

**LEHIGH TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA
ORDINANCE NO. 2023- 7**

AN ORDINANCE ENACTED BY THE BOARD OF SUPERVISORS OF LEHIGH TOWNSHIP, NORTHAMPTON COUNTY, PENNSYLVANIA, AMENDING THE TOWNSHIP ZONING ORDINANCE TO PROVIDE FOR ADULT USE CANNABIS FOR LAWFUL USE AND AUTHORITY AND FOR PERSONAL USE OF CANNABIS AND TO PROVIDE FOR THE LOCATION OF THE CANNABIS BUSINESS ESTABLISHMENT FOR THE PRODUCTION OF AND DISTRIBUTING THE SALE OF RECREATIONAL MARIJUANA USE WITHIN THE TOWNSHIP.

THE BOARD OF SUPERVISORS OF LEHIGH TOWNSHIP, County of Northampton, Commonwealth of Pennsylvania, hereby enacts and ordains the following amendments to Lehigh Township Zoning Ordinance and as set forth in the Code of the Lehigh Township Zoning Ordinance Chapter 180 and as subsequently amended; and

WHEREAS, the Township believes this ordinance is necessary to comply with the Adult use and lawful distribution of Cannabis in the event the Commonwealth of Pennsylvania adopts an Act and to guide and regulate the orderly growth, development and redevelopment of the Township in accordance with the goals, objectives and plans of the Township's Comprehensive Plan. These goals, objectives and plans are hereby incorporated as objectives of this Ordinance; and

WHEREAS, to protect the established character and the social and economic well-being of private and public property and to ensure proper development and uses of property and to ensure all uses are accounted for and developed in accordance with the characteristics of the surrounding neighborhood.

WHEREAS, Lehigh Township desires to plan and accommodate for the usage of recreational use of marijuana and the establishment of a cannabis business establishment and legal cannabis distribution within the Township to meet the needs of Lehigh Township residents and businesses; and

WHEREAS, the Commonwealth of Pennsylvania has legislation pending to permit the recreational use of marijuana and the establishment of cannabis business establishments which can legally distribute and sell marijuana within the Commonwealth of Pennsylvania; and

WHEREAS, pursuant to the enactment of a state legislative Act permitting said marijuana use, processing, distribution and sale within the Township, the Township is entitled pursuant to its police powers to reasonably regulate said use for the health, safety, welfare of the community; and

WHEREAS, the passage of an Act by the Commonwealth of Pennsylvania will require the Township to amend its current zoning ordinance and enact new legislation according to the procedures set forth in the Municipalities Planning Code; and

WHEREAS, the Pennsylvania Commonwealth Court in In Re Jandl Land Co., 284 A.3d 1314 (Pa. Commw. Ct. 2022) has ruled that the “pending ordinance” doctrine does not apply to land development applications; and

WHEREAS, if the Commonwealth of Pennsylvania enacts an Act that permits the recreational use of marijuana, its processing, distribution and sale as a legal and permitted use, given the time delay from passage of a state Act until the Township could enact a reasonable zoning ordinance to regulate the time, place, manner, and number of cannabis business establishments, the Township would not be able to adopt an ordinance for months under the policies and procedures set forth the Municipal Planning Code; and

WHEREAS, during this interim period of time between the passage of a state Act and adoption of a Township Ordinance land development plans could be filed with the Township which would then prevent the Township from reasonably regulating the use to the detriment of the citizens of Lehigh Township; and

WHEREAS, the Township deems it to be in the best interest of the health, safety and welfare of its citizens to adopt an Ordinance that will become effective immediately and simultaneously upon the date of adoption of an Act by the Commonwealth of Pennsylvania to allow the use, processing, distribution and sale of marijuana for recreational use so that adequate zoning protections are in place and enforceable to reasonably regulate its use as permitted by the Act as soon as the use is deemed legal by the Commonwealth of Pennsylvania.

WHEREAS, Lehigh Township, believes the most appropriate zoning district to permit a Cannabis Business Establishment is in the Industrial (I) zoning district.

1. SECTION 180-15 entitled Word Usage and Definitions is here by modified by adding the language below to the definitional Section at the appropriate alphabetized place:

- a. "Adult use cultivation center." A facility operated by an organization or business that is permitted by the board to cultivate, process, transport and perform other necessary activities to provide cannabis and cannabis-infused products to cannabis business establishments.
- b. "Adult use dispensary." A dispensary licensed under this chapter.
- c. "Adult use dispensing organization." A facility operated by an organization or business that is permitted by the board to acquire cannabis from a cultivation center or other dispensary for the purpose of selling or dispensing cannabis, cannabis concentrates, cannabis-infused products, cannabis seeds, paraphernalia or related supplies under this chapter to purchasers or to qualified registered medical cannabis patients and caregivers. The term includes a registered dispensary as defined under Chapter 94 (relating to medical marijuana) that has obtained an adult use dispensing organization permit.
- d. "Cannabis business establishment." An individual or entity holding a permit issued by the board to cultivate, process, dispense, infuse or transport

cannabis, including adult use dispensing organizations, adult use cultivation centers and social and economic equity dispensing organization charter permit holders.

- e. "Cannabis concentrate." A product derived from cannabis that is produced by extracting cannabinoids, including tetrahydrocannabinol (THC), from the plant through the use of propylene glycol, glycerin, butter, olive oil or other typical cooking fats, water, ice, dry ice, butane, propane, CO2, ethanol or isopropanol with the intended use of smoking, vaping or making a cannabis-infused product. The term includes a product derived from cannabis that is produced by means of heat and pressure or mechanical separations.
- f. "Cannabis container." A sealed, resealable, child-resistant and traceable container or package used for the purpose of containment of cannabis, cannabis concentrate or a cannabis infused product during transportation.
- g. "Cannabis flower." Marijuana, hashish and other substances identified as including any parts of the plant *Cannabis sativa* and including derivatives or subspecies, such as *indica*, of all strains of cannabis, including raw kief, leaves and buds. The term does not include resin that has been extracted from any part of the plant or any compound, manufacture, salt, derivative, mixture or preparation of the plant, the plant's seeds or resin.
- h. "Cannabis-infused product." A beverage, food, oil, ointment, tincture, topical formulation or another product containing cannabis or cannabis concentrate that is not intended to be smoked or otherwise inhaled. The term includes edibles.
- i. "Cannabis paraphernalia." Equipment, products or materials intended to be used for planting, propagating, cultivating, growing, harvesting, manufacturing, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting or otherwise introducing cannabis into the human body.
- j. "Controlled substance." The term shall not include cannabis or cannabis products as defined in this chapter or Chapter 94.
- k. "Curbside." The transfer or dispensing of cannabis or a cannabis product by an employee of a cannabis business establishment to a vehicle located in the parking area or to an individual at the entrance of the facility.
- l. "Dispensary." A facility operated by an adult use dispensing organization under this chapter.
- m. "Dispensing organization agent." A principal officer, employee or agent of an adult use dispensing organization who is 21 years of age or older.

- n. "Enclosed locked facility." A room, greenhouse, building or other enclosed area equipped with locks or other security devices that permit access only to cannabis business establishment agents working for the permitted cannabis business establishment or acting under this chapter to cultivate, process, store or distribute cannabis.
- o. "Enclosed locked space." Space within a facility, building or other enclosed area equipped with locks or other security devices that permit access only to authorized individuals under this chapter.
- p. "Medical marijuana grower/processor." The term shall have the same meaning as "grower/processor" under section 9403.
- q. "Medical marijuana organization." As defined under section 9403.
- r. "Micro cultivation center." A facility operated by an individual or entity that is permitted to cultivate, dry, cure and package cannabis and perform other necessary activities to make cannabis available for sale at an adult use dispensing organization.
- s. "Ownership and control." Ownership of at least 51% of the business, including corporate stock if a corporation, and control over the management and day-to-day operations of the business and an interest in the capital, assets, profits and losses of the business proportionate to percentage of ownership.

2. **SECTION 180-22** entitled "Industrial Zone (I) shall be modified by adding the underscored to 180-22 (C) entitled Special Exception uses as new subsection four (4) follows:

Cannabis Business Establishment (See 180-85.2)

3. **SECTION 180-54** entitled "Special Criteria" shall be amended by adding subsection 180-85.2 and be entitled Cannabis Business Establishment and provide for the following special criteria:

180-85.2 Cannabis Business Establishment Facilities

A. Purpose.

The purpose of this section is to establish a processing standards for the establishment, construction, and operation of a cannabis, business establishment, and for the regulation of the dispensary buildings used to dispense with the recreational marijuana pursuant to the Pennsylvania Adult Use of Marijuana in the Commonwealth of Pennsylvania immediately upon enactment by the Commonwealth of Pennsylvania to allow for the integration of an allowed industry, while providing for the protection of the public health, safety, morals, and general welfare.

B. District Regulations:

- (1) Adult Use Cultivation Center as defined above are permitted by special exception in the Industrial (I) zone with consideration for the applicable performance standards found in subsection D of this Section.
- (2) Micro Cultivation Center as defined above are permitted by special exception in the Industrial (I) zone with consideration for the applicable performance standards found in subsection D of this Section.
- (3) Adult Use Dispensary as defined above are permitted by special exception in the Industrial (I) zone with consideration for the applicable performance standards found in subsection D of this Section.

C. **Definitions.** See Section 180-15.

D. **Use Regulations.** The following are performance standards for a Cannabis Business Establishment and Dispensary facilities.

- (1) Cannabis Business Establishment (Adult Use Cultivation Center and Micro Cultivation Center)
 - (a) A Cannabis Business Establishment shall meet the same Township's Zoning and Land Use requirements as other manufacturing, processing, and production facilities that are located in the same zoning district with the exception that said use requires a minimum five (5) acre lot.
 - (b) A Cannabis Business Establishment may only cultivate, process, dispense, infuse, or transport cannabis in an indoor, enclosed and secure building, which includes electronic locking systems, electronic surveillance, and other features required by the Cannabis Regulatory Control Board (CRCB) or other state regulatory body. The Cannabis Business Establishment shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational, vehicle, or other motor vehicle.
 - (c) A Cannabis Business Establishment shall meet the setback, parking, landscaping, coverage, and building height requirements required in the zoning district in which the use is permitted by right to determine the building, envelope and lot coverage and show me all the bulk requirements of the underlying zoning district.
 - (d) The maximum floor area of a Cannabis Business Establishment shall be limited to 3,000 square feet, of which

sufficient space, must be set aside for secure storage of cannabis infused products and in related finished products, and marijuana related materials used in production or for required laboratory testing and for the storage of cannabis paraphernalia.

- (e) There shall be no emissions of dust, fumes, vapors, odors, or waste into the environment from any facility, or medical marijuana, growing, processing or testing occurs. If on lot Wells will be used to supply water the requirements of Section 147-20D regarding stormwater discharge shall comply with chapter 138, entitled "Stormwater Management" requirements for other manufacturing, processing and production facilities.
 - (f) Marijuana remnants and by-products shall be secured and properly disposed of in accordance with the Cannabis Regulatory Control Board (CRCB) policy or other regulatory body and shall not be placed within any unsecure exterior refuse containers.
 - (g) Cannabis Business Establishment growers/processors shall provide only wholesale products to other medical marijuana facilities. Retail sales and dispensing of marijuana products is prohibited at marijuana growing/processor facilities.
 - (h) Grower/processors may not locate within 1000 feet of the property line of a public, private, or parochial school or daycare center.
 - (i) All external lighting, serving the Cannabis Business Establishment must be shielded in such a manner to not allow light to be omitted skyward or onto adjoining properties in accordance with other sections of the Zoning Ordinance including but not limited to the requirements for proper lighting in Section 180-37.
 - (j) Parking and loading facilities shall be designed in accordance with the requirements found in Article III Section 180-37, entitled "Off-street parking and loading regulations. In addition there shall be 1 parking space per 25 square feet of the entire building structure plus 1 parking space per employee.
 - (k) A buffer planting is required, where a Cannabis Business Establishment adjoins a residential use her district pursuing to the requirements of Section 180-33.
- (2) Entrances and driveways.

Entrances and driveways to a medical marijuana grower/processor must be designed to accommodate the anticipated vehicles used to service the facility.

(3) Adult Use Dispensary

- (a) An adult use dispensary shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same district with the exception that said use requires a minimum five (5) acre lot.
- (b) An adult use dispensary must be legally registered in the commonwealth and possess a current valid medical marijuana permit from the Cannabis Regulatory Control Board (CRCB) or other regulating body.
- (c) An adult use dispensary may only dispense medical marijuana in an indoor, enclosed, permanent, and secure building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle.
- (d) An adult use dispensary may not operate on the same site as a facility used for growing and processing medical marijuana.
- (e) An adult use dispensary shall have a single secure public entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing medical marijuana.
- (f) Permitted hours of operation of a dispensary shall be 8:00 a.m. to 8:00 p.m. (of the same calendar day).
- (g) An adult dispensary shall meet the setback, parking, loading, landscaping, coverage and building height requirements of the zoning district in which the use is permitted to determine the building envelope, lot coverage and maximum allowable floor area.
- (h) An adult use dispensary shall be a maximum of 3,000 gross square feet, of which no more than 500 square feet shall be used for secure storage of product and shall have an interior customer waiting area equal to a minimum of 25% of the gross floor area.
- (i) An adult use dispensary shall:

- [1] Not have a drive-through service;
 - [2] Not have outdoor seating areas;
 - [3] Not have outdoor vending machines;
 - [4] Prohibit the administering of, or the consumption of, marijuana on the premises; and
 - [5] Not offer direct or home delivery service.
- (j) An adult use dispensary may dispense marijuana to individuals pursuant to the rules and restrictions under the Act.
 - (k) An adult use dispensary may not be located within 1,000 feet of the property line of a public, private or parochial school or a day-care center. This distance shall be measured in a straight line from the closest exterior wall of the building or portion thereof in which the business is conducted or proposed to be conducted, to the closest property line of the protected use, regardless of municipality in which it is located.
 - (l) An adult use dispensary shall be a minimum distance of 1,000 feet from the next nearest medical marijuana facility. This does not include complementing or supporting businesses covered by different definitions. This distance shall be measured in a straight line from the closest exterior walls of the buildings or portions thereof in which the businesses are conducted or proposed to be conducted to the closest property of the protected use regardless of municipality in which it is located. This separation distance does not apply to the distance between the grower/processor or academic clinical research centers and the specific dispensary they serve, or with which they partner.
 - (m) Any adult use dispensary facility lawfully operating shall not be rendered in violation of these provisions by the subsequent location of a public, private or parochial school or a day-care center.
 - (n) All external lighting serving an adult use dispensary must be shielded in such a manner to not allow light to be emitted skyward or onto adjoining properties in accordance with lighting requirements of §§ 180-37 and 180-52.
 - (o) Parking requirements will follow the parking schedule found in Article III, § 180-37, off-street parking and loading, regulations as listed for medical offices. In addition, there

shall be 1 parking space per 25 square feet of the entire building structure plus 1 additional parking space per employee.

- (p) A buffer planting is required where an adult use dispensary adjoins a residential use or district in accordance with § 180-33 of the Zoning Ordinance.
- (q) Entrances and driveways to a medical marijuana dispensary must be designed to accommodate the anticipated vehicles used to service the facility.
 - [1] All accesses must secure the appropriate highway occupancy permit from the Department of Transportation and/or Lehigh Township for non-state-owned roads.
 - [2] The clear sight triangle found in Article III, General Requirements, § 180-29, must be considered and maintained.
 - [3] The driveway must be designed and improved to the standards expressly described in Article IV, § 147-17, of the Subdivision and Land Development Ordinance.
- (r) Loading and off-loading areas within the structure are preferred. If an external loading dock arrangement is designed, it should be from within a secure environment.
- (s) In the event the Controlled Substance, Drug, Device and Cosmetic Act 2 relating to marijuana conflicts with a provision of any Act adopted by the Commonwealth then in that event Act ____ is declared to take precedence.

E. Administration and enforcement.

- (1) Building and zoning permits/approvals.
 - (a) A zoning permit shall be required prior to obtaining a building permit; for the construction or erection of a building; the alteration of a building or portion thereof; the use or change in use of a building or land; or any adjustments to a nonconforming use.
 - (b) The Township's zoning permit application must be completed.

- (c) Permit fees shall be as stipulated in the fee schedule adopted by resolution of the municipal governing body in effect at the time of application.
- (d) Permits may be denied if the applicant, in the reasonable opinion of the Lehigh Township Board of Supervisors, is failing to comply with any state or local law or regulation.
- (e) In the case of new construction, meeting the Pennsylvania Municipal Planning Code 4 definition, land development plan application is required to be submitted and an approval secured, prior to establishment of the use.
- (f) If the application is to change the use of a building or needs to demonstrate allocation of space within a structure, the applicant shall provide architectural drawings prepared by an architect registered in the Commonwealth of Pennsylvania.
- (g) A Cannabis Business establishment must be legally registered in the commonwealth and possess a current valid permit from the DOH.

F. Penalties.

Any owner, operator, or other person who violates or permits a violation of this section shall, upon being found liable therefor in a civil enforcement proceeding before a Magisterial District Judge, pay to Lehigh Township a fine of not more than \$500.00, plus all court costs, including but not limited to reasonable attorney's fees incurred by Lehigh Township on account of such violation. No penalty or cost shall be imposed until the date the determination of the violation by the Magisterial District Judge becomes final. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment as provided by law. Each day a violation exists after final judgment shall constitute a separate offense. The amount of the fine imposed shall be multiplied by the number of such days and may be charged and collected by Lehigh Township without further judicial proceedings. Further, the appropriate officers or agents of Lehigh Township are hereby authorized to issue a cease-and-desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith. No bond will be required if injunctive relief is sought

by Lehigh Township. A person who violates this section shall also be responsible for Lehigh Township's attorney's fees, engineering fees, expert fees and court costs reasonably incurred by Lehigh Township on account of such violation.

4. SECTION 4. SEVERABILITY.

The provisions of this Ordinance shall be severable, and if any provision hereof shall be declared unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent of the Township that this Ordinance would have been amended as if such unconstitutional, illegal or invalid provision or provisions had not been included herein.

5. SECTION 5. REPEALER.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

6. SECTION 6. EFFECTIVE DATE.

This Ordinance shall become effective immediately upon the adoption by the Commonwealth of Pennsylvania of an Act which permits the recreational use of marijuana, its processing, distribution and sale to the general public. The date of adoption of this ordinance shall be the date the state Act becomes effective.

ORDAINED AND ENACTED as an ordinance as a regular meeting of Board of Supervisors of Lehigh Township, Northampton County, Pennsylvania, this _____ day of _____ 2023.

ATTEST:

LEHIGH TOWNSHIP

Secretary

Chairman, Board of Supervisors