

ORDINANCE 2022-19

*Borough of Metuchen
County of Middlesex
State of New Jersey*

AN ORDINANCE BY THE BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX, NEW JERSEY CONDITIONALLY PERMITTING CLASS 3 CANNABIS WHOLESALE BUSINESSES AND CLASS 5 CANNABIS RETAIL BUSINESSES WITHIN CERTAIN ZONING DISTRICTS, ESTABLISHING LICENSING, AND TAXATION REQUIREMENTS THEREFORE AND CONTINUING TO PROHIBIT ALL OTHER CLASSES OF CANNABIS BUSINESSES WITHIN THE BOROUGH OF METUCHEN

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called “cannabis” for adults at least 21 years of age; and

WHEREAS, on February 22, 2021, Governor Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

WHEREAS, the Act required that any municipal prohibition by the Borough of Metuchen must be adopted within 180 days of the effective date of the Act (i.e., by August 21, 2021), and that the failure to timely act shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall automatically 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, the Act did not preclude a municipality from prohibiting cannabis establishments and operations within its municipal limits within the 180 days of the effective date of the Act and thereafter authorizing and/or permitting any one or more of the cannabis establishments (defined in section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”) within the municipality; and

WHEREAS, the State’s newly created Cannabis Regulatory Commission (“CRC”) was charged with adopting rules including those for licensing applications and eligibility; the number of permissible licenses of each type; security requirements for licensees; labeling and packaging requirements; retailer employee eligibility criteria; and advertising and marketing limitations; and

WHEREAS, on or about June 28, 2021, the Borough of Metuchen adopted, Ordinance No. 2021-10, entitled. “AN ORDINANCE BY THE BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION 110-93 OF THE METUCHEN CODE”; and

WHEREAS, at the time of passage, of Ordinance No. 2021-10, the Council of the Borough of Metuchen determined that it was in the best interest of the Borough to prohibit cannabis operations and establishments within the Borough until such time as the State promulgated rules and regulations relating to the various aspects of cannabis operations, licensing, eligibility, security, labeling, and marketing and the Borough had the opportunity to thoroughly review and analyze all classes of cannabis licensing and establishments, as described below, along with the Borough's specific zoning districts, regulations and needs and the potential impact it may have upon the Borough and its residents; and

WHEREAS, on or about August 19, 2021, the CRC approved the initial Rules and Regulations relating to the regulation of personal use cannabis; and

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

- Class 1 Cannabis Cultivator license, for facilities involved in growing and cultivating cannabis;
- Class 2 Cannabis Manufacturer license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- Class 3 Cannabis Wholesaler license, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk from 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.

WHEREAS, the Borough of Metuchen has reviewed the regulations along with the Borough's current zoning districts and has determined that it is in the best interest of the Borough of Metuchen to conditionally permit the operations of Class 3 Cannabis Wholesale Businesses and Class 5 Cannabis Retail Businesses within certain zoning districts under certain conditions and to establish local licensing and taxation requirements therefor while continuing to prohibit all other Classes of Cannabis Businesses within the Borough, except as provided for herein; and

WHEREAS, municipalities are authorized by the Act and by *N.J.S.A. 40:48I-1.a (1)* to impose by ordinance a transfer tax of up to two percent (2%) on the sale of cannabis or cannabis items by a cannabis retailer located in the municipality; and

WHEREAS, municipalities imposing a transfer tax are required by N.J.S.A. 40:48I-1.b (1) to include in the ordinance a user tax, at the equivalent transfer tax rates, on any current license holder operating more than one cannabis establishment and transferring cannabis or cannabis items from the license holder's establishment in the municipality to any of the other license holder's establishment(s), whether located in the municipality or another municipality, based on the value of each such transfer or use not otherwise subject to the transfer tax; and

WHEREAS, the Council of the Borough of Metuchen has determined that, due to present uncertainties regarding the potential future impacts that allowing all of the classes of cannabis business might have on New Jersey municipalities in general, and on the Borough in particular, it is at this time necessary and appropriate, and in the best interests of the health, safety and welfare of the Borough's residents and members of the public who visit, travel, or conduct business in the Borough, to conditionally permit only Class 3 Cannabis Wholesalers, and Class 5 Cannabis Retailers to operate within the geographical boundaries of the Borough; to establish limitations on where and how these operations may take place; and to establish licensing and taxation requirements in connection with same; and

WHEREAS, the Borough of Metuchen joins several other Middlesex County municipalities who have authorized, or have indicated that they will authorize Class 5 Cannabis Retailer licenses so that residents of the Borough, if they are unable to procure legally authorized cannabis products in the Borough, will simply go to an adjoining municipality to acquire their cannabis products; and

WHEREAS, conditionally permitting the wholesale and retail sales of cannabis within the Borough has the potential to provide a significant source of additional revenue to the Borough annually to offset the current reliance on property taxes. Said additional revenue will assist the Borough in providing tax relief, including relief for senior residents that would like to remain in the Borough but face challenges due to the burden of real property taxes; and

WHEREAS, conditionally permitting retail cannabis sales will address economic equity issues, support continued economic growth and will provide additional job opportunities for residents of the Borough; and

WHEREAS, the Borough intends to continue gathering information and further exploring whether and where to allow other marketplaces classes of cannabis businesses within the Borough; and

WHEREAS, until such time as the Borough has gathered sufficient information to make such a determination, all other marketplaces classes of cannabis businesses, except for Class 3 Cannabis Wholesale and Class 5 Cannabis Retail shall be prohibited from operating anywhere within the geographical boundaries of the Borough.

NOW THEREFORE, BE IT ORDAINED, by the Municipal Council of the Borough of Metuchen, in the County of Middlesex, State of New Jersey, as follows:

SECTION 1. Preamble. The findings set forth in the preamble to this ordinance are hereby incorporated as if fully restated.

SECTION 2. Purpose. The purpose of this ordinance is to update the general ordinances including the creation of a Chapter ____ of the Borough Code entitled “Cannabis” and to amend Chapter 110 (Land Development) of the Borough of Metuchen to incorporate the legal operation, under certain conditions and in certain locations, of Class 3 Cannabis Wholesale and Class 5 Cannabis Retail businesses and to specifically identify the zones for which such operations shall be conditionally permitted. This ordinance will also outline the requirements for the operation of Class 3 Cannabis Wholesale and Class 5 Cannabis Retail businesses within the Borough, including the establishment of local licensing requirements in addition to any licensing issued by the State of New Jersey and the imposition of a local cannabis transfer and user tax.

SECTION 3. General Prohibitions on all cannabis businesses other than Class 3 Cannabis Wholesale services and Class 5 Cannabis Retail services. In accordance with the authority granted to the Borough by *N.J.S.A. 24:61-45*, Ordinance No. 2021-10 is hereby amended to conditionally permit Class 3 Cannabis Wholesale Services and Class 5 Cannabis Retail Services within the Borough subject to the conditions, use, permitting, and taxation requirements set forth in this Ordinance. As provided in Ordinance No. 2021-10, all other cannabis businesses shall be prohibited from operating anywhere within the geographical boundaries of the Borough of Metuchen.

SECTION 4. Licensing Requirements and General Conditions and Limitations for Class 3 Cannabis Wholesalers and Class 5 Cannabis Retailers. A new Chapter ____, entitled. “Cannabis” is hereby added to the Code of the Borough of Metuchen, which shall state as follows:

CHAPTER __

CANNABIS

ARTICLE I

General Provisions

§ _____ 1. Purpose.

This chapter is enacted in accordance with the provisions of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (the “Act” or “CREAMMA”), *N.J.S.A. 24:61-32 et seq.*, and the regulations promulgated by the Cannabis Regulatory Commission (“CRC”). The purpose of this chapter is to regulate the establishment and operation of cannabis businesses in the Borough of Metuchen (“Borough”) and to specify the conditions and limitations applicable thereto.

§ _____ -2. Definitions.

For the purpose of this chapter and all other applicable chapters of this Code, words and phrases herein shall have the meanings set forth in CREAMMA.

§ _____ -3. Applicable laws.

All applications for licenses, all licenses issued and all proceedings under this chapter shall be in accordance with the Act, rules and regulations referred to in §____-1 above, and all other

applicable laws of the State of New Jersey. The regulations set forth herein are subject to the enabling authority of the State of New Jersey, by and through the Cannabis Regulatory Commission, and are subject to compliance with all statutes and/or regulations promulgated and adopted by the State of New Jersey or its instrumentalities. If any provision of this chapter is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail.

§ ____ -4. License required.

No cannabis facility may lawfully operate in the Borough without the issuance of a State permit or license and full regulatory oversight of the cannabis business by the Cannabis Regulatory Commission or other state licensing authority as well as the oversight and issuance of a license by the Borough in accordance with the provisions of this chapter.

§ ____ -5. Conditions and limitations.

A. Only the following marketplace classes of cannabis facilities shall be conditionally allowed to operate in the Borough, subject to the limitations and requirements set forth herein and elsewhere in this Code and all other classes shall be prohibited:

- (1) Class 3 Wholesaler
- (2) Class 5 Cannabis Retailer

B. Only a Borough conditional license issued pursuant to this chapter shall constitute “written municipal approval” pursuant to CREAMMA, *N.J.S.A. 24:6I-36(b)(1)(c)(i)* and *24:6I-45(c)*. Other written statements, letters, resolutions, or other documents issued by the Borough or any official, employee, or other representative shall not constitute annual or renewed “written municipal approval” for purposes of the CRC.

C. Cannabis wholesale and retail services (“facility”) shall be permitted, pursuant to this chapter, only if in addition to all applicable land use regulations, the following requirements are met:

- (1) Land development regulations: The facility shall obtain all approvals required pursuant to the Borough’s land development regulations set forth in Chapter 110 of this Code, which approval(s) shall be evidenced by the issuance of conditional use approval by the Planning Board or, where applicable, use variance approval by the Zoning Board of Adjustment.
- (2) Hours of operation: The operating hours of the licensed facility shall be between 9:00 am and 10:00 pm daily. It shall be unlawful for any person to sell or dispense cannabis or cannabis products or for the operation of any licensed facility at any time other than between these hours.
- (3) The licensed facility shall be accessible directly from a right-of-way through a separate entrance independent from any other retail ingress.

(4) Queuing. Queuing of customers outside a cannabis facility is prohibited. The cannabis establishment shall have a sufficient waiting area inside the facility to accommodate customers, or shall provide a reservation service, phone/text notification service or other alternatives to waiting on the exterior of the premises and/or the public right-of-way. Loitering is prohibited and shall be managed by the facility.

(5) Location. No cannabis establishment shall be permitted within two hundred (200) feet of a Kindergarten through 12th grade school.

(6) No cannabis product or paraphernalia shall be visible from a public sidewalk, public street or right-of-way or any other public place.

(7) All cannabis products and paraphernalia shall be stored securely indoors and onsite.

(8) Consumption of cannabis products, by any means of ingestion, or smoking, shall not be permitted in the licensed facility or adjacent grounds.

(9) Noise. Outside generators and other mechanical equipment used for any kind of power supply, cooling or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.

(10) Odor. All cannabis facilities shall have equipment to mitigate cannabis-related odor. The building/premises shall be equipped with a ventilation system sufficient in type and capacity to eliminate cannabis odors emanating from the interior of the premises. The ventilation system must be approved by the Construction Code Official and/or appropriate inspector and may be subject to periodic inspection.

(11) All cannabis facilities shall be secured in accordance with State of New Jersey statutes and regulations. All cannabis facilities shall be secured and shall have full-time security protocols. Security protocols shall be submitted to the Metuchen Police Department for compliance review with all safety and security standards established by the State of New Jersey for cannabis establishments. The Metuchen Police Department may, at its discretion and upon review of the proposed location, recommend or require additional safety and security measures. At a minimum, the following shall be required: (a) A video recording security system shall be employed covering all areas of the cannabis facility and the adjacent exterior of the building/premises with an around the clock 365 days per year, 24/7 recording system that records for a minimum thirty-day archive; (b) Trained security personnel shall be on-site at all times during operating hours; (c) The Metuchen Police Department and Zoning Officer shall be provided the name and twenty-four-hour phone number of the responsible staff person to notify during suspicious activity or emergency; (d) Outside areas of the premises shall be well illuminated for safety and security, but not in a way that is counter to Code requirements for outdoor lighting and screening or obtrusive to pedestrians, drivers or other users of the public right-of-way; (e) The premises and right-of-way adjacent to the cannabis facilities shall be monitored by staff of the cannabis establishment and kept free of loitering, litter and other debris, and the sidewalks

shall be swept and cleaned on a regular basis; and (f) To the maximum extent possible, wholesale cannabis facilities shall have security fencing and gates around the perimeter of the premises.

(12) Signage design shall comply with the regulations of the State and the Borough's sign regulations contained in Chapter 110 of the Code.

(13) No cannabis facility shall be housed in a vehicle or any movable or mobile structure.

(14) Comply with all rules and regulations adopted by the New Jersey Cannabis Regulatory Commission.

ARTICLE II

Licensing

§ -6. Issuing authority.

A. All licenses required by this chapter shall be issued by the Borough Council, which shall also administer the provisions of this chapter, except as provided herein.

B. No license issued pursuant to this chapter shall be effective until or unless the State has issued the requisite permits or licenses to operate such a facility.

C. Each local license issued pursuant to this Chapter shall be valid for a term of one (1) year from the date of issuance subject to the payment of the annual registration fee and shall be renewed upon the submission of an application for renewal provided all conditions and requirements of applicable State law and this chapter are met.

D. The Borough Council may, in its discretion, adjust the renewal date of the local license to correlate with an applicant's state licensing and renewal schedule.

E. Renewal of any license shall be governed by any Code amendments, additional restrictions or changes in regulations adopted since the previous license was issued or renewed.

F. The Borough of Metuchen and Borough Council reserve the right to add any terms or conditions upon the issuance and/or renewal of any cannabis license issued if determined to be in the best interest of the Borough promoting the health, safety and welfare of the Borough residents.

§ -7. Application process.

A. After the passage of this Ordinance, the Borough will issue a request for proposals (RFP) and publicly advertise for applicants seeking licensing to submit an application for the review and pre-approval to obtain the appropriate land use approval and the subsequent Borough

Council conditional license approval. After the above RFP process is complete should a license become inactive or available, the Borough within its sole discretion, may elect to issue a subsequent RFP, if applicable, elect to select an additional applicant from the initial RFP process, or publicly advertise the availability of the license and any applicant may apply for pre-approval from the Borough as provided for herein.

B. Application/Proposal. Persons wishing to obtain any classification of cannabis license shall submit a proposal in response to the RFP and/or file a license application with the Borough Clerk, on a standardized form established by the Borough. The Borough shall establish a reasonable application period and deadline for all applications and/or proposals. An application shall be deemed incomplete and/or non-responsive, and shall not be processed by the Borough, unless all documents and application fees are submitted.

C. To be deemed complete and/or responsive, all applications and proposals shall be accompanied by the following:

(1) Nonrefundable application fee.

(2) Proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, which proof may consist of: a deed, a lease, a real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises to the Applicant contingent upon successful licensing.

(3) Affidavit and documentary proof of compliance with all state and local laws regarding affirmative action, anti-discrimination and fair employment practices. The applicant shall also certify under oath that they will not and shall not discriminate based on race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations.

(4) Affidavit or other documentary proof that any person proposed to have an ownership interest in the license shall not have had any cannabis license or permit revoked for a violation affecting public safety in the State of New Jersey or a subdivision thereof within the preceding five (5) years.

(5) Any other documents, forms and/or documentation required by the Borough that are set forth in the Borough's Request for Proposals.

D. In accordance with State law, the applicant shall receive a letter of support from the Borough of Metuchen upon completion of the RFP process and after the Borough Council approves the license application for a conditional municipal license. All applications upon being deemed complete and/or proposals timely received pursuant to the RFP shall be submitted to a Cannabis Subcommittee for review. The Cannabis Subcommittee shall be made up of the following: (i) Two (2) members of Council (appointed by the Mayor), (ii) the Metuchen Chief of Police, (iii) the Borough Administrator or their designee; and (iv) the Mayor or their designee. This Committee shall review completed submissions and/or proposals for any cannabis license

and issue an endorsement for the applicant/s or respondent/s to proceed to obtain the appropriate land use approval and eventually the Borough’s Council approval for a conditional municipal license. In evaluating the application(s)/proposals, the Committee shall establish a minimum percentage score required using the criteria and percentage attributed to said criteria as set forth in the Borough’s Request for Proposals to be awarded an endorsement to proceed to obtain the appropriate land use approval and the eventual conditional municipal license. In the event, there are multiple applicants/proposers for a license, the Committee shall evaluate all applicants/respondents, and issue an endorsement/s to the highest scoring applicants/respondents, based upon the criteria and scoring methodology contained the the Borough’s Requesut for Proposals, limited in number to those licenses permitted by this Chapter. Thereafter, the applicants/respondents with the Commitee’s endorsement shall be permitted and required to proceed to obtain the necessary land use approval from the appropriate Land Use Board. After receipt of the appropriate land use approval, the Applicant/s or Respondent/s shall be submitted to the Council for the Borough’s approval of a conditional municipal license.

E. Notwithstanding the foregoing competitive application process, a notification of award and conditional municipal license shall entitle the recipient applicant to pursue a State permit or license in the appropriate classification for up to 12 months, which may be extended in the Administrator’s discretion for an additional 6 months for good cause. No final license to operate shall issue until the applicant has received a State permit and satisfied other prerequisites of municipal licensure. If the recipient of a notice of award and conditional licensee has not received a State permit or license within 12 months from issuance, unless extended for good cause, said notification of award and conditional municipal license may be revoked by the Borough Council. In such an event, the Borough within its sole discretion may authroize the Committee thereafter to issue an endorsement to the next highest scoring Applicant/Respondent or may issue a new request for proposals and receive applications and evaluate all applicants for licensure under the criteria set forth in the Request for Proposals.

_____ -8. Fees; number of licenses.

A. The number and type of cannabis licenses and the application and annual registration fees therefor shall be as follows:

Class of License	Application Fee (nonrefundable)	Application Fee (Renewal)	Annual Registration Fee	Number of Licenses within the Borough of Metuchen
Class 3 Cannabis Wholesaler	\$2,500.00	N/A	\$15,000.00	Two (2)
Class 5 Cannabis Retailer	\$2,500.00	N/A	\$15,000.00	Three (3)

B. The initial license registration fee shall be paid within ten (10) days of Applicant’s notification that it has received a State Permit. Thereafter, the annual registration fee shall be paid

to the Borough ten (10) days prior to each anniversary of the issuance of the license or the notification by the Borough of its intent to renew the license.

C. Licenses issued pursuant to this chapter shall be personal to the licensee and shall not be transferable.

D. A separate license shall be required for each class of cannabis business, and a separate application fee and registration fee shall be charged for each type of license.

E. Licensees shall file an application to renew its cannabis license no later than sixty (60) days from the date of its expiration on a standardized form to be established by the Borough. There shall be no application renewal fee upon timely filed applications for renewal.

ARTICLE III

Suspension or Revocation of License

§ ____-9. Suspension; revocation; non-renewal.

Any suspension, revocation or non-renewal of a license pursuant to this chapter, or any suspension, revocation or non-renewal of a CRC-issued license or permit for the operation, or any adjudication of felony criminal guilt by the cannabis business or its principals shall constitute an automatic revocation of a Borough license issued pursuant to this chapter, at which time the operation shall immediately cease. A criminal adjudication voids and prohibits any future reinstatement of a Borough license.

ARTICLE IV

Enforcement, Violations and Penalties

§ ____-10. Violations and penalties.

Any violation of the terms of this chapter, of any condition of the license, or of any State, or local law or regulation may result in the revocation of the license and may further subject the licensee to any applicable penalties, including but not limited to the general penalties set forth in Chapter 1, § 1-2 of this Code.

§ ____-11. Enforcement.

The provisions of this chapter shall be enforced by the Borough Police Department, Borough Zoning Officer and/or Borough Health Officer as appropriate based on the nature of the violation.

SECTION 5. Amendments to the Land Development Ordinances Chapter 110 of the Code of the Borough of Metuchen.

A. § 110-4, entitled "Definitions" is hereby supplemented and amended to include the following terms and definitions:

“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.

“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.

“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.

“Cannabis establishment” means a cannabis cultivator, a cannabis distributor, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer, or a cannabis delivery service.

“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.

“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.

“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.

B. The following sections of Chapter of 110 of the Code of the Borough of Metuchen are hereby amended to state as follows:

§ 110-75 B-1 Central Business District

Principal, accessory and conditional uses shall be permitted and regulated in the B-1 Central Business District as follows:

A. Permitted principal uses:

- (1) Retail shops and stores.
- (2) Personal service businesses.
- (3) Physical fitness studios.
- (4) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants, provided that such shall not have an outdoor dining area within 50 feet of residentially zoned land.
- (5) Banks and other financial institutions, except drive-in banks.
- (6) Offices, except located on the ground floor of a building fronting on Main Street.
- (7) Nursery schools and day-care centers.
- (8) Apartments, except located on the ground floor of a building.
- (9) Borough-operated public facilities.
- (10) Massage and somatic therapy establishments.

B. Permitted accessory uses:

- (1) Driveways, parking lots, loading areas and multilevel parking facilities, except where such is located to have ingress and/or egress on Route 27 (Middlesex Avenue) and the same can be provided from another street or municipal parking lot abutting the site.
- (2) Plazas, courtyards, alleys and other similar type public and semipublic spaces.
- (3) Other uses deemed to be permitted accessory uses.

C. Permitted conditional uses:

- (1) Dry-cleaning establishments, pursuant to § 110-87B.
- (2) Inns and hotels, pursuant to § 110-87C.
- (3) Religious affiliated office or counseling center, pursuant to § 110-87D.
- (4) Two-family detached dwellings, pursuant to § 110-87E.
- (5) Class 5 Cannabis Retailers, provided that they are located on a lot fronting on Middlesex Avenue and comply with the requirements of Chapter ___, Article I, § -5(C) of the Code of the Borough of Metuchen.

§ 110-76 B-2 Neighborhood Business District

Principal, accessory and conditional uses shall be permitted and regulated in the B-2 Neighborhood Business District as follows:

A. Permitted principal uses:

- (1) Retail shops and stores, provided that such shall not generate objectionable noise, odors, smoke or glare or require extensive loading areas within proximity of residential uses on adjacent lots.
- (2) Personal service businesses.

- (3) Physical fitness studios.
- (4) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants, provided that such shall not have an outdoor dining area within 50 feet of residentially zoned land or require extensive loading areas within proximity of residential uses on adjacent lots.
- (5) Banks and other financial institutions, except drive-in banks.
- (6) Offices.
- (7) Nursery schools and day-care centers.
- (8) Apartments, except located on the ground floor of a building.
- (9) Borough-operated public facilities.
- (10) Massage and somatic therapy establishments.
- (11) Affordable senior housing.

B. Permitted accessory uses:

- (1) Driveways and parking lots.
- (2) Other uses deemed to be permitted accessory uses.

C. Permitted conditional uses:

- (1) Dry-cleaning establishments, pursuant to § 110-87B.
- (2) Two-family detached dwellings, pursuant to § 110-87E.
- (3) Class 5 Cannabis Retailers, provided that they are located on a lot fronting on Central Avenue or Jersey Avenue or Amboy Avenue and comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

§ 110-77 B-3 Office Business District

Principal, accessory and conditional uses shall be permitted and regulated in the B-3 Office Business District as follows:

A. Permitted principal uses:

- (1) Retail shops and stores, provided that they are located fronting on Main Street.
- (2) Personal service businesses.
- (3) Physical fitness studios.
- (4) Offices.
- (5) Banks and other financial institutions, except drive-in banks.
- (6) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants, provided that such shall not have an outdoor dining area within 50 feet of residentially zoned land.
- (7) Funeral homes and mortuaries.
- (8) Nursery schools and day-care centers.
- (9) Social halls, clubs, lodges and places of public assembly.
- (10) Apartments, if located on upper floors above another permitted use at the ground level.
- (11) Borough-operated public facilities.
- (12) Affordable senior housing.

B. Permitted accessory uses:

- (1) Driveways, parking lots and loading areas.
- (2) Other uses deemed to be permitted accessory uses.

C. Permitted conditional uses.

- (1) Any conditional uses permitted in the B-2 Zone.
- (2) Drive-in banking facilities pursuant to § 110-87J, on the condition that the property fronts on Central Avenue, Middlesex Avenue between Central Avenue and the Lehigh Valley Railroad right-of-way (abandoned) or the westerly side of Lake Avenue.
- (3) Downtown Gateway Overlay District, pursuant to § 110-87AA.
- (4) Class 5 Cannabis Retailers, provided that they are located on a lot fronting on Middlesex Avenue, Lake Avenue, or Amboy Avenue, and east of Factory Street and comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

§ 110-78 B-4 Restricted Business District

Principal, accessory and conditional uses shall be permitted and regulated in the B-4 Restricted Business District as follows:

A. Permitted principal uses:

- (1) Personal service businesses.
- (2) Offices.
- (3) Banks and other financial institutions.
- (4) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants, provided that such shall not have an outdoor dining area within 50 feet of residentially zoned land.
- (5) Health clubs, gyms, fitness centers and spas.
- (6) Borough-operated public facilities.
- (7) Affordable senior housing.

B. Permitted accessory uses:

- (1) Driveways, parking lots and loading areas.
- (2) Other uses deemed to be permitted accessory uses.
- (3) Plazas, courtyards, alleys and other similar type public and semipublic open spaces.

C. Permitted conditional uses:

- (1) (Reserved)
- (2) Inns and hotels on parcels of land with a minimum lot frontage of 300 feet on a minor arterial street as designated in the Borough of Metuchen Master Plan, provided that no parking lot shall be located within 25 feet of a lot line on which there is a residential use.
- (3) New automobile dealerships, provided that they are located on parcels of land with a minimum lot frontage of 300 feet on a minor arterial street as designated in the Borough of Metuchen Master Plan and provided that they were in existence as of August 1993.

- (4) (Reserved)
- (5) Automobile washing establishments, pursuant to § 110-87H.
- (6) Automobile repair establishments, pursuant to § 110-87I.
- (7) Drive-in bank facilities, pursuant to § 110-87J.
- (8) Downtown Gateway Overlay District, pursuant to § 110-87AA.
- (9) Class 5 Cannabis Retailers, provided that they are located on a lot fronting on Essex Avenue, west of the Bonhamtown Railroad eastern spur and comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

§ 110-80 D-1 Downtown Development District

Principal, accessory and conditional uses shall be permitted and regulated in the D-1 Downtown Development District as follows:

A. Permitted principal uses:

- (1) Retail shops and stores, provided that they are located fronting on New or Pearl Streets.
- (2) Personal service businesses.
- (3) Physical fitness studios.
- (4) Offices.
- (5) Banks and other financial institutions, except drive-in banks.
- (6) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants.
- (7) Apartments, except located fronting on Middlesex Avenue unless substantial buffering is provided.
- (8) Nursery schools and day-care centers.
- (9) Borough-operated public facilities.
- (10) Affordable senior housing.
- (11) Massage and somatic therapy establishments.

B. Permitted accessory uses:

- (1) Driveways, parking lots, loading areas and multilevel parking facilities, except where such is located to have ingress and/or egress on Route 27 (Middlesex or Lake Avenues) and the same can be provided from another street or municipal parking lot abutting the site.
- (2) Other uses deemed to be permitted accessory uses.
- (3) Plazas, courtyards, alleys and other similar type public and semipublic open spaces.

C. Permitted conditional uses:

- (1) Planned unit residential development, pursuant to Article 19 of this chapter.
- (2) Dry-cleaning establishments, pursuant to § 110-87B.
- (3) Inns and hotels, pursuant to § 110-87C.
- (4) Mixed-use neighborhoods, pursuant to § 110-87Y.
- (5) Planned unit commercial development, pursuant to Article 19 of this chapter.

- (6) Downtown Gateway Overlay District, pursuant to § 110-87AA.
- (7) Class 5 Cannabis Retailers, except within Block 115 and comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

§ 110-83 LI Light Industrial District

Purpose. It is the purpose of the Light Industrial District to provide sufficient space in appropriate locations for attractive office, light industrial and related uses which do not create any hazards or noise, vibrations, smoke, dust, odors, heat, glare and other objectionable influences, which would be offensive to adjoining lands.

B. Permitted principal uses:

- (1) Offices for executive, administrative, professional and business purposes.
- (2) Properly certified scientific, research or testing laboratories, provided that all activities and equipment are housed within the principal structure(s) and that no hazardous, noxious or offensive conditions or noise are generated outside the principal structure(s).
- (3) Distribution centers involving the handling and distribution of wholesale goods to purveyors but not for resale to the general public or individual members of "wholesale clubs."
- (4) Light Industrial plants of a type which have no nuisance problems and which carry on processes within completely enclosed buildings, including the assembly of articles of merchandise from the following previously prepared or refined materials: canvas, cellophane, cloth, cork film, felt, glass, tanned leather, paper, plastics, metals or sheet metal, textiles, wax, wire, wood and yarns.
- (5) Included are the following permitted industrial uses:
 - (a) Assembly of toys, novelties, rubber or metal stamps and other molded rubber or plastic products.
 - (b) Assembly of electrical appliances, electronic instruments and devices.
 - (c) Establishments which produce clothing and fabricated products by cutting and sewing purchased woven or textile fabrics and related materials, such as tanned leather, rubberized fabrics and plastics.
 - (d) Establishments engaged in assembly of finished articles made entirely or mainly of wood or wood substitutes.
 - (e) Assembly of furniture and fixtures.
 - (f) Establishments which engage in the fabrication of paper and paperboard into converted products, such as boxes and envelopes.
 - (g) Establishments engaged in printing and publishing and those establishments which perform services for the printing trade, such as bookbinding, typesetting and engraving.
 - (h) Establishments engaged in the fabrication of metal products.

(i) Establishments engaged in the assembly of instruments for measuring, testing, analyzing and controlling and their associated sensors and accessories; photographic, medical and optical goods; watches and clocks.

(j) Establishments engaged in the assembly of musical instruments.

(k) Establishments engaged in the assembly of toys and amusements, sporting and athletic goods.

(l) Establishments engaged in the assembly of pens, pencils and other office and artists' materials.

(m) Establishments engaged in the assembly of jewelry, novelties and buttons.

(n) Establishments engaged in the assembly of cash registers, typewriters, calculators and other office machines.

(6) Planned unit residential development in the R-5 Overlay Zone at a maximum permitted density of six dwelling units per gross acre in accordance with § 110-91A, PURD in R-5 Overlay Residential District.

(7) Affordable senior housing.

(8) Borough-operated public facilities.

C. Permitted accessory uses:

(1) Accessory storage within a wholly enclosed permanent building of goods and materials intended for processing on the premises.

(2) Driveways, parking lots and loading areas.

(3) Other uses deemed to be accessory uses that are normally ancillary to the permitted principal uses, except that factory-outlet-type retail stores and sales shall not be considered an accessory use.

D. Permitted conditional uses:

(1) Warehouse and mini-storage warehouses with individualized compartments pursuant to § 110-87W.

(2) Automotive repair establishments inclusive of detailing and customizing but not including body repair or painting, pursuant to § 110-87I.

(3) Machine shops pursuant to § 110-87M.

(4) Arcades, amusement centers, bowling alleys, indoor tennis courts, skating rinks, handball courts, batting cages and billiard parlors, pursuant to § 110-87P.

(5) Dance halls and discotheques, pursuant to § 110-87Q.

(6) Go-go dancing establishments and cabarets, pursuant to § 110-87R.

(7) Artist's body painting studios, tattoo shops, modeling studios and massage parlors, pursuant to § 110-87S.

(8) Adult bookstores, adult gift shops and adult motion-picture theaters, pursuant to § 110-87T.

(9) Wireless communications facilities pursuant to § 110-87X.

(10) Off-track betting parlor.

(11) For properties having required frontage on Middlesex Avenue, drive-in bank facilities, pursuant to § 110-87J.

(12) For properties not abutting a residential district, contractor's establishments.

(13) Class 3 Cannabis Wholesalers, provided that they are located on a lot fronting on Liberty Street, Aylin Street, Leonard Street or Norcross Avenue and comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

E. Prohibited uses:

(1) Residences of any type except as permitted in the R-5 and R-6 Residential Overlay Districts.

(2) Retail businesses of any type.

(3) Religious institutions and schools.

(4) Any process or storage use that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, gas fumes, noise, vibration or similar substances or conditions is specifically prohibited.

(5) Refining, processing, distribution, transmission and storage of crude oil or refined petroleum products or the manufacture of bottled fuel gas or any of the principal products or by-products of the petrochemical industry.

(6) Billboards and painted exterior wall signs.

(7) Trucking depots or terminals or truck maintenance facilities.

(8) Bus depots or terminals or bus maintenance facilities.

(9) (Reserved)

(10) Processing, bottling, canning or manufacture of any food product.

(11) Storage tanks are specifically prohibited except when the material stored or storage of material is not the principal use of the site but only provides for an ancillary or utility function and not a process function to the principal use.

(12) The manufacture of chemicals.

(13) The manufacture of cellulose products, resins, dye stuff, glue, vegetable, animal or mineral fats or oils, explosives, combustible gases, soap and other surfactants, fertilizer, asphalt and tar products.

(14) The manufacture of cardboard, paper, paper pulp or paper products.

(15) The manufacture or production of metals and alloys in ingot form.

(16) The slaughtering, tanning and/or processing of animals or fowl.

(17) The processing, sale, storage, auctioning or reclamation of junk of any kind, including automobile wrecking and/or storing; recyclable materials storage, processing or incineration.

(18) The manufacturing or refining of asphalt; blast furnaces, boiler works and forge shops; the manufacture or processing of cork,

linoleum or oil cloth and glue or gelatin; the tanning of hides and skins; slaughterhouses; the manufacture of paint, oils, lacquer or varnish.

(19) The manufacture or bulk storage of fireworks and explosives, illuminating gas or poisonous gases.

(20) Any use involving the storage or manufacture of radioactive materials.

(21) Metal fabrication of trailers, truck bodies or other transportation equipment.

(22) Manufacture or processing of concrete or concrete products.

§ 110-87AA. Downtown Gateway Overlay District.

(1) A Downtown Gateway Overlay District shall be a permitted conditional use. The permitted uses within a Downtown Gateway Overlay District shall be:

(a) Supermarkets, not exceeding 50,000 square feet in gross floor area and which may include eating, drinking and an outdoor cafe on premises.

(b) Retail shops and stores.

(c) Personal service businesses.

(d) Physical fitness studios.

(e) Offices.

(f) Banks and other financial institutions, including drive-in banks.

(g) Eating and drinking establishments, except fast-food restaurants and drive-in restaurants.

(h) Apartments, only if located on the north side of Middlesex Avenue and not including any apartments located on the ground floor of a building fronting on Middlesex Avenue or Central Avenue.

(i) Nursery schools and day-care centers.

(j) Dry-cleaning establishment where no dry cleaning occurs on the premises. If dry cleaning occurs on the premises, it shall be subject to § 110-87B.

(k) Inns and hotels.

(l) Social halls, clubs, lodges and places of public assembly.

(m) Borough-operated public facilities.

(n) Massage and somatic therapy establishments.

(2) Permitted accessory uses within a Downtown Gateway Overlay District shall include:

(a) Driveways, parking lots, loading areas and multilevel parking facilities.

(b) Outdoor display and sales areas associated with permitted retail shops and stores and supermarkets.

(c) Outdoor cafes and restaurants, including those with appropriate licenses that serve alcoholic beverages outdoors.

(d) Plazas, courtyards, kiosks, outdoor art exhibit spaces, water features, permanent or temporary installations of public art, walkways and alleys and other similar types of public and semipublic open spaces.

(e) Trash enclosures, compactors and dumpsters.

- (f) Walls, fences, hedges and other landscape elements.
- (g) Utility boxes.
- (h) Other uses deemed to be permitted accessory uses.

(3) Permitted Conditional Use within a Downtown Gateway Overlay District shall include:

- (a) Class 5 Cannabis Retailers which comply with the requirements of Chapter __, Article I, § -5(C) of the Code of the Borough of Metuchen.

(4) Conditions. A Downtown Gateway Overlay District shall meet the following conditions:

- (a) Minimum tract area shall be five acres. For the purposes of calculating tract area, lots separated by street rights-of-way may be considered part of the same tract, including the area of the right-of-way separating such lots.
- (b) Minimum frontage on Middlesex Avenue: 250 feet located along both sides of the street facing one another.
- (c) A supermarket shall be a required use.
- (d) If development of the tract is proposed in multiple phases, a phasing plan shall be provided. The phasing plan shall identify the portions of the tract proposed for preliminary and final site plan approval as well as any phases reserved for future development. The required supermarket use shall be developed in the first phase. A concept plan for the entire tract, depicting both proposed first-phase development and illustrating one or more scenarios for potential future phases, shall be provided.

§ 110-91F Planned unit commercial development (PUCD) in D-1 District.

(1) Findings. In accordance with the New Jersey Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-45, the following facts and conclusions shall be determined by the Planning Board before any PUCD is approved:

- (a) That the proposed development conforms to the standards set forth herein to the extent they apply, or to the regulations governing development in the D1 Zone generally. The Planning Board shall be guided by the standards set forth in N.J.S.A. 40:55D-65(c). The regulations set forth herein are departures from the regulations otherwise applicable to the subject property and other properties in the D1 Zone.
- (b) That any proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space shall be adequate.
- (c) That provision through the physical design of any proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment shall be adequate.
- (d) That any proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.

(e) In the case of any proposed development which contemplates construction over a period of years, the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development shall be adequate.

(2) The following are the conditional use standards:

(a) The minimum tract area shall be four acres, including any new street.

(b) The tract shall have frontage on New Street and Pearl Street.

(c) The tract shall be within 200 yards of the Metuchen Train Station building (northbound side).

(d) A common open space or public open space in the form of a public plaza shall be provided in the approximate location as shown on the Regulating Plan.

(3) The following are permitted uses within any PUCD:

(a) Permitted principal uses within a PUCD:

[1] Common open space or public open space in the form of a public plaza.

[2] Retail shops and stores.

[3] Business and personal service businesses.

[4] Physical fitness studios.

[5] Hotels.

[6] Offices.

[7] Banks and other financial institutions, except drive-in banks.

[8] Eating and drinking establishments, except fast-food restaurants and drive-in restaurants.

[9] Apartments.

[10] Townhouses.

[11] Work-live units.

[12] Nursery schools and day-care centers.

[13] Dry-cleaning establishment where no dry cleaning occurs on the premises. If dry cleaning occurs on the premises, it shall be subject to § 110-87B.

[14] Parking structures.

[15] Borough-operated public facilities.

[16] Grocery stores with a gross floor area not exceeding 15,000 square feet.

[17] Massage and somatic therapy establishments.

(b) Permitted accessory uses within a PUCD:

[1] Driveways, parking lots, loading areas and multilevel parking facilities.

[2] Outdoor display and sales area associated with permitted retail shops and stores.

[3] Outdoor dining areas in cafes and restaurants, including those with appropriate licenses that serve alcoholic beverages outdoors.

[4] Plazas, courtyards, kiosks, outdoor art exhibit space, water features, permanent or temporary installations of public art, walkways and alleys and other similar types of public and semipublic open spaces.

[5] Trash enclosures, compactors and dumpsters.

[6] Walls, fences, hedges and other landscape elements.

[7] Utility boxes.

[8] Other uses deemed to be permitted accessory uses.

(4) Prohibited uses within a PUCD shall include:

(a) Pharmacies and drugstores.

(b) Class 5 Cannabis Retailers.

(5) The following are design standards for any PUCD:

(a) The minimum size of the required common open space or public open space in the form of a public plaza shall be 0.5 acre (21,780 square feet). For the purposes of this section, the calculation for the area of the public plaza shall be based upon measuring the perimeter curblineline of the block on which such is located. Public sidewalks may count toward the calculation of the area of the public plaza.

(b) Maximum building coverage for primary and accessory structures, including parking structures, shall not exceed 70% of the tract. For the purposes of this section, the calculation of tract area shall include all lots, the public plaza and any new streets.

(c) Buildings shall not contain a dwelling unit or hotel room in that portion of the ground floor fronting the public plaza. Common spaces within buildings, such as lobbies, may occupy that portion of the ground floor fronting upon New Street and/or the public plaza.

(d) Parking for nonresidential uses shall be one space per 1,000 square feet of area, excluding storage areas. There shall be no customer parking requirement for all business uses, except for hotel uses which will be subject to § 110-154. Parking for residential uses shall be subject to the Residential Site Improvement Standards, N.J.A.C. 5:21. The Planning Board shall entertain reductions in the required number of both nonresidential and residential parking spaces if the applicant can demonstrate through expert testimony and technical documents that the proposed application would so warrant, as a result of its mixed-use nature, parking demands of specific users, proximity to transit options, specific housing demographics, a parking management plan or other similar reasons.

(e) Business and service uses included within a mixed-use neighborhood shall be designed to be integrated with and/or complement Main Street and other existing commercial areas within the B-1 and D-1 Districts. Integration of business and service uses shall be accomplished by proximity of location, site orientation, scale and massing along the streetscape, architectural style, color, materials and details, pedestrian circulation linkages, vehicular circulation and parking, lighting, landscaping and street furniture.

(f) Off-tract improvements may be required of the developer as part of an overall development integration plan, including but not limited to vehicular and pedestrian circulation elements and linkages and stormwater management systems.

(g) Sidewalks and walkways that link all uses with one another and with business areas within the tract and with Main Street and other commercial areas shall be integrated into the development plan.

(h) In addition to the public plaza, open space areas may include courtyards, alleys, plazas, or similar type improvements. Such open spaces may be public, semipublic, or private if entirely enclosed within a building.

(i) The public plaza, sidewalks, walkways and open space areas shall incorporate pedestrian amenities, such as gathering/sitting areas, benches, shade trees, landscaping, accent lighting and other street furniture.

(j) Frontages along Lake Avenue, New Street, Pearl Street and the public plaza shall include Main Street style street lamps at intervals of spacing consistent with the existing street lamps on Main Street.

(k) Buildings and parking structures shall be set back a minimum of 15 feet from the edge of curb of the existing or proposed street upon which such building fronts, except on Pearl Street where buildings no taller than two stories may have a reduced setback of 10 feet. Buildings with a height of four stories or greater shall be set back 20 feet. Arcades supporting upper-floor terraces and verandas shall be allowed to project within the setback up to 12 feet. Steps leading to a first floor, balconies, awnings and landscape planters shall be allowed to project within the right-of-way.

(l) Buildings shall be located to front towards and relate to a public street, both functionally and visually. In locations where on-street parking does not exist, the entry to a use or building may be placed in a location other than facing the street at the discretion of the Planning Board.

(m) Any surface parking lot shall be designed as a parking plaza. A parking plaza shall be spatially enclosed by buildings and designed with an emphasis on visual and functional pedestrian elements, such as colored, textured paving, pedestrian-scale lighting, shade trees, landscaping and rich streetscape treatments and details.

(n) Building height within a PUCD shall be generally located as shown in the Regulating Plan [refer to Planned Unit Commercial Development Regulating Plan, Subsection F(5)(r) hereof.

[1] Maximum height of principal buildings or structures shall be as follows:

[a] On Parcel A, maximum building height shall not exceed three stories and 35 feet.

[b] On Parcel B, maximum building height shall not exceed four stories and 50 feet.

[c] On Parcel C, maximum building height shall not exceed five stories and 65 feet. For the purposes of this section, the levels of a parking structure shall not count as stories, and the height of any parking structure shall be governed by height in feet.

[2] For the purposes of this section, height shall be measured from finished grade.

[3] Building elements and appurtenances such as chimneys, spires, cupolas, belfries, towers or flagpoles, designed for ornamental

purposes, as well as functional elements such as elevator housing, roof-mounted HVAC systems, and roof-access stairwells may exceed the height requirements by up to 25 feet.

[4] Editor's Note: The Regulating Plan is on file in the Borough offices.

(o) The predominant building material for buildings facing New Street, the public plaza, and Lake Avenue shall be brick in traditional colors consistent and complementary with that found on Main Street.

(p) Any building fronting the public plaza shall be designed using classical proportions with a consistent uniform facade treatment employing an articulated rhythm of bays and windows. These bays or sections shall be a minimum of 20 feet wide and a maximum of 36 feet wide. The ground floors of buildings shall have articulated entries and large storefront-type windows.

(q) Buildings shall have a defined base, ground floor, belt course and cap which are designed to draw the eye of pedestrians to the lower portions of the buildings. Any building four stories or taller and parking structures greater than 40 feet in height shall be designed using some combination of massing, scale, roof type, cornice, projections, recesses, materials, colors and other architectural treatments to minimize the visual impact of the height of such building.

(r) The Regulating Plan shall be consistent with the ~~attached~~ exhibit. ~~(The Regulating Plan Exhibit shall be replaced with the Regulating Plan attached hereto)~~ which is on file with the Borough of Metuchen.

SECTION 6. Taxation of Class 3 Cannabis Wholesalers and Class 5 Cannabis Retailers. A new Article 4 entitled “Local Cannabis Transfer Tax and User Tax” is hereby created and added to Chapter 172, “Taxation” of the Code of the Borough of Metuchen which shall state as follows:

CHAPTER 172

TAXATION

ARTICLE IV

Local Cannabis Transfer and User Tax

§ 172-14. Purpose.

The purpose of this article is to implement the provisions of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (the “Act” or “CREAMMA”) set forth at *N.J.S.A. 24:6I-46* and *N.J.S.A. 40:48I-1*, which authorize a municipality to impose transfer and user taxes on cannabis establishments.

§ 172-15. Definitions.

All terms herein shall be defined as set forth in section 3 of CREAMMA, *N.J.S.A. 24:6I-33*.

§ 172-16. Cannabis transfer tax.

A. All cannabis establishments operating in the Borough shall be subject to the following transfer tax on the sale of cannabis or cannabis related items:

- (1) Class 3 Cannabis Wholesalers: One percent (1%) of receipts from each sale.
- (2) Class 5 Cannabis Retailers: Two percent (2%) of the receipts from each sale.

B. The transfer tax imposed pursuant to this section shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

C. The transfer tax shall be collected or paid, and remitted to the Borough by 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.

§ 172-17. Cannabis user tax.

A. Any concurrent license holder operating more than one cannabis establishment shall be subject to a two percent (2%) user tax. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to this article, from the license holder's establishment that is located in the Borough to any of the other license holder's establishments, whether located in the Borough or in another municipality.

B. The user tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity with regard to cannabis.

C. The user 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.

§ 172-18. Collection of cannabis transfer and user tax.

In accordance with the provisions of CREAMMA:

A. Every cannabis establishment required to collect the transfer and user taxes imposed by this article shall be personally liable for the transfer and user tax imposed, collected, or required by this article and CREAMMA.

B. Any cannabis establishment collecting a transfer tax or user tax shall have the same right with respect to collecting the tax from another cannabis establishment or the consumer as if the tax was a part of the sale and payable at the same time. With respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the tax was part of the purchase price of the cannabis or cannabis item and payable at the same time, provided that the

Borough's chief financial officer is joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

C. No cannabis establishment required to collect the transfer and user taxes imposed by this article 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 or user tax will be refunded to the cannabis establishment or the consumer.

§ 172-19. Remittance of cannabis taxes; delinquencies.

A. All revenues collected from the transfer tax and user tax imposed pursuant to this article shall be remitted to the Borough's chief financial officer on a monthly basis.

B. The Borough shall enforce the payment of delinquent taxes or transfer fees imposed by this article in the same manner as provided for municipal real property taxes.

C. In the event that the transfer tax or user tax imposed by this article 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 Borough 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 Borough taxes, and shall be on a parity with and deemed equal to the Borough lien on the parcel for unpaid property taxes due and owing in the same year.

D. The Borough shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance of cannabis taxes 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.

E. No licensed cannabis establishment operating in the Borough shall be permitted to renew a license issued pursuant to Chapter ___ of this Code should any transfer or user tax imposed by this article be delinquent.

SECTION 7. Repealer. Any section, paragraph, subsection, clause, or provision of the Borough Code or prior Ordinances inconsistent with the provisions of this Ordinance is hereby repealed to the extent of such inconsistency.

SECTION 8. Severability. If an section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 9. Effective Date. This Ordinance shall take effect upon its passage and publication and filing with the County of Middlesex Planning Board, and as provided for by law.

Introduction: September 12, 2022
 Date of Publication: September 15, 2022

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
BRANCH	X				KANDEL	X			
DELIA	X				KOSKOSKI	X			
HIRSCH	X				RASMUSSEN	X			
MOTION	DELIA				SECOND	RASMUSSEN			
X – INDICATES VOTE					AB- ABSENT		NV- NOT VOTING		

I hereby certify the foregoing to be a true copy of an ordinance introduced by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on September 12, 2022.

 Deborah Zupan, RMC
 Borough Clerk

Adopted: October 24, 2022
 Date of Publication: October 27, 2022

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
BRANCH	X				KANDEL	X			
DELIA	X				KOSKOSKI	X			
HIRSCH				X	RASMUSSEN	X			
MOTION	RASMUSSEN				SECOND	KOSKOSKI			
X – INDICATES VOTE					AB- ABSENT		NV- NOT VOTING		

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on October 24, 2022.

 Deborah Zupan, RMC
 Borough Clerk

ATTEST:

BOROUGH OF METUCHEN

 Deborah Zupan, RMC
 Borough Clerk

By: _____
 Jonathan M. Busch
 Mayor