

**CITY OF ABSECON**

**ORDINANCE 13-2021**

**AN ORDINANCE CREATING CHAPTER 152 OF THE CODE OF THE CITY OF ABSECON TO IMPLEMENT PROVISIONS OF THE NEW JERSEY CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE AND MARKETPLACE MODERNIZATION ACT**

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

**WHEREAS**, 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, including: Class 1 Cannabis Cultivator license, Class 2 Cannabis Manufacturer license; Class 3 Cannabis Wholesaler license; Class 4 Cannabis Distributer license; Class 5 Cannabis Retailer license; and Class 6 Cannabis Delivery license; and

**WHEREAS**, Section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner and times operation of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, Section 31b of the Act stipulates that any municipal regulation or prohibition of any of the above classes must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

**WHEREAS**, section 40 of the Act authorizes municipalities by ordinance to adopt regulations which establish limited taxation of the above classes of activity within the municipality; and

**WHEREAS**, specifically, a municipality may 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 and at the discretion of the municipality, the tax may be imposed 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

**WHEREAS**, the City Council determines that it is appropriate to implement these measures as permitted by law.

**NOW, THEREFORE, BE IT ORDAINED AND ADOPTED**, by the City Council of the City of Absecon, County of Atlantic, State of New Jersey that Chapter 5 of the City Code, entitled "Cannabis Licensing and Regulations," is hereby established to read as follows:

**SECTION I** Chapter 5 of the City Code, entitled "Cannabis Licensing and Regulations," is hereby amended and supplemented to read as follows:

## **ARTICLE I**

### **Purpose and Preemption**

#### **§152-1. Purpose.**

It is the purpose of this Chapter to implement the provisions of P.L. 2021, c. 16, which authorizes the governing body of a municipality to adopt ordinances imposing local regulation and licensing, and taxation on cannabis establishments, and regulating the consumption of cannabis in public areas.

#### **§152-2. Preemption.**

The regulations of this Ordinance are subject to the enabling authority of the State of New Jersey and are subject to compliance with all statutes and/or regulations adopted by the State of New Jersey or its instrumentalities, including the Cannabis Regulatory Commission. If any provision of this Ordinance is inconsistent with state statutes and/or regulations, the state statutes and/or regulations shall prevail.

## **ARTICLE II**

### **Definitions**

#### **§152-3. Definitions.**

- A. "Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L.2021, c. 16 (C.24:6I-31 et al.) for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c. 307 (C.24:6I-1 et al.) and P.L.2015, c. 158 (C.18A:40-12.22 et al.); marijuana as defined in N.J.S.2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L.2001, c. 114 (C.2C:35B-1 et seq.), or marihuana as defined in section 2 of P.L.1970, c. 226 (C.24:21-2) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C.24:21-1 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c. 238 (C.4:28-6 et al.).

- B. "Cannabis consumption area" means, as further described in section 28 of P.L.2019, c. 153 (C.24:6I-21), a designated location operated by a licensed cannabis retailer or permit holder for dispensing medical cannabis, for which both a State and local endorsement has been obtained, that is either: (1) 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 or the dispensing of medical cannabis occurs; or (2) an exterior structure on the same premises as the cannabis retailer or permit holder, either separate from or connected to the cannabis retailer or permit holder, at which cannabis items or medical cannabis either obtained from the retailer or permit holder, or brought by a person to the consumption area, may be consumed.
- C. "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.
- D. "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.
- E. "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.
- F. "Cannabis establishment" means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.
- G. "Cannabis extract" means a substance obtained by separating resins from cannabis by: (1) a chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane, or propane; (2) a chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or (3) any other process identified by the Cannabis Regulatory Commission by rule or regulation.
- H. "Cannabis flower" means the flower of the plant *Cannabis sativa* L. within the plant family Cannabaceae.
- I. "Cannabis item" means any usable cannabis, cannabis product, cannabis extract, and any other cannabis resin. "Cannabis item" does not include: any form of medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c. 307 (C.24:6I-1 et al.) and P.L.2015, c. 158 (C.18A:40-

12.22 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c. 238 (C.4:28-6 et al.).

- J. "Cannabis leaf" means the leaf of the plant *Cannabis sativa* L. within the plant family Cannabaceae.
- K. "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."
- L. "Cannabis paraphernalia" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing a cannabis item into the human body. "Cannabis paraphernalia" does not include drug paraphernalia as defined in N.J.S.2C:36-1 and which is used or intended for use to commit a violation of chapter 35 or 36 of Title 2C of the New Jersey Statutes.
- M. "Cannabis product" means a product containing usable cannabis, cannabis extract, or any other cannabis resin and other ingredients intended for human consumption or use, including a product intended to be applied to the skin or hair, edible cannabis products, ointments, and tinctures. "Cannabis product" does not include: (1) usable cannabis by itself; or (2) cannabis extract by itself; or (3) any other cannabis resin by itself.
- N. "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.
- O. "Cannabis testing facility" means an independent, third-party entity meeting accreditation requirements established by the Cannabis Regulatory Commission that is licensed to analyze and certify cannabis items and medical cannabis for compliance with applicable health, safety, and potency standards.
- P. "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.

- Q. "Conditional Approval" means a determination by the City that the Applicant has complied with the provisions of this Chapter.
- R. "Conditional license" means a temporary license designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license that allows the holder to lawfully act as a cannabis cultivator, cannabis manufacturer, cannabis wholesaler, cannabis distributor, cannabis retailer, or cannabis delivery service as the case may be, which is issued pursuant to an abbreviated application process, after which the conditional license holder shall have a limited period of time in which to become fully licensed by satisfying all of the remaining conditions for licensure which were not required for the issuance of the conditional license.
- S. "Consumption" means the act of ingesting, inhaling, or otherwise introducing cannabis items into the human body.
- T. "Delivery" means the transportation of cannabis items and related supplies to a consumer. "Delivery" also includes the use by a licensed cannabis retailer of any third party technology platform to receive, process, and fulfill orders by consumers, which third party shall not be required to be a licensed cannabis establishment, distributor, or delivery service, provided that any physical acts in connection with fulfilling the order and delivery shall be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer, which includes a certified cannabis handler employed or otherwise working on behalf of a cannabis delivery service making off-premises deliveries of consumer purchases fulfilled by that cannabis retailer.
- U. "Financial consideration" means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions, or donations.
- V. "Immature cannabis plant" means a cannabis plant that is not flowering.
- W. "Local Cannabis License" means a current and valid license for a Cannabis Establishment issued under this Ordinance, which shall be granted to a Local Cannabis Licensee only for and limited to a specific Licensed Premises and a specific Licensed Property.
- X. "Local Cannabis Licensee" means the individual, organization, partnership, company, corporation, enterprise, or other entity that holds a current and valid Local Cannabis License issued under this Ordinance as well as the person or persons associated with the Local Cannabis Licensee as Applicant(s) for that Local Cannabis License.
- Y. "Licensed Premises" means the particular building, buildings, or tenant space within which the Local Cannabis Licensee will be authorized to conduct the Facility's activities pursuant to the Local Cannabis License.
- Z. "Licensed Property" means the real property comprised of a lot, parcel, or other designated unit of real property upon which the Licensed Premises is situated.

- AA. "License" means a license issued under P.L.2021, c. 16 (C.24:6I-31 et al.), including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license. The term includes a conditional license for a designated class, except when the context of the provisions of P.L.2021, c. 16 (C.24:6I-31 et al.) otherwise intend to only apply to a license and not a conditional license.
- BB. "Licensee" means a person or entity that holds a license issued under P.L.2021, c. 16 (C.24:6I-31 et al.), including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor license, a Class 5 Cannabis Retailer license, or a Class 6 Cannabis Delivery license, and includes a person or entity that holds a conditional license for a designated class, except when the context of the provisions of P.L.2021, c. 16 (C.24:6I-31 et al.) otherwise intend to only apply to a person or entity that holds a license and not a conditional license.
- CC. "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent that the person acts in a representative capacity.
- DD. "Manufacture" means the drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" does not include packaging or labeling.
- EE. "Mature cannabis plant" means a cannabis plant that is not an immature cannabis plant.
- FF. "Medical cannabis" means cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c. 307 (C.24:6I-1 et al.) and P.L.2015, c. 158 (C.18A:40-12.22 et al.). "Medical cannabis" does not include any cannabis or cannabis item which is cultivated, produced, processed, and consumed in accordance with P.L.2021, c. 16 (C.24:6I-31 et al.).
- GG. "Premises" or "licensed premises" includes the following areas of a location licensed under P.L.2021, c. 16 (C.24:6I-31 et al.): all public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms; all areas outside a building that the Cannabis Regulatory Commission has specifically licensed for the production, manufacturing, wholesaling, distributing, retail sale, or delivery of cannabis items; and, for a location that the commission has specifically licensed for the production of cannabis outside a building, the entire lot or parcel that the licensee owns, leases, or has a right to occupy.
- HH. "Produce" means the planting, cultivation, growing or harvesting of cannabis. "Produce" does not include the drying of cannabis by a cannabis manufacturer, if the cannabis manufacturer is not otherwise manufacturing cannabis.
- II. "Public place" means any place to which the public has access that is not privately owned; or any place to which the public has access where alcohol consumption is not allowed,

including, but not limited to, a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, playground, swimming pool, shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library, or any other public building, structure, or area.

### ARTICLE III

#### **Licensing and Regulations**

#### **§152-4. Local Cannabis License; Classification & Number of Local Cannabis Licenses**

- A. Local Cannabis License Required. No person shall operate a Cannabis Establishment, Distributor or Delivery Service at any time or from any location within the City unless a currently effective Local Cannabis License for that Person at that Licensed Premises has been issued under this Ordinance.
- B. Classification & Number of Local Cannabis Licenses. The City, subject to State licensure, may issue the following Local Cannabis Licenses:

<b>Class of License</b>	<b>Maximum Number of Licenses</b>
Class I - Cannabis Cultivator license	3
Class II - Cannabis Manufacturer license	3
Class III - Cannabis Wholesaler license	3
Class IV - Cannabis Distributor license	3
Class V - Cannabis Retailer license	3
Class VI - Cannabis Delivery license	3

- C. Dual Local Cannabis Licenses. The licensure and dual operation in multiple classes of Local Cannabis Licenses is permitted so long as all licenses are held by the same Local Cannabis Licensee, all applicable state and local licenses have been issued, such licenses remain valid, active and in compliance with all applicable state and City requirements.
- D. Conditional Approval for Local Cannabis License. The number of Conditional Approvals for Local Cannabis Licenses shall not be limited by the provisions of **§152-4(B)**.

#### **§152-5. – Cannabis Retailer License Prohibited within 200 feet.**

No Cannabis Retailer License shall be issued for the sale of cannabis within two hundred feet of any church, park or public or private schoolhouse. The protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church, government entity or school, such waiver to be effective until the date of the next renewal of the license. Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church, park or school to the nearest entrance of the premises sought to be licensed.

The prohibition contained in this section shall not apply to the renewal of any Cannabis Retailer License where no such church, park or schoolhouse was located within two hundred feet of the licensed premises at the time of the issuance of the original Cannabis Retailer License.

#### **§152-6. Local Consumption Areas Prohibited**

No entity in possession of a Local Cannabis License shall permit the consumption of cannabis in or upon a licensed premises. The City Administrator shall deny any request for local endorsement and/or approval of a Cannabis Consumption Area.

#### **§152-7. Local Cannabis Licensing Authority.**

The City Administrator is hereby designated to act as the local licensing authority for the City for all Local Cannabis Licenses. The City Administrator shall coordinate and cooperate with the Absecon Cannabis Regulating Committee, which Committee includes: the Mayor, the City Administrator, the Chief of Police and the City Council Chairpersons of the Public Safety Committee, the Finance Committee and the Economic Development Committee. Under all circumstances in which State law requires communication to the City by the Cannabis Regulatory Commission or any other State agency with regard to cannabis licensing by the State, or in which State law requires any review or approval by the City of any action taken by the State licensing authority, the exclusive authority for receiving such communications and granting such approvals shall be exercised by the City Administrator.

#### **§152-8. Application Requirements**

An application for a Local Cannabis License shall be submitted on current forms provided by the City with an application fee pursuant to **§152-12**. At least one controlling beneficial owner shall sign all applications. However, other owners with day-to-day management authority may be required to sign authorizations, requests to release information and other forms required by licensing authority staff. Applications shall be complete and accurate and must include all attachments, checklists, verifications and supporting documents required by the City's current application forms before the application will be accepted or considered. The City may refuse to accept an incomplete application.

#### **§152-9. Procedures & Requirements for Approval**

- A. Application review. All Applications for a Local Cannabis License shall be referred to a Absecon Cannabis Regulating Committee for purpose of reviewing the application and discussing the Applicant's compliance with this Chapter. The Applicant will be provided an opportunity to make a presentation and answer any questions of the members of the subcommittee.
- B. Local licensing authority considerations. The local licensing authority may consider the facts and evidence adduced as a result of the Application Review, as well as any other facts pertinent to the type of license for which the application has been made. Such facts include, but are not limited to, the number, type, and availability of cannabis businesses located in or near the premises under consideration and other pertinent matters affecting the qualification of the applicant for the conduct of the type of business proposed, including, but not limited to, the applicant possessing a minority, women's, or disabled veterans' business certification



provided to the Applicant by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development pursuant to N.J.S.A. 24:6I-25.

- C. Conditional Approval. After review and consideration by the subcommittee, the local licensing authority may grant a Conditional Approval if concluded that the applicant has met the requirements set forth in this Chapter. A Conditional Approval shall entitle the Applicant to pursue a State license in the appropriate classification for up to 18 months. A Conditional Approval shall not grant the Applicant any right or privilege to a Local Cannabis License.
- D. Limitation on Number of Licenses. The number of Local Cannabis Licenses for each class of license are limited pursuant to **§152-4(B)**. A Local Cannabis License will not be issued to an Applicant that has obtained a Conditional Approval if the maximum number of Local Cannabis Licenses for the same class have been issued by the City.
- E. Denial of Conditional Approval. The City shall deny a Conditional Approval to any Applicant who fails to provide information, documentation and assurances as required by this Chapter or as requested by the City, or who fails to reveal any material fact to qualification, or who supplies information which is untrue or misleading as to a material fact pertaining to the qualification criteria for licensure. The City shall grant a Conditional Approval upon a determination that the Applicant has met the requirements of this Chapter unless the City finds by clear and convincing evidence that the Applicant would be manifestly unsuitable to perform the activities for the applicable license class for which Conditional Approval is sought.  
  
A written decision with findings supporting the denial of the Conditional Approval shall be sent by certified mail to the applicant at the address shown in the application.
- F. Termination of Conditional Approval. A Conditional Approval shall be valid for 18 months, unless otherwise revoked, from the date of approval.

#### **§152-10. Procedures & Requirements for Issuance of Local Cannabis License**

No Local Cannabis License shall be issued until the Applicant has received a State license and satisfied other prerequisites of the Conditional Approval.

- A. Notice to City. An Applicant shall notify the City upon meeting all conditions of the Conditional Approval. The notice shall include a copy of the State license, a copy of the full application submitted to the State of New Jersey and a statement affirming that the Applicant has not made any material changes to the original application.
- B. Issuance of Local Cannabis License. The City shall issue a Local Cannabis License once satisfied that the conditions of the Conditional Approval have been met.
- C. License duration. Unless revoked or suspended, local licenses shall run concurrently with state licenses. This means that once a Local Cannabis License is issued, such license will expire, unless otherwise revoked as provided for herein, on the same date as the current state license.

## §152-11. Regulations

A Local Cannabis Licensee shall at all times comply with the following operational requirements, which the City may review and amend from time to time as it determines reasonable.

- A. Scope of Operation. A Local Cannabis Licensee shall comply with all respective applicable codes of the local zoning, building, and health departments. The Local Cannabis Licensee must hold a valid Local Cannabis License and State license for the classification intended to be carried out on the Licensed Property.
- B. Security. Local Cannabis Licensee shall at all times maintain a security system that meets State law requirements, and in addition shall also include the following:
  - a. Robbery and burglary alarm systems which are professionally monitored and operated twenty-four (24) hours a day, seven (7) days a week and which will contact local law enforcement if triggered;
  - b. All security recordings and documentations shall be preserved for at least thirty (30) days by the Local Cannabis Licensee and made available to any law enforcement upon request for inspection.
- C. Operating Hours. Hours of operation for the Class V Cannabis Retail License holders shall be limited to an operating schedule of 10 a.m. to 10 p.m. All other Classes of licensure may operate 24 hours per day.
- D. Sign Restrictions. No signs, pictures, photographs, drawings or other depictions shall appear on the outside of any Licensed Premises nor be visible outside of the Licensed Premises on the Licensed Property nor advertise in a way that is inconsistent with and federal, state, or local rule or regulation.
- E. Permits. All necessary building, electrical, plumbing and mechanical licenses must be obtained for any part of the Licensed Premises in which electrical, wiring, lighting or watering devices that support the cultivation, growing, harvesting or testing of cannabis are located.
- F. Waste Disposal. The Local Cannabis Licensee shall use lawful methods in controlling waste or by-products from any activities allowed under the Local Cannabis License. All waste or by-products stored must be contained in a dumpster that is locked or located within a locked enclosure.
- G. Indoor Operation. All activities permitted pursuant to a Local Cannabis License, including without limitation, distribution, growth, manufacturing, cultivation, or the sale of cannabis, and all other related activity must occur indoors.
- H. Odor Prohibited. A Local Cannabis Licensee's operation and design shall minimize any impact to adjacent uses, including the control of any odor by maintaining and operating an air filtration system or other appropriate system.

- I. Nuisance Prohibited. The Licensed Premises shall not be operated in a manner that creates noise, dust, or glare beyond the boundaries of the property; or create any other nuisance that hinders the public health, safety and welfare.
- J. Additional Conditions. The City may impose such reasonable Terms and Conditions on a Local Cannabis Licensees as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Ordinance and applicable law.

**§152-12. Application Fee.**

At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs associated with the processing of the application. The application fee shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or City law or ordinance, including, by way of example, the Annual Licensing Fee pursuant to §152-13.

The Application Fee shall be \$10,000, for licenses for Classes I through and including Class V. The Application Fee for a Class VI license shall be \$2,500. Application Fees may be modified annually by resolution of the City Council of the City of Absecon.

**§152-13. Annual Licensing Fee.**

- A. The Local Cannabis Licensee shall pay an annual licensing fee for each license held as follows:

<b>Class of License</b>	<b>License Fee</b>
Class I - Cannabis Cultivator license	\$10,000
Class II - Cannabis Manufacturer license	\$10,000
Class III - Cannabis Wholesaler license	\$10,000
Class IV - Cannabis Distributor license	\$10,000
Class V - Cannabis Retailer license	\$10,000
Class VI - Cannabis Delivery license	\$ 2,500

- B. Payment Date. Annual Licensing Fee(s) shall be due and payable on the date the City issues a Local Cannabis License and shall be payable annually thereafter on the yearly anniversary of the issuance of the license.
- C. Late Fees. The failure of a Local Cannabis Licensee to pay the Annual Licensing Fee when due, will result in the assessment of a Late Fee as follows:
  - a. One (1) to Seven (7) days late, a late fee equivalent to two (2%) percent of the Annual Licensing Fee.
  - b. Eight (8) to Fifteen (15) days late, a late fee equivalent to five (5%) percent of the Annual Licensing Fee.

- c. Sixteen (16) to Thirty (30) days late, a late fee equivalent to ten (10%) percent of the Annual Licensing Fee.
- d. After expiration of Thirty (30) days the Local Cannabis Licensee shall cease operations.

#### **§152-14. Local Cannabis License Renewals.**

- A. Timing of Renewal Application. An application for renewal of a Local Cannabis License shall be filed at least sixty calendar days prior to the expiration date of the current license.
- B. Renewal Application Procedures. The renewal application shall contain all the information required for new applications. The applicant shall pay a fee pursuant to **§152-12** to cover the costs of processing the renewal permit application. An application for renewal of a Local Cannabis License shall be rejected if any of the following exists:
  - 1. The application is filed less than sixty days before its expiration.
  - 2. The Local Cannabis License is suspended or revoked at the time of the application.
  - 3. The Local Cannabis Licensee has not been in regular and continuous operation in the four months prior to the renewal application.
  - 4. The Local Cannabis Licensee has failed to conform to the requirements of this chapter, or of any regulations adopted pursuant to this chapter.
  - 5. The Local Cannabis Licensee fails or is unable to renew its state of New Jersey license.
  - 6. If the city or state has determined, based on substantial evidence, that the Local Cannabis Licensee is in violation of the requirements of this Chapter, or of the state rules and regulations, and the city or state has determined that the violation is grounds for termination or revocation of the Local Cannabis License.
- C. Conditions of Renewal. The Local Licensing Authority is authorized to make all decisions concerning the issuance of a renewal license. In making the decision, the Local Licensing Authority is authorized to impose additional conditions to a renewal license, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the cannabis review committee shall be appealable to the city council pursuant to **§152-16**.

#### **§152-15. Transfer of Local Cannabis License.**

- A. Non-transferable. A Local Cannabis Licensee shall not transfer ownership or control of the Local Cannabis License to another person or entity unless and until the transferee obtains an amendment to the license from the Local Licensing Authority stating that the transferee is now the licensee. Such an amendment may be obtained only if the transferee files an application in accordance with all provisions of this chapter (as though the transferee were

applying for an original Local Cannabis License). The proposed transferee's application shall be accompanied by an Application Fee pursuant to **§152-12**.

No Local Cannabis License may be transferred when the Local Licensing Authority has notified the licensee that the permit has been or may be suspended or revoked.

- B. Change in Ownership. Changes in ownership of a Local Cannabis Licensee's business structure or a substantial change in the ownership of a Local Cannabis Licensee's business entity (changes that result in a change of more than fifty-one percent of the original ownership) must be approved by the Local Licensing Authority through the transfer process contained in subsection (A) of this section. Failure to comply with this provision is grounds for permit revocation.
- C. Any attempt to transfer a Local Cannabis License either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

### **§152-16. Suspension of License**

The Local Licensing Authority may revoke, suspend, or decline to renew any Local Cannabis License issued under this Chapter, or for any violation of any law and/or any rule, regulation policy, procedure or regulation in this Chapter. Grounds for revocation, suspension or nonrenewal of a license or permit shall include the following:

- A. The failure of the Local Cannabis Licensee to comply with the provisions of this chapter or any other law pertaining to commercial cannabis businesses;
- B. The giving of false or misleading information by the Local Cannabis Licensee in making application for a Local Cannabis License or in connection with an investigation conducted by the city or any other state, local or federal agency;
- C. Any cause for denying an original Local Cannabis License as set forth in this Chapter;
- D. The revocation, suspension, or nonrenewal of associated state licenses/permits, which revocation, suspension or nonrenewal the Local Cannabis Licensee shall disclose immediately to the Local Licensing Authority;
- E. The failure of the Local Cannabis Licensee to diligently initiate business operations or to continue to carry on business operations in a manner substantially as set forth in the business plan, safety and security plan and application submitted in support of the Local Cannabis Licensee's original or renewal application to operate.

The determination of the Local Licensing Authority to suspend, revoke or decline to renew a Local Cannabis License shall be made in writing and mailed or delivered to the Local Cannabis Licensee's registered agent. The determination of the Local Licensing Authority shall become effective ten days following the date of the notice of that determination. The Local Cannabis Licensee may, during such ten-day period, appeal the determination of the Local Licensing Authority to the city council. If the Local Cannabis License fails to file the notice of appeal within such ten-day period, the determination of the Local Licensing Authority shall be final and

conclusive. If a written notice of appeal is filed with the city clerk during such ten-day period, the determination of the Local Licensing Authority shall be stayed pending the city council's hearing and decision on the appeal.

#### **§152-17. Liability & Indemnification**

- A. By accepting a Local Cannabis License issued pursuant to this Chapter, the Local Cannabis Licensee waives and releases the City, its officers, elected officials, and employees from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of Local Cannabis Licensee's owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.
- B. By accepting a Local Cannabis License issued pursuant to this Chapter, all Local Cannabis Licensees agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, and insurers, against all liability, claims or demands arising on account of bodily injury, sickness, disease, death, property loss or damage or any other loss of any kind, including but not limited to, any claim of diminution of property value by a property owner whose property is located in proximity to a Licensed Property, arising out of, claimed to have arisen out of, or in any manner connected with the operation of a marijuana establishment or use of a product cultivated, processed, distributed or sold that is subject to the Local Cannabis License, or any claim based on an alleged injury to business or property by reason of a claimed violation of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Section 1964(c) or any other alleged violation of the law
- C. By accepting a Local Cannabis License issued pursuant to this Chapter, a Local Cannabis Licensee agrees to indemnify, defend and hold harmless the City, its officers, elected officials, employees and insurers, against all liability, claims, penalties, or demands arising on account of any alleged violation of any existing law including the federal Controlled Substances Act, 21 U.S.C. Section 801 et seq.

#### **§152-18. Local Cannabis License as Revocable Privilege**

A Conditional Approval and Local Cannabis License granted by this Chapter are a revocable privilege granted by the City and are not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. Each Local Cannabis License is exclusive to the Local Cannabis Licensee, and a Local Cannabis Licensee or any other person must apply for and receive the City's approval before a Local Cannabis License is transferred, sold, or purchased. A Local Cannabis Licensee or any other person shall not lease, pledge, or borrow or loan money against a license. The attempted transfer, sale, or other conveyance of an interest in a Local Cannabis License without prior state and local approval is grounds for suspension or revocation of the Local Cannabis License or for other sanction considered appropriate by the City.

## ARTICLE IV

### **Cannabis Taxation**

#### **§152-19. Tax established.**

- A. There is hereby established a local cannabis transfer tax in the City of Absecon which shall be fixed at a uniform percentage rate of two percent (2%) of the receipts from each sale by a cannabis cultivator; two percent (2%) of the receipts from each sale by a cannabis manufacturer; one percent (1%) of the receipts from each sale by a cannabis wholesaler; and two percent (2%) of the receipts from each sale by a cannabis retailer for every occupancy of a cannabis establishment in the City of Absecon.
- B. In addition to the tax established in paragraph A of this section, a user tax, at the equivalent transfer tax rates, is hereby established on any concurrent license holder, as permitted by section 33 of P.L.2021, c.16 (C.24:6I-46), operating more than one cannabis establishment. 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 paragraph A of this subsection, from the license holder's establishment that is located in City of Absecon to any of the other license holder's establishments, whether located in this City or another municipality.
- C. Any transaction for which the transfer tax or user tax is imposed, or could be imposed, pursuant to this section, other than those which generate receipts from the retail sales by cannabis retailers, shall be exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

#### **§152-20. Tax in addition to other taxes or fees.**

The cannabis transfer tax shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon property or cannabis establishment.

#### **§152-21. Collection.**

- A. The transfer tax or user tax imposed by this article shall be collected or paid, and remitted to the City of Absecon 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 City by the cannabis retailer selling the cannabis item to that consumer. The transfer tax or 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.
- B. Every cannabis establishment required to collect a transfer tax or user 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 or user tax from another cannabis establishment or the consumer as if the transfer tax or user tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user 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 Financial Officer of the City of Absecon shall be 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 a transfer tax or user tax imposed by this section 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.
- D. All revenues collected from a transfer tax or user tax imposed by ordinance pursuant to this section shall be remitted to the City of Absecon Chief Financial Officer on a quarterly basis payable for the prior three month's activities and due at the same time as quarterly dates for the collection of property taxes. The revenues due on February 1 of each year shall include all transfer taxes or user taxes collected for the prior year months of October, November and December. The revenues due on May 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of January, February and March. The revenues due on August 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of April, May and June. The revenues due on November 1 of each year shall include all transfer taxes and user taxes collected for the immediate prior months of July, August and September.

#### **§152-22. Payment; vendor violations and penalties.**

- A. The Chief Financial Officer shall collect and administer any transfer tax or user tax imposed to this section.
- B. The municipality shall enforce the payment of delinquent taxes or transfer fees imposed pursuant to this section 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 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.
- D. A 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."

### **ARTICLE V**

#### **Prohibition of Public Consumption of Cannabis, Marijuana, and Hashish**

#### **§152-23. City Policy.**



The purpose of this Article is to regulate conduct in Public Places affecting the public health, safety and general welfare by protecting residents of and visitors to the City of Absecon from the nuisance and health hazards of second hand cannabis smoke, and to provide for the public health, safety and welfare by discouraging the inherently dangerous behavior of consuming cannabis around non-users; by protecting the public from nonconsensual exposure to secondhand cannabis smoke and cannabis-related litter and pollution, and, by affirming the family-friendly atmosphere of public areas in the City Absecon.

**§152-24. Restrictions on Public Consumption of Cannabis, Marijuana, and Hashish.**

It is unlawful for any person to smoke or otherwise use or consume Cannabis while on the outdoor grounds of any City building, including adjacent parking lots, and in or on any Public Open Space, Parks, Public Right-of-Way, Recreation Area, or the area of any scheduled public event.

**§152-25. Enforcement.**

The City of Absecon Police Department is hereby charged with the enforcement of this section of the code. All members of the Police Department are hereby designated as enforcement officers for the purpose of enforcement of this section.

**ARTICLE VI**

**§152-26. Violations and penalties.**

- A. Any licensee who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, have his, her or its license subject to a fine of \$2,500 for the first offense and \$3,500 for any subsequent offense as well as such penalties as may otherwise be provided by law.
- B. Any such person who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, be subject to a minimum fine of \$250 or a maximum of \$2,000 or by imprisonment for a term not exceeding 90 days or by a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law.

**Dated: August 12<sup>th</sup>, 2021**

SIGNED:   
Kimberly Horton, Mayor

ATTEST:   
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on July 15<sup>th</sup>, 2021. Laid over and advertised for public hearing and final adoption on August 12<sup>th</sup>, 2021. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on August 12<sup>th</sup>, 2021.