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Barbara L. Dispoto, RMC

MAYOR
Richard Bolan

ADMINISTRATOR
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COUNCIL PRESIDENT
Katherine Bennin

COUNCIL MEMBERS
Jacqueline DeMuro
Jacqueline Flynn
Douglas Herrick
Louis D. Roer
Ryan P. Ullman

BOROUGH OF MAYWOOD
15 Park Avenue, Maywood, NJ 07607

ORDINANCE #12-21

AN ORDINANCE TO CREATE CHAPTER 107 OF THE BOROUGH OF MAYWOOD CODE SO AS TO PERMIT CANNABIS INDUSTRIES AS DEFINED BY THE “NEW JERSEY CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE, AND MARKETPLACE MODERNIZATION ACT” (THE “ACT”) WITHIN THE BOROUGH OF MAYWOOD, STATE OF NEW JERSEY

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MAYWOOD, IN THE COUNTY OF BERGEN AND STATE OF NEW JERSEY, AS FOLLOWS:

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 Borough of Maywood; 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, 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 do so 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.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Maywood, County of Bergen, as follows:

Section 1: Chapter 107 is created and shall read as

Title of Chapter § 107: CANNABIS

§ 107-1 SMOKING, VAPORIZING AND CONSUMPTION IN PUBLIC IS PROHIBITED

- A.** No person shall consume any cannabis product on any of the public streets, sidewalks, parking lots, roadways, pathways, playgrounds, parks or quasi-public areas or any other public property whatsoever within the Borough at any hour of the day or night unless a special permit is issued therefor in accordance with applicable statutes.
 - i. Unless another penalty is expressly provided by New Jersey Statute, any person who violates any provision of this article shall, upon conviction thereof, be punished by a fine in the amount of not less than \$100 and shall not exceed \$1000.
- B.** The use of cannabis shall be in compliance with Chapter 234 of the Borough of Maywood Code which prohibits smoking/vaporizing on public property and in public vehicles
 - i. Unless another penalty is expressly provided by New Jersey Statute, any person who violates any provision of this article shall, upon conviction thereof, be punished by a fine in the amount of not less than \$100 and shall not exceed \$1000.
- C.** All businesses within the Borough shall comply with the New Jersey's Smoke-Free Air Act of 2006.
 - i. Unless another penalty is expressly provided by New Jersey Statute, any person who violates any provision of this article shall, upon conviction thereof, be punished by a fine in the amount of not less than \$500 and shall not exceed \$2000.

§ 107-2 PERMITTED CANNABIS BUSINESSES; LOCATIONS

- A.** No class of cannabis industry is permitted to establish/operate within the areas designated by Chapter 201 of the Borough Code as the Special Improvement District, the A-1 Residential one family district, the A-2 Residential two-family district, the GA Garden Apartment district, or the TH Townhouse Use District.
- B.** The following Cannabis industries are permitted to establish a business and operate within the Borough of Maywood in the designated area of zoning other than those provided in section A of this chapter.

- i. Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis in the LL, SOB, OR and HDO District;
 - ii. Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items in the LL, SOB, OR and HDO District;
 - iii. Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees in the LL, SOB, OR and HDO District;
 - iv. 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 LL, SOB, OR and HDO District;
 - v. Class 5 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers in the SOB zone, HDO zone, the OR zone on the Northern Side of Spring Valley Avenue, the P-C zone on the Northern Side of Spring Valley Avenue ending at and not exceeding easterly beyond the access road of the Bergen Town Center, any commercial/retail properties existing as of January 1, 2021 located on Essex Street, the R-C zone of Pasic Street-East of Maywood Avenue only; and
 - vi. 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 in the LL, SOB, OR and HDO District;
- C. Unless part of an industrial process; the vaporizing, smoking and/or consumption of cannabis for personal use of any form is strictly prohibited from taking place on the premises of any business established pursuant to this chapter.

§ 107-3 CANNABIS BUSINESSES STANDARDS; LICENSE REQUIRED.

- A. It shall be unlawful for any person or any corporate entity to operate a cannabis business establishment as defined in and governed by Chapter 429.6 of the Borough Code and P.L. 2021, c.16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”) without first having procured an annual license from the Local Board of Health so to do and without complying with any or all of the provisions concerning operation and maintenance of the same as contained in the aforementioned Chapter XII of the State Sanitary Code.
- B. All cannabis businesses must comply with the New Jersey's Smoke-Free Air Act of 2006.

§ 107-4 LICENSE FEES; RENEWAL; LATE FEES.

- A. A cannabis business operating pursuant to this chapter shall pay an annual License fee which shall be established by the Borough of Maywood
- B. The licenses issued aforesaid shall be effective for the calendar year, expiring on the 31st day of December of the year of issue, and may be renewable for succeeding calendar years thereafter. The fee for license renewals shall be due and payable on or before the first day of February in the year of renewal. Retail food establishments in operation and holding current licenses at the time of enactment of this chapter shall be required to renew licenses at the revised fees specified herein for succeeding years.
- C. Late fees. A late fee of \$50 shall be charged for license which are not paid on/or before February 1 of the license year. An additional \$75 shall be charged for each thirty-day period that the license fee is not paid after February 1 of the license year

§ 107-5 REVOCATION, SUSPENSION OR CANCELLATION OF CANNABIS BUSINESS LICENSE LICENSES; HEARING.

- A. Any license issued under the terms and provisions of this chapter may be suspended or revoked by the Board of Health of this municipality for the violation by the licensee of any provision of this chapter or Chapter XII of the New Jersey State Sanitary Code or whenever it shall appear that the business, trade, calling, profession or occupation of the person, firm or corporation to whom such license was issued is conducted in a disorderly or improper manner or in violation of any law of the United States, the State of New Jersey or any ordinance of this municipality or that the purpose for which the license has been issued is being abused to the detriment of the public or is being used for a purpose foreign to that for which the license was issued.
- B. Any license issued under the terms and provisions of this chapter may be suspended or revoked if the personal use of cannabis is permitted on the business premises.
- C. A license issued under the terms and provisions of this chapter shall not be revoked, canceled or suspended until a hearing thereon shall have been had by the Board of Health. Written notice of the time and place of such hearing shall be served upon the licensees at least three days prior to the date set for such hearing. Such notice shall also contain a brief statement of the grounds to be relied upon for revoking, canceling or suspending such license. Notice may be given either by personal delivery thereof to the person to be notified or be deposited in the United States Post Office in a sealed envelope, postage prepaid, addressed to such person to be notified at the business address appearing upon said license. At the hearing before the Board of Health, the person aggrieved shall have an opportunity to answer and may thereafter be heard, and upon due consideration and deliberation by the Board of Health, the complaint may be dismissed, or if the governing body concludes that the charges have been sustained and substantiated, it may revoke, cancel or suspend the license held by the licensee.
- D. If any such license shall have been revoked, neither the holder thereof nor any person acting for him, directly or indirectly, shall be entitled to another license to carry on the same

business within the Borough, unless the application for such license shall be approved by the Governing Body

§ 107-6 CANNABIS BUSINESSES TRANSFER TAX

- A. Transfer Tax Imposed.** There is hereby imposed a transfer tax of two percent (2%) 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 manufacturer to another cannabis establishment; and receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; and a tax of one percent of the receipts from each sale by a cannabis wholesaler. 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, or from the consumer at the point of sale, on behalf of the municipality by the cannabis retailer selling the cannabis item to that consumer. 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 the consumer, or that the transfer tax will be refunded to the cannabis establishment or the consumer.
- B. Tax Liability.** Every cannabis establishment required to collect a transfer tax imposed by ordinance 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 or the consumer as if the transfer tax was a part of the sale and payable at the same time, or with respect to nonpayment of the transfer tax or user tax by the cannabis establishment or consumer, 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.
- C. 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 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.

- D. Administration of Transfer Tax.** The Borough 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.
- i. 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.
 - ii. 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.
- E. 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.

- F. 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.
- G. 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 there from, 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.
- H. 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.

I. Time Limitations. The following periods of limitations shall apply to suits for collection of taxes:

- i. 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.
- ii. Where no return was filed or a fraudulent return was filed, there shall be no limits to file suit for the collection of taxes.
- iii. 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.
- iv. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

J. 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.

K. 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.

L. Definitions and Repealer. Unless specifically defined otherwise herein, any term used herein shall be incorporate the definition of that term in the Act. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Maywood inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

M. Interpretation and Savings Provision. No ordinance, regulation or interpretation thereof shall conflict with the Act. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to conflict with the Act or otherwise 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.

N. Violations and penalties. Any person or business who violates any provision of this chapter shall, upon conviction, be subject to the penalties provided by § 1-15 of this Code.

§ 107-7 NON-APPLICABILITY.

No provision of this chapter shall be applied so as to impose any unlawful burden on either interstate commerce or any activity of the state or federal government.

§ 107-8 VIOLATIONS AND PENALTIES.

Any person, firm or corporation who shall violate any of the provisions of this chapter shall, upon conviction, be subject to the penalties provided by § 1-15 of this Code, and each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

Section 2: All ordinances of the Borough of Maywood which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance if, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this ordinance.

Section 4: This ordinance shall take effect upon passage and publication according to law.

Date:

APPROVED: _____
Richard Bolan, Mayor

ATTEST: _____
Barbara L. Dispoto, RMC
Borough Clerk

Introduction-1st Reading**Date: June 22, 2021**

	Moved	Seconded	Ayes	Nays	Abstain	Absent	Recuse
Mayor Bolan							
Councilwoman DeMuro			X				
Councilwoman Flynn			X				
Councilman Herrick		X	X				
Councilman Roer	X		X				
Councilman Ullman			X				
Council President Bennin			X				

Adoption-2nd/Final Reading**Date:**

	Moved	Seconded	Ayes	Nays	Abstain	Absent	Recuse
Mayor Bolan							
Councilwoman DeMuro							
Councilwoman Flynn							
Councilman Herrick							
Councilman Roer							
Councilman Ullman							
Council President Bennin							