

## **TOWNSHIP OF HAINESPORT**

### **ORDINANCE 2022-1**

#### **ORDINANCE OF THE TOWNSHIP OF HAINESPORT PERMITTING THE OPERATION OF AND TAXING CLASS 3 WHOLESALER AND CLASS 4 DISTRIBUTOR CANNABIS BUSINESSES IN CERTAIN ZONES, WITH CONDITIONS, AND AMENDING CHAPTER 77 OF THE CODE OF THE TOWNSHIP OF HAINESPORT**

**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 cannabis 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, 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 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**, 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 authorizes 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**, on August 10, 2021, the Township Committee of the Township of Hainesport adopted Ordinance No. 2021-8, in which the Township “opted out” of all six cannabis license types; and

**WHEREAS**, Ordinance No. 2021-8 stated in pertinent part:

WHEREAS, the Township Committee of the Township of Hainesport has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis businesses might have on New Jersey municipalities in general, and on the Township of Hainesport in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Township of Hainesport’s residents and members of the public who visit, travel, or conduct business in the Township of Hainesport to amend the Township of Hainesport’s zoning regulations to prohibit all manner of cannabis-related land use and development within the geographic boundaries of the Township of Hainesport; and

**WHEREAS**, on September 20, 2021, the New Jersey Cannabis Regulatory Commission (CRC) issued the initial rules (N.J.A.C. 17:30 et seq.) implementing the Act; and

**WHEREAS**, the Township Committee has reviewed the rules and has had opportunity to observe and digest the cannabis business landscape in New Jersey since the Act was adopted in February 2021; and

**WHEREAS**, the Township Committee formed a Cannabis Subcommittee to consider the impact of the regulations and to consider whether the Township should consider permitting cannabis businesses to operate in the Township, and, if so, how such businesses should be regulated;

**WHEREAS**, the Cannabis Subcommittee met on several occasions, and ultimately determined to recommend to the Township Committee that the Township should permit Class 3 Cannabis Wholesalers and Class 4 Cannabis Distributors in the Township, with conditions and restrictions; and

**WHEREAS**, the Township Committee considered the recommendation of the Cannabis Subcommittee, and believes that, due to its centralized location and proximity to major state and interstate highways, the Township of Hainesport is an ideal location for Class 3 Cannabis Wholesalers and Class 4 Cannabis Distributors; and

**WHEREAS**, the Township Committee desires to amend the Township Code to permit Class 3 Cannabis Wholesalers and Class 4 Cannabis Distributors, with strict requirements and conditions to ensure the health, safety and welfare of the Township's residents; and

**WHEREAS**, the Township Committee believes it is in the best interest of the Township to impose a local tax to the greatest extent permitted by the Act, which is 1% of sales made by Cannabis Wholesalers, and

**WHEREAS**, it is anticipated that the Township Committee, shortly after the adoption of this ordinance, will make amendments to Chapter 104 ("Land Use") to incorporate the addition of cannabis business uses in the Township.

**NOW THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Hainesport, in Burlington County, State of New Jersey, as follows:

## **SECTION I.**

Section 77-5 ("Cannabis Establishments Prohibited") of the Township Code shall be repealed in its entirety.

New Sections in Chapter 77 ("Drugs and Cannabis"), Article II ("Cannabis") shall be added to the Code of the Township of Hainesport as follows:

### **§ 77-5 DEFINITIONS**

**CANNABIS** - 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, 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 BUSINESS** - Any person or entity that holds any of the six Classes of licenses established under P.L. 2021, c. 16, the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act."

**CANNABIS CULTIVATOR** - Any licensed person or entity that grows, cultivates, or produces cannabis, 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** - 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** - 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** - A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

**CANNABIS MANUFACTURER** - 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 PRODUCT** - 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.

**CANNABIS RETAILER** - 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 TESTING FACILITY** - 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.

CANNABIS WHOLESALER - 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.

§ 77-6 Cannabis Wholesalers and Distributors Permitted; Other Cannabis Businesses Prohibited.

A. Cannabis Wholesalers and Distributors, as said terms are defined in Section 77-5 of this Code and Section 3 of P.L. 2021, c. 16 ("New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"), shall be permitted uses in the Township as set forth in this Chapter and in Chapter 104. A total of four (4) Cannabis Wholesalers and/or Cannabis Distributors shall be permitted in the Township.

B. Cannabis Cultivators, Manufacturers, Retailers and Delivery Services as said terms are defined in Section 77-5 of this Code and Section 3 of P.L. 2021, c. 16 ("New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"), shall be prohibited in all zones in the municipality, but the delivery of cannabis items and related supplies by a delivery service is permissible.

§ 77-7 PROOF REQUIRED FOR LOCAL SUPPORT

A. Any request for a resolution of local support, pursuant to N.J.S.A 24:6I-7.2, shall include a concept plan indicating how applicant intends on complying with the Township's zoning, site plan and licensing requirements.

B. After submitting the documents required in Section 77-8 of this Code, all applicants shall appear before the Township's Economic Development Committee, which shall make a recommendation to the Township Committee on whether to issue a resolution of local support.

C. A resolution of local support does not constitute final approval for local licensure. A local license shall only be granted as set forth in Section 77-8 of this Code.

D. The Township Committee and the Economic Development Committee shall consider proposals for a resolution for local support in the order that the proposals are submitted.

§ 77-8 LICENSING

A. No cannabis business may lawfully operate in Hainesport Township 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 oversight and issuance of a license by the Township in accordance with the provisions of this Chapter.

B. All cannabis businesses shall be subject to Site Plan and/or land use approvals in

accordance with the Municipal Land Use Law and Chapter 104 of this Code.

C. A license to operate shall be considered for approval by the Township Committee when the applicant has submitted evidence that it:

1. Received Site Plan or land use approval and/or zoning permit, where applicable;
2. Complies with all elements of its concept plan;
3. Complies with any other relevant Township Ordinance; and
4. Has paid the required fees pursuant to Section 77-9 of this Code.

D. Each local license shall be effective from January 1 until December 31 and shall be annually renewed upon the submission of a renewal application and renewal fee provided all conditions and requirements of applicable State law and this Chapter are met.

E. Any conditions of land use approval may be incorporated as conditions of the local license.

F. Site Plan approval by the Township's land use boards is not required unless specific improvements necessitate review pursuant to Chapter 104 of this Code.

#### § 77-9 FEES

A. The application fee for a Cannabis Wholesaler license and for a Cannabis Distributor license shall be \$5,000. The fee shall be nonrefundable. A single cannabis business that seeks to obtain both a Cannabis Wholesaler and Cannabis Distributor license shall remit application fees for both license types.

B. The annual registration fee for a Cannabis Wholesaler license and for a Cannabis Distributor license shall be \$5,000. A single cannabis business that maintains both a Cannabis Wholesaler and a Cannabis Distributor license shall remit annual registration fees for both license types.

#### § 77-10 LOCATION

Cannabis Wholesaler and Cannabis Distributor businesses shall only be permitted in those zoning districts where Wholesale and Distributor uses, as defined, are expressly permitted principal uses in accordance with Chapter 104 of this Code.

#### § 77-11 SECURITY

A cannabis business licensee shall maintain security on the site in accordance with the security plan that is approved by the Township, with consultation by the New Jersey State Police. Such plan shall address items such as appropriate fencing, security personnel, employee training, lighting, transport of product and receipts, and site control features that prevent unauthorized entry, to the satisfaction of the Township, with consultation by the

New Jersey State Police. Such measures may require land use approvals as required by Chapter 104 of this Code.

#### § 77-12 SITE MANAGEMENT

A. The cannabis business shall prevent and eliminate any conditions on the site that constitute a nuisance.

B. The cannabis business shall maintain the exterior of the site, including any parking lots under the control of the permittee, free of litter, debris, and trash.

C. The cannabis business shall properly store and dispose of all waste generated on the site, including chemical and organic waste, in accordance with all applicable laws and regulations. No cannabis business shall dispose of cannabis or cannabis products unless they have been made unusable and unrecognizable.

#### § 77-13 ODOR CONTROL

A cannabis business licensee shall prevent all odors generated from the storage of cannabis from escaping from the buildings on the site, such that the odor cannot be detected by a reasonable person of normal sensitivity at the property line. All cannabis facilities shall have an air treatment system to mitigate cannabis-related odor. The air treatment system shall have sufficient odor absorbing filtration systems utilizing carbon filters or similar, and ventilation and exhaust systems to eliminate cannabis odors coming from the interior of the premises, such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the subject property line.

#### § 77-14 STORAGE

A. All operations, including storage of cannabis items, shall occur within a fully enclosed building, including loading and unloading.

B. Any Cannabis Wholesaler or Cannabis Distributor that temporarily stores live cannabis plants in accordance with state law may do so only to the extent that no watering, fertilization, lighting or other horticultural practices are provided on site which would constitute cultivation, and may be stored for a period of not more than 72 hours. The temporary storage of live cannabis plans may necessitate a higher level of odor control, pursuant to Section 77-13 of this Code.

#### § 77-15 PENALTIES AND ENFORCEMENT

A. 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.

B. The provisions of this Chapter shall be enforced by the Township Zoning Officer, Township Health Officer, New Jersey State Police or other Township designee, as appropriate based on the nature of the violation.

## SECTION II.

New Article III, entitled "Cannabis Taxation," shall be added to Chapter 77 ("Drugs and Cannabis") of the Code of the Township of Hainesport.

New Section 77-16 shall be added to Chapter 77 follows:

### § 77-16 CANNABIS TAXATION

A. It is the purpose of this Section to implement the provisions of P.L. 2021, c. 16, which authorizes the governing body of a municipality to adopt an ordinance imposing a tax at a uniform percentage rate not to exceed 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, which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the cannabis establishment.

B. Unless otherwise defined herein, as used herein, the Township adopts by reference the terms and definitions established in Chapter 77 of this Code and in Section 40 of N.J.S.A. 24:6I-33.

C. There is hereby established a local cannabis transfer tax in the Township of Hainesport which shall be fixed at a uniform percentage rate of one percent (1%) of the receipts from each sale by a cannabis wholesaler.

D. 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.).

E. 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.

F. Collection

1. The transfer tax or user tax imposed by this article shall be collected or paid, and remitted to Hainesport Township by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item. 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.

2. 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 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 Hainesport shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

3. 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 that the transfer tax or user tax will be refunded to the cannabis establishment.

4. All revenues collected from a transfer tax or user tax imposed by ordinance pursuant to this section shall be remitted to the Hainesport Township 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.

g. Payment; vendor violations and penalties.

1. The Chief Financial Officer shall collect and administer any transfer tax or user tax imposed to this section.

2. The Township 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.

3. 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.

4. The Township 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.

### **SECTION III. SEVERABILITY.**

If any section, subsection, paragraph, sentence or other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of this Ordinance, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this Ordinance directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this Ordinance shall remain in full force and effect.

### **SECTION IV. INCONSISTENT ORDINANCES REPEALED.**

All Ordinances or parts of Ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

### **SECTION V. EFFECTIVE DATE.**

This ordinance shall take effect upon the passage and adoption of the amendments to the Township's Land Use Code (Chapter 104) necessary to incorporate cannabis uses, which is anticipated to be considered shortly after the adoption of this ordinance.

## NOTICE OF PUBLIC HEARING

### HAINESPORT TOWNSHIP ORDINANCE NO. 2022-1

#### ORDINANCE OF THE TOWNSHIP OF HAINESPORT PERMITTING THE OPERATION OF AND TAXING CLASS 3 WHOLESALE AND CLASS 4 DISTRIBUTOR CANNABIS BUSINESSES IN CERTAIN ZONES, WITH CONDITIONS, AND AMENDING CHAPTER 77 OF THE CODE OF THE TOWNSHIP OF HAINESPORT

The Ordinance published herewith was introduced and passed upon first reading at the regular meeting of the Township Committee of the Township of Hainesport held on February 8, 2022. It will be further considered for passage after a public hearing at the regular meeting to be held on March 8, 2022 at the Municipal Building, One Hainesport Centre, Hainesport, New Jersey at 7:00 PM at which time and place any persons desiring to be heard upon the same will be given an opportunity to be heard. During the week prior to and up to and including the date of such meeting or further consideration, copies of said Ordinance in its entirety may be obtained from the Township Clerk.

Dated: February 8, 2022



Paula L. Kosko, RMC, Township Clerk  
Township Administrator

	Motion	Second	Yes	No	Abstain	Absent
Levinson			X			
Gilmore			X			
Clauss		X	X			
Montgomery	X		X			
MacLachlan			X			

**NOTICE OF FINAL PASSAGE**

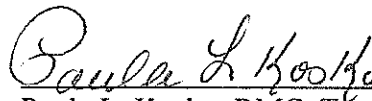
**HAINESPORT TOWNSHIP  
ORDINANCE NO. 2022-1**

**ORDINANCE OF THE TOWNSHIP OF HAINESPORT PERMITTING THE  
OPERATION OF AND TAXING CLASS 3 WHOLESALER AND CLASS 4  
DISTRIBUTOR CANNABIS BUSINESSES IN CERTAIN ZONES, WITH CONDITIONS,  
AND AMENDING CHAPTER 77 OF THE CODE OF THE TOWNSHIP OF  
HAINESPORT**

Notice is hereby given that Ordinance No. 2022-1 as entitled above has been finally adopted on final reading by the governing body of Hainesport Township after a public hearing at a meeting held on March 8, 2022. Said Ordinance shall take effect in accordance with the law.

ATTEST:

Dated: MARCH 8 2022

  
Paula L. Kosko, RMC, Township Clerk  
Township Administrator

ACKNOWLEDGMENT OF

APPROVAL BY:

Dated: MARCH 8 2022

  
BRUCE MACLACHLAN  
Mayor of Hainesport Township

	Motion	Second	Yes	No	Abstain	Absent
Levinson		X	X			
Gilmore			X			
Clauss			X			
Montgomery	X		X			
MacLachlan						X

Introduced: February 8, 2022  
First Publication: February 15, 2022  
Adoption: March 8, 2022  
Final Publication: March 11, 2022