



Legislation Details (With Text)

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On agenda: 8/4/2021 **Final action:** 8/19/2021
Title: AN ORDINANCE AMENDING THE CITY OF NEWARK ZONING ORDINANCE, TITLE XLI, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TO AMEND THE DEFINITIONS, PERMITTED USES BY DISTRICT, AND ADOPTING LAND USE REGULATIONS PERTAINING TO CANNABIS ACTIVITIES.

No Action Taken 6PSF-ab (s) 081721

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
8/19/2021	1	Municipal Council	Close on Public Hearing and Adopt	Pass
8/17/2021	1	Municipal Council	No Action Taken	
8/4/2021	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

AN ORDINANCE AMENDING THE CITY OF NEWARK ZONING ORDINANCE, TITLE XLI, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TO AMEND THE DEFINITIONS, PERMITTED USES BY DISTRICT, AND ADOPTING LAND USE REGULATIONS PERTAINING TO CANNABIS ACTIVITIES.

No Action Taken 6PSF-ab (s) 081721

WHEREAS, the City of Newark Municipal Council (the “Municipal Council”), pursuant to N.J.S.A. 40:55D-62, may adopt or amend a Zoning Ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, On November 3, 2020, voters in the State of New Jersey approved Public Question No. 1, which amended the Constitution of the State of New Jersey to legalize the Adult-Use of marijuana, also known as “cannabis”, for persons age 21 and older and legalizes the cultivation, processing and sale of retail marijuana; and

WHEREAS, on February 22, 2021, Governor Philip D. 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 Adult-Use of marijuana by persons 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreation (“adult use”) cannabis operations, use, and possession; and

WHEREAS, the City of Newark is designated as an “Impact Zone”, which is defined in the Act for the purposes of furthering principles of social justice, and in which the Cannabis Regulatory

Commission shall prioritize applications for licenses; and

WHEREAS, Section 31 of the Act authorizes municipalities to adopt an ordinance to permit or prohibit one or more classes of licensed business; and

WHEREAS, the Act establishes six (6) marketplace classes of licensed cannabis 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 one 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 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; and

WHEREAS, Section 31 of the Act authorizes municipalities to regulate the number of permitted cannabis licensed businesses, and the time, manner, place, and other aspects of licensed cannabis business operations; and

WHEREAS, Section 31 of the Act authorizes municipalities to prohibit the operation of any one or more classes of licensed cannabis businesses, but not the delivery of cannabis items and related supplies by a delivery service, within the jurisdiction of the municipality and

WHEREAS, Section 31 of the Act stipulates 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 31 of the Act, the failure to adopt a municipal ordinance shall mean that for a period of five (5) years thereafter, Class 1 Cultivator, Class 2 Manufacturer, Class 3 Wholesaler, and Class 4 Distributor licensed businesses shall be permitted uses in all industrial zones, and the Class 5 Retailer licensed business shall be a conditionally permitted use in all

commercial / retail zones; and

WHEREAS, the Municipal Council previously adopted an ordinance permitting Medical Marijuana Alternative Treatment Centers (ATC), medical marijuana cultivation facilities, and medical marijuana manufacturing facilities in accordance with the Compassionate Use Medical Marijuana Act, P.L. 2009, c.307 (2010) codified at N.J.S.A. 24:6I-1, *et seq.* (the “CUMMA”); and

WHEREAS, the Municipal Council seeks to amend the Newark Zoning and Land Use Regulations at Title XLI of the Municipal Code and the City’s Redevelopment Plans to permit the use of land and buildings within the City of Newark as Adult Use licensed cannabis businesses with regulations pertaining to each class of license as defined in the Act; and

WHEREAS, the Municipal Council, pursuant to N.J.S.A. 40:55D-64, sought the recommendations of the Newark Central Planning Board relative to these issues; and

WHEREAS, on November 5, 2020 the Municipal Council referred the draft proposed ordinance amending the Zoning Ordinance establishing permitted uses for cannabis activities, including cultivation, processing and retail sale for Adult-Use of marijuana, to the Central Planning Board for formal review, report and recommendations as required by N.J.S.A. 40:55D-26; and

WHEREAS, the Central Planning Board, at its July 12, 2021 regular meeting, confirmed that the proposed amendment is substantially consistent with the City’s land use plan element, in accordance with the provisions of N.J.S.A. 40:55D-62, and made recommendations for modifications.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Note: Bold and underlined is new text.

SECTION 1. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are amended by amending Title XLI, Chapter 2, Section 2 (41:2.2), Definitions, as follows:

“Cannabis” shall mean all parts of the plant *Cannabis sativa L.*, variations, and derivative products thereof having the same definitions as set forth in the State Law in accordance with P.L. 2021, c.16 (C.24:6I-33)

Cannabis Consumption Area means a designated indoor location operated by a licensed cannabis retailer or permit holder for dispensing medical cannabis, for which a State and local endorsement has been obtained, that is an indoor, structurally enclosed area of the cannabis retailer or permit holder that is separate from the area in which retail sales of cannabis items of the dispensing of medical cannabis occurs.

Cannabis Cultivator means 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. This person or entity shall hold a Class 1 Cannabis Cultivator license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Cannabis Delivery Service means 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. This person or entity shall hold a Class 6 Cannabis Delivery license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Cannabis Distributor means 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. This person or entity shall hold a Class 4 Cannabis Distributor license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Cannabis Manufacturer means 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. This person or entity shall hold a Class 2 Cannabis Manufacturer license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Cannabis Microbusiness means a person or entity licensed under P.L. 2021, c.16 (C.24:6I-31 et al.) as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service that may only, with respect to its business operations, and capacity and quantity of product: (1) employ no more than 10 employees; (2) operate a cannabis establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis cultivator, grow cannabis on an area no more than 2,500 square feet measured on a horizontal plane and grow above that plane not higher than 24 feet; (3) possess no more than 1,000 cannabis plants each month, except that a cannabis distributor's possession of cannabis plants for transportation shall not be subject to this limit; (4) acquire each month, in the case of a cannabis manufacturer, no more than 23 1,000 pounds of usable cannabis; (5) acquire for resale each month, in the case of a cannabis wholesaler, no more 25 than 1,000 pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof; and (6) acquire for retail sale each month, in the case of a cannabis retailer, no more than 1,000 pounds of usable cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin, or any combination thereof.

Cannabis Retailer means 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. This person or entity shall hold a Class 5 Cannabis Retailer license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Cannabis Wholesaler means 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. This person or entity shall hold a Class 3 Cannabis Wholesaler license as established and defined by P.L. 2021 c.16 (C.24:6I-33).

Marijuana. See “Cannabis”.

SECTION 2. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are amended by amending Title XLI, Chapter 4, Section 2 (41:4-2), Permitted Uses in Commercial Districts, by adding new uses as follows:

41:4-2. Permitted Uses in Commercial Districts

Table 4-2: Commercial Districts			
P = Permitted - = Not Permitted C = Conditional Use Only Any use not listed below			
	C-1	C-2	C-3
Principal Uses			
Cannabis Delivery	C	C	C
Cannabis Retailer	C	C	C
Cannabis Microbusiness	C	C	C
Accessory Uses			
Indoor Cannabis Consumption Retailer	P	P	P

SECTION 3. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are amended by amending Title XLI, Chapter 4, Section 3 (41:4-3), Permitted Uses Industrial, Airport, and Port Area Districts, by adding new uses as follows:

41:4-3. Permitted Uses Industrial, Airport, and Port Area Districts

Table 4-3: Industrial, Airport, and Port Area Districts

P = Permitted - = Not Permitted C = Conditional Use Only Any use not listed						
	I-1	I-2	I-3	EWR	EWR-S	PORT
Principal Uses						
Cannabis CC	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Cannabis DC	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Cannabis DC	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Cannabis MC	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Cannabis WC	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>

SECTION 4. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are amended by amending Title XLI, Chapter 4, Section 4 (41:4-4), Permitted Uses in Mixed-Use & Other Districts, by adding new uses as follows:

41:4-4. Permitted Uses Mixed-Use and other districts

Table 4-4: Mixed-Use & Other Districts						
P = Permitted - = Not Permitted C = Conditional Use Only Any use not listed below is						
	MX-1	MX-2	MX-3	INST	PARK	CEM
Principal Uses						
Cannabis De	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	=	=
Cannabis Re	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	=	=
Accessory U	MX-1	MX-2	MX-3	INST		
Indoor Cann-		P	P	P		
Licensed Ca						

SECTION 5. The Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, are amended by amending Title XLI, Chapter 6, Conditional Use Standards, by adding new Section 57 (41:6-57) Licensed Cannabis Businesses (Cultivator, Manufacturer, Distributor, Wholesaler, Retailer, Delivery) as follows:

41:6-57. Licensed Cannabis Businesses (Cultivator, Manufacturer, Distributor, Wholesaler, Retailer, Delivery)

- 1) Purpose.** The purpose of this Chapter is to protect the public health, safety, and welfare, enact strong and effective regulatory and enforcement controls in compliance with State law and federal enforcement guidelines, protect neighborhood character, and minimize potential for negative impacts on people, communities, and the environment in the City of Newark by establishing minimum land use requirements for cannabis activities. This Chapter recognizes that cannabis activities require land use controls due to the unique federal and State legal regulations applicable to cannabis activity, and the potential

environmental and social impacts associated with cannabis activity.

- 2) Standards applicable to all licensed cannabis businesses
- a) Applicants shall submit a completed, pending, or approved State license application.
 - b) Applicants shall submit a security management plan that complies with applicable State standards and demonstrates at minimum:
 - i) A safety and security alarm system that includes a battery backup or generator system to provide uninterrupted service in the event of a power outage.
 - ii) Security cameras that provide coverage for all points of building ingress and egress, portions of the interior open to the public or used for the storage, cultivation, or processing of cannabis, and entire exterior of the premises with an off-site backup recording system and battery back or generator system.
 - iii) Any other information required as part of the State or City licensing application. Where State regulations are more restrictive than the standards in this section, the State regulations shall apply.
 - c) Applicants shall submit an odor management plan with details that demonstrate the mechanism for treating the air with odor absorbing ventilation and exhaust systems such that odors generated in the facility are not detectable by a person of reasonable sensitivity outside the building or in any other unit in the same building if the use only occupies a portion of the building.
 - d) Applicants shall submit a neighborhood compatibility map showing all land uses within 1,000 feet of the proposed licensed premises that specifically identifies any pre-school, elementary school, junior high school, high school, library, park, playground, recreation or youth center, licensed drug or alcohol recovery facility, or licensed sober living facility. Distance shall be measured from the nearest point of the property line of the site that contains the licensed facility to the nearest point of the property line of the enumerated use using a direct straight-line measurement.
 - e) Applicants shall submit a waste management plan showing the location of interior and exterior waste storage areas, including and specialized holding areas required for the disposal of cannabis products.
 - f) The licensed cannabis business premises shall be illuminated to the following minimum standards:
 - i) A minimum of 3.0 foot-candles of illumination shall be maintained within 10 feet of all building entrances.
 - ii) A minimum of 1.0 foot-candle of illumination shall be maintained throughout the property.
 - g) No licensed cannabis business shall be located within the following distances from the specified land uses listed below:

- i) 500 feet from primary and secondary schools (K-12), playgrounds, parks state licensed daycare facilities,
- ii) 200 feet from adult and juvenile correctional facilities, college or university either public or private, halfway house or correctional facility, group homes serving persons age 18 and under, a halfway house, transitional housing and state licensed substance use treatment facility.
- iii) 500 feet from another marijuana business.
- h) Signage shall comply with the following standards:
 - i) External signage shall be limited to black text on a white background.
 - ii) One (1) wall mounted sign shall be permitted on the façade where the main entrance is located, not to exceed twenty (20) square feet in area.
 - iii) Signage shall not display advertisements for cannabis products or brand names.
 - iv) The price of cannabis products shall not be advertised.
- 3) Standards applicable to cannabis cultivation businesses.
 - a) Applicants shall provide a statement outlining any pesticides, fertilizers, or other potentially hazardous materials that are expected to be used in the cultivation process.
 - b) A statement and supporting documentation shall be provided showing that all cultivation facilities shall be designed and operated to prevent pesticides, fertilizers, cannabis, and other potential contaminants from being discharged into the public wastewater and/or storm water systems.
- 4) Hours of Operation: All cannabis establishments must comply with R.O. 14:2-4.

SECTION 6. All redevelopment plans in effect in the City of Newark on the date of adoption of this Ordinance shall conditionally permit licensed cannabis businesses as follows:

- 1) Cannabis Cultivator, Cannabis Distributor, Cannabis Manufacturer, and Cannabis Wholesaler shall be permitted in any redevelopment district or sub-district that permits light manufacturing, warehousing, or uses with similar industrial character, subject to the applicable conditional use standards at 41:6-57.
- 2) Cannabis Delivery and Cannabis Retailers, with Indoor Accessory Consumption Areas, and Cannabis Microbusinesses shall be permitted in any redevelopment district or sub-district that permits retail uses, subject to the applicable conditional use standards at 41:6-57.

SECTION 7. Any prior ordinances or parts thereof inconsistent herewith shall be amended and supplemented to conform to the provisions contained herein.

SECTION 8. If any part of this ordinance is declared unconstitutional or illegal, the remaining

provisions shall not be affected and shall continue in full force and effect.

SECTION 9. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends Title XLI, of the Newark Zoning and Land Use Regulations by amending the definitions, amending permitted uses by district and adopting Land Use Regulations pertaining to Cannabis Activities.