

## ORDINANCE 2207

**AN ORDINANCE PROHIBITING ALL CLASSES OF CANNABIS LICENSED BUSINESSES IN RESIDENTIAL, COMMERCIAL AND HISTORICAL DOWNTOWN DISTRICTS (R1.5, R10, R15, R1-2, SC-1, SC-2, AH-1, AH-2, AH-3, AH-4, PRD-1, OBC-1, OBC-2, OBC-3, OBC-4, OPA-1, OPA-2 M-1, M-2, HDD, RH, HAM-1); AND PERMITTING LICENSED CANNABIS BUSINESS CLASSES 2 (MANUFACTURER), 3 (WHOLESALE), 4 (DISTRIBUTOR) WITHIN DESIGNATED AREAS OF THE M-3 ZONE WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF SOUTH PLAINFIELD.**

**WHEREAS**, the State of New Jersey has, by statute, enacted 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 and older and establishes a comprehensive regulatory and licensing scheme for commercial recreation (adult use) cannabis operations, use and possession;

**WHEREAS**, the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments, cannabis distributors or cannabis delivery services allowed to operate within the municipal boundaries, as well as the location, manner and times of operation of such establishments, distributors or delivery services, and to establish civil penalties for the violations of any such regulations; and

**WHEREAS**, the Act also authorized municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors or delivery services anywhere in the municipality; and

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

- 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 Distributor License, for businesses involved in transporting cannabis plants in bulk from once licensed cultivator to another licensed cultivator, or cannabis in bulk from any type of licensed cannabis business to another;
- Class 5 Cannabis Retail License, for locations at which cannabis items and related supplies are sold to consumers;
- 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,



which service would include the ability of the 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 the consumer; and

**WHEREAS**, the Act also provides that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (by August 21, 2021); and

**WHEREAS**, the failure of municipalities to adopt any regulation or prohibition shall mean that for a period of five (5) years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

**WHEREAS**, at the conclusion of the initial and any subsequent five (5) year period following the failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

**WHEREAS**, the Mayor and Council of the Borough of South Plainfield has determined that, due to present and potential impacts that allowing cannabis businesses may have on New Jersey municipalities in general and on the Borough of South Plainfield in particular, it is at this time necessary and appropriate to amend the Code of the Borough of South Plainfield to prohibit Class 1 (Cultivator), Class 5 (Retailer), and Class 6 (Delivery) cannabis business from operating anywhere in the Borough of South Plainfield, except for the delivery of cannabis items and related supplies by a delivery service. It is further deemed appropriate to amend the Code of the Borough of South Plainfield to permit Class 2 (Manufacturer), Class 3 (Wholesaler), and Class 4 (Distributor) businesses in designated M-3 industrial zones, and to create a new chapter establishing a Cannabis Transfer User Tax;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of South Plainfield, County of Middlesex, State of New Jersey as follows:

AMEND Chapter 540, Zoning, Article II, Word Usage and Definitions, Section 540-5, to add the following new definitions:

Cannabis: Any and all parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, and every compound, manufacturer, salt, derivative, mixture, 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. 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 or registered to qualifying patients pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act”.

Cannabis Cultivator: Any licensed person or entity that grows, cultivates or produces cannabis in this State, and sells and may transport this cannabis to other cannabis cultivators or useable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivators License.

Cannabis Delivery Service: Any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies filed by cannabis retailer 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 directly through the cannabis delivery service, which after presenting the purchase order of the cannabis retailer for fulfillment, is delivered to that consumer. This person shall hold a Class 6 Cannabis Delivery License.

Cannabis Distributor: Shall mean 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 establishments 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 Distributors License.

Cannabis Manufacturer: Shall mean 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 the other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturers License.

Cannabis Retailer: Shall mean any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers, and sells these to the 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 Retail License.

Cannabis Wholesaler: Shall mean 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.



Article XII, Administration and Enforcement, shall be amended to create a new Section 540-78, which shall be titled "Prohibited Uses" and shall read as follows:

Any use not specifically permitted in the zoning district established by this Chapter is hereby specifically prohibited from that district, and further provided that the following uses and activities shall be specifically prohibited in any zone in the Borough:

- Class 1 - Licensed Cannabis Cultivator
- Class 5 - Licensed Cannabis Retailer
- Class 6 - Licensed Cannabis Delivery

Article VII, Zone District Regulations, shall be amended to create a new section, 540-45 (a)(6) which shall read as follows:

Class 2 (Licensed Cannabis Manufacturer), Class 3 (Licensed Cannabis Wholesaler), and Class 4 (Licensed Cannabis Distributor) shall be permitted in those M-3 industrial zones as depicted in the shaded green areas of the map attached as Schedule A to this Ordinance, which map shall be available in the office of the Borough Clerk, limited to two Licensed Cannabis Manufacturers, two Licensed Cannabis Wholesalers, and one Licensed Cannabis Distributor having been granted licenses and permission of the Borough to operate at any given time.

The Code of the Borough of South Plainfield shall be further amended to create a new chapter entitled "Establishment of Cannabis Transfer Tax and User Tax in the Borough of South Plainfield" within the geographical boundaries of the Borough. This tax shall be imposed on receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment.

A one percent (1%) transfer tax shall be collected from receipts from each sale by a cannabis wholesaler located within the geographical boundaries of the Borough.

A user tax is hereby also established at the same rate (2%) of the transfer tax contained herein and 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 P.L. 2021 c. 16, from the license holder's establishment that is located in the Borough to any other license holder's establishments, whether located in the Borough or another municipality.

The transfer tax or user tax imposed by this Ordinance shall be in addition to any other tax imposed by law. 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 "Sale and Use Tax Act" (N.J.S.A. 54:32B-1, et seq.). The transfer tax or user tax will be assessed and collected pursuant to established State law and

Administrative rules and regulations regarding same.

**BE IT FURTHER ORDAINED** as follows:

Any article, section, paragraph, subsection, clause or other provision of the Code of the Borough of South Plainfield inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency;

If any section, paragraph, subsection, clause, 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 adjudged, and the remainder of this Ordinance shall be deemed valid and effective;

After introduction, the Borough Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Council of the Borough of South Plainfield within 35 days after referral, a report, including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies in any other matter as the Board deems appropriate;

After introduction, the Borough Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least ten (10) days prior to the scheduled hearing, a copy of this Ordinance and the Notice of Hearing in accordance with N.J.S.A. 40:55D-15 to:

- A. The clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected property; and
- B. The Middlesex County Planning Board.

After adoption, the Borough Clerk is hereby directed to file a copy of this Ordinance with the Middlesex County Planning Board in accordance with N.J.S.A. 40:55D-16;

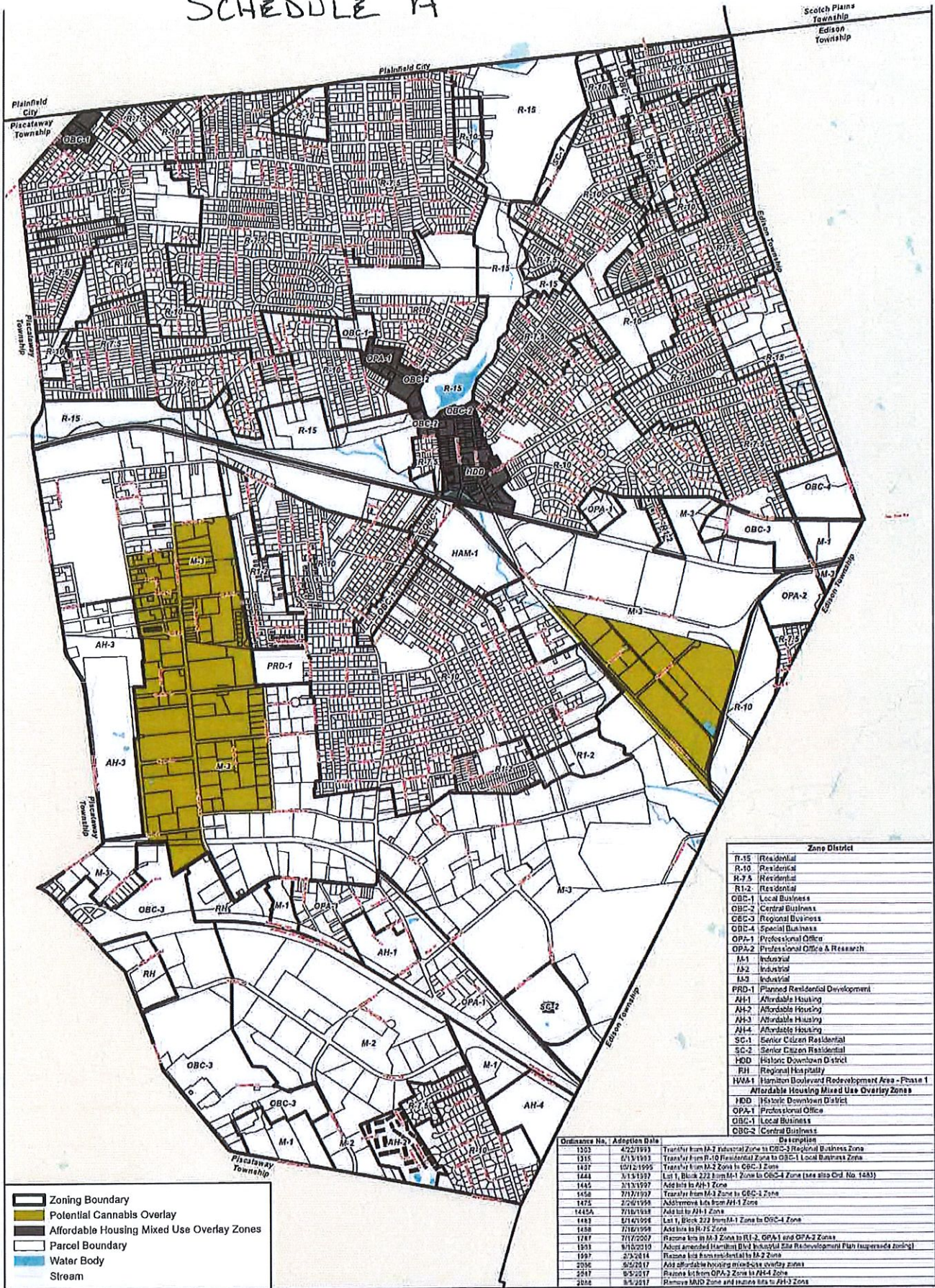
This Ordinance shall take effect upon final passage and publication in accordance with New Jersey law and filing with the Middlesex County Planning Board.

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Amy Antonides, Clerk  
Borough of South Plainfield  
Adopted:\_\_\_\_\_

\_\_\_\_\_  
Matthew P. Anesh, Mayor  
Borough of South Plainfield



# SCHEDULE A

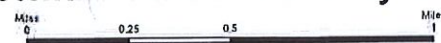


Zone District	
R-15	Residential
R-10	Residential
R-7.5	Residential
R-7	Residential
R-12	Residential
OBC-1	Local Business
OBC-2	Central Business
OBC-3	Regional Business
OBC-4	Special Business
OPA-1	Professional Office
OPA-2	Professional Office & Research
M-1	Industrial
M-2	Industrial
M-3	Industrial
PRD-1	Planned Residential Development
AH-1	Affordable Housing
AH-2	Affordable Housing
AH-3	Affordable Housing
AH-4	Affordable Housing
SC-1	Senior Citizen Residential
SC-2	Senior Citizen Residential
HDD	Historic Downtown District
RH	Regional Hospital
IWA-1	Hamilton Boulevard Redevelopment Area - Phase 1
Affordable Housing Mixed Use Overlay Zones	
HDD	Historic Downtown District
OPA-1	Professional Office
OBC-1	Local Business
OBC-2	Central Business

Ordinance No.	Adoption Date	Description
1303	4/22/1993	Transfer from M-2 Industrial Zone to OBC-3 Regional Business Zone
1315	6/13/1993	Transfer from R-10 Residential Zone to OBC-1 Local Business Zone
1437	10/12/1995	Transfer from M-2 Zone to OBC-3 Zone
1448	3/13/1997	Lot 1, Block 223 from M-1 Zone to OBC-4 Zone (see also Ord. No. 1443)
1452	2/13/1997	Add lots in AH-1 Zone
1454	7/17/1997	Transfer from M-3 Zone to OBC-3 Zone
1475	2/26/1998	Add/remove lots from AH-1 Zone
1445A	7/18/1998	Add lots to AH-1 Zone
1483	8/14/1998	Lot 1, Block 222 from M-1 Zone to OBC-4 Zone
1488	7/16/1998	Add lots to R-7.5 Zone
1787	7/17/2007	Remove lots in M-3 Zone to R-12, OPA-1 and OPA-2 Zones
1903	8/10/2010	Adopt amended Hamilton Blvd Hospital Site Redevelopment Plan (supercede zoning)
1997	2/25/2014	Remove lots from residential to M-2 Zone
2096	5/25/17	Add affordable housing mixed use overlay zones
2247	9/5/2017	Remove lots from OPA-2 Zone to AH-4 Zone
2304	9/5/2017	Remove MUD Zone and remove lots to AH-3 Zone

Zoning Boundary  
 Potential Cannabis Overlay  
 Affordable Housing Mixed Use Overlay Zones  
 Parcel Boundary  
 Water Body  
 Stream

## Borough of South Plainfield, Middlesex County, New Jersey Potential Cannabis Overlay Zones



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Prepared by: RED, 06-15-2021  
Sources: USFPA/SHDC, NJDOT, NJGDM, South Plainfield Borough, TAM Associates  
File Path: C:\Users\red\Documents\South Plainfield Borough Cannabis Overlay - Introduction.mxd