilities, or delivery services, shall be available.

§119-6. Conditions for Issuance and Renewal of License.

The following conditions are required for the issuance and renewal of a cannabis establishment license:

- A. Applicant must possess any and all required licenses, permits or authorizations from the State of New Jersey and/or the New Jersey Cannabis Regulatory Commission for the operation of a cannabis establishment.
- B. The Applicant has received the requisite land use approval from the appropriate land use board (either the Planning Board or Zoning Board of Adjustment) having jurisdiction over the required approvals
- C. The applicant is in compliance with the following operational requirements:
 - 1. A cannabis facility shall comply with the zoning code, the building code, the property maintenance code, and all conditions of the applicable land use approval at all times.

2. The facility must hold at all times a valid license or permit issued by the State of New Jersey to undertake cannabis cultivation and manufacturing activities (when required for any accessory production) at the permitted property. A State issued license is valid only for the location identified on the license and until the expiration date printed on the license and cannot be transferred to another location in the Township without a new application. The State issued license shall be prominently displayed inside the permitted premises in a location where it can be easily viewed by law enforcement and administrative authorities. Any cannabis facility is subject to compliance with all State laws, regulations and guidelines with respect to cannabis licenses issued by the State of New Jersey.
3. Cultivation and manufacturing operations shall be conducted solely within the permitted premises on the permitted property.
4. No person under the age of eighteen (18) shall be permitted to enter into the permitted premises without a parent or legal guardian.
5. A cannabis cultivation or manufacturing facility shall at all times maintain a security system that meets State law requirements.
6. All cannabis in whatever form stored at the permitted premises shall be kept in a secure manner and shall not be visible from outside the permitted premises, nor shall it be grown, processed, exchanged, displayed or dispensed outside the permitted premises.
7. the amount of cannabis on the permitted property and under the control of the permit holder, owner or operator of the facility shall not exceed the amount permitted by the State license.
8. No pictures, photographs, drawings, or other depictions of cannabis or cannabis paraphernalia shall appear on the outside of any permitted premises nor be visible outside of the permitted premises on the permitted property.
9. The words "marijuana," "cannabis" and any other words used or intended to convey the presence or availability of marijuana shall not appear on the outside of the permitted premises nor be visible outside of the permitted premises on the permitted property.
10. No person operating or employed by a cannabis cultivation facility shall provide or otherwise make available cannabis to any person who is not legally authorized to possess same under state law.

11. All necessary building, electrical, plumbing and mechanical permits must be obtained for any part of the permitted premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of cannabis are located.
12. The owner and operator of a cannabis cultivation or manufacturing facility shall use lawful methods in controlling and disposing of waste or by-products from any activities allowed under the State license or permit.
13. Odor and noise control methods as established shall be maintained at all times.

§ 119-7. Violations and penalties.

Any person, firm, or corporation violating any of the provisions of this article shall be subject to such penalties as are provided for in Chapter 74, Violations and Penalties,

SECTION 8. This Ordinance may be renumbered for codification purposes.

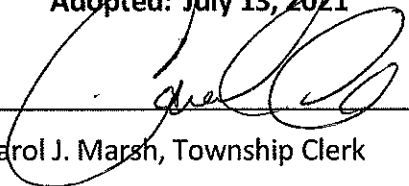
SECTION 9. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

SECTION 10. In the event that any section, part or provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.


SECTION 11. This Ordinance shall take effect upon passage as required by law.

Introduced: June 22, 2021

Adopted: July 13, 2021



Carol J. Marsh, Township Clerk



Kyle Russell, Mayor