



# Cannabis – Your Town Opted In or Out, Now What?

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# NJILGA

NEW JERSEY INSTITUTE OF  
LOCAL GOVERNMENT ATTORNEYS

## NJSBA Cannabis Law Special Committee NJSBA Cannabis Municipal/Land Use



A panoramic view of the Jersey City skyline across the Hudson River. The Freedom Tower is the most prominent building on the left. A yellow ferry boat is visible on the water in the foreground. The sky is clear and blue.

# Jersey City

NEW JERSEY



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# HOBOKEN

THE MILE SQUARE CITY

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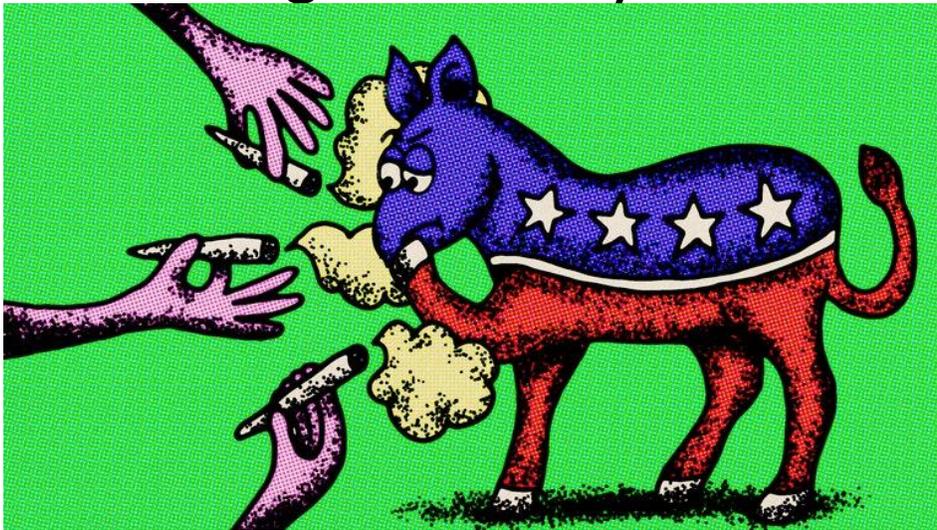


# ATLANTIC CITY



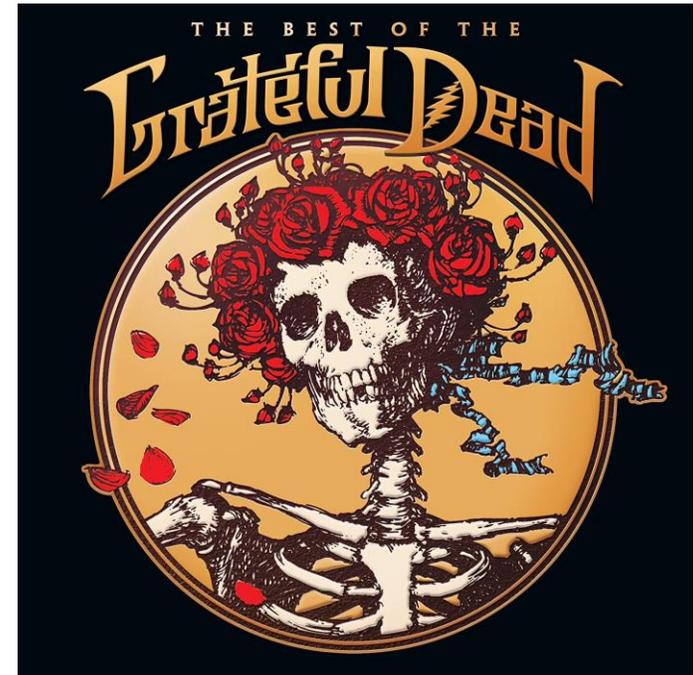
# Pot, Politics and Land Use

- Councilman in TWO Towns
- Borough Attorney



- Zoning and Planning Board Attorney
- Zoning and Planning Board Chairman and Member



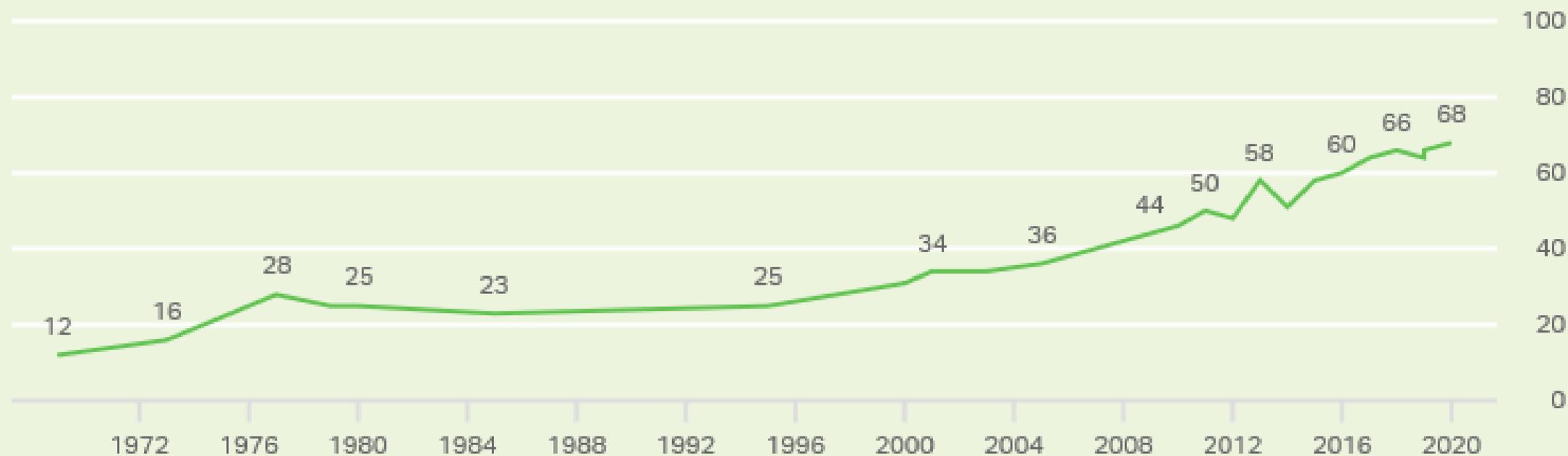


A PRESENTATION FOR MUNICIPALITIES ON  
THE PERSONAL-USE RECREATIONAL  
CANNABIS RESOLUTION AND LICENSING  
PROCESS

# Americans' Views on Legalizing Marijuana Reach New High

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal



GALLUP



# RECREATIONAL CANNABIS

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# CANNABIS REGULATORY COMMISSION (CRC)

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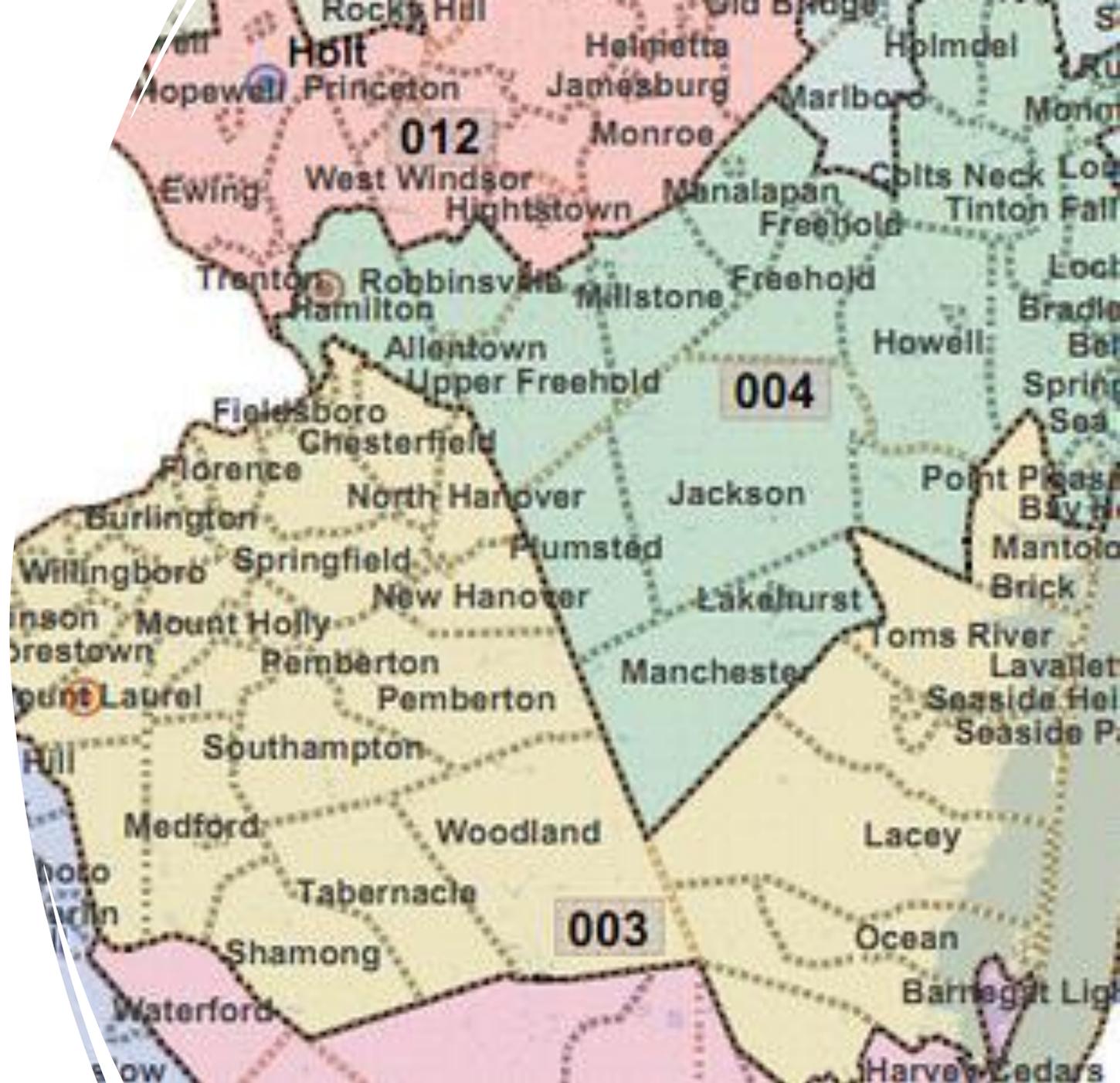


Dianna Houenou \* Krista Nash \* Sam Delgado \* Maria Del Cid \* Charles Barker \* Jeff Brown

# NJ IS HOME RULE!

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New Jersey has 564 municipalities. In contrast, California has 482. Why does New Jersey have so many independent towns and subsequently so many municipal governments? New Jersey has divided itself, divided itself again, and almost always refuses to erase its municipal boundaries.



KEEP  
CONTROL



# Classes of Licenses

Class 1 – Cannabis Cultivator

Class 2 – Cannabis Manufacturer

Class 3 – Cannabis Wholesaler

Class 4 – Cannabis Distributor

Class 5 – Cannabis Retailer

Class 6 – Cannabis Delivery Service

# Cannabis Cultivator (Class 1 License)

## Cannabis grower

- –Grows, cultivates, or produces cannabis in New Jersey, and sells.
- –Sells and may transport to other cannabis growers, processors, wholesalers or retailers, but not consumers.

# Class 1

## Cannabis Cultivator

- Facilities involved in growing and cultivating cannabis this includes Indoor Farming. The Cannabis market will be highly controlled by the State. The licensed operator will have a limited plant grow canopy that is intended to limit harvested cannabis leaves and harvested cannabis flowers, regardless of whether the cannabis is grown outdoors or indoors;



# Cannabis Manufacturer (Class 2 License)

- **Cannabis manufacturer**

- Processes cannabis items in New Jersey by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling.
- Optionally transporting these items to other cannabis processors, wholesalers or retailers, but not to consumers.

# Class 2

## Cannabis Manufacturer

- Facilities involved in the manufacturing, preparation, and packaging of cannabis items; This class is also known as a Cannabis Processor means any licensed person or entity that processes cannabis items in this State by purchasing or otherwise obtaining cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis processors, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Processor license. A cannabis processor may also be referred to as a "cannabis product manufacturing facility".



# Cannabis Wholesaler (Class 3 License)

- **Cannabis wholesaler**
  - Purchases or otherwise obtains, stores, sells, or otherwise transfers.
  - 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.



**NEW THIS WEEK!**  
**Mango Passionfruit**  
**CBD Sparkling Water**  
0 CALORIES | NO SUGAR ADDED  
**ONLY \$5.75**

**STAFF PICK**  
Pure Sativas  
**CRITICAL KALI MIST**  
1x 100 | 10g Sativa  
Try this light mist, perfect for the day!

**BEST VALUE!**  
**LOLA MONTES**  
By Edson  
1x 0.5g Pre-Rolled Joint  
**Only \$1.50**

Get Your Kicks  
HISTORIC ROUTE 66  
in Route 66  
Brewery & Supply

PROUDLY CERTIFIED  
ORGANIC  
CANNABIS

RAW

# Cannabis Distributor (Class 4 License)

- **Cannabis distributor**

- Transports cannabis items in bulk intrastate from one licensed cannabis establishment to another licensed establishment.
- May engage in temporary storage as necessary to carry out transportation activities.



**CANNABIS  
DELIVERED**

**FOR YOUR ENJOYMENT.**

LICENSE PARTNERS: A10-17-0000008-TEMP / M10-17-0000034-TEMP

**eaze**  
explore eaze.com

Do It Outdoors Leasing LLC

PA PUC A-8917565  
FMCSA MCS19609  
USDOT 2780202

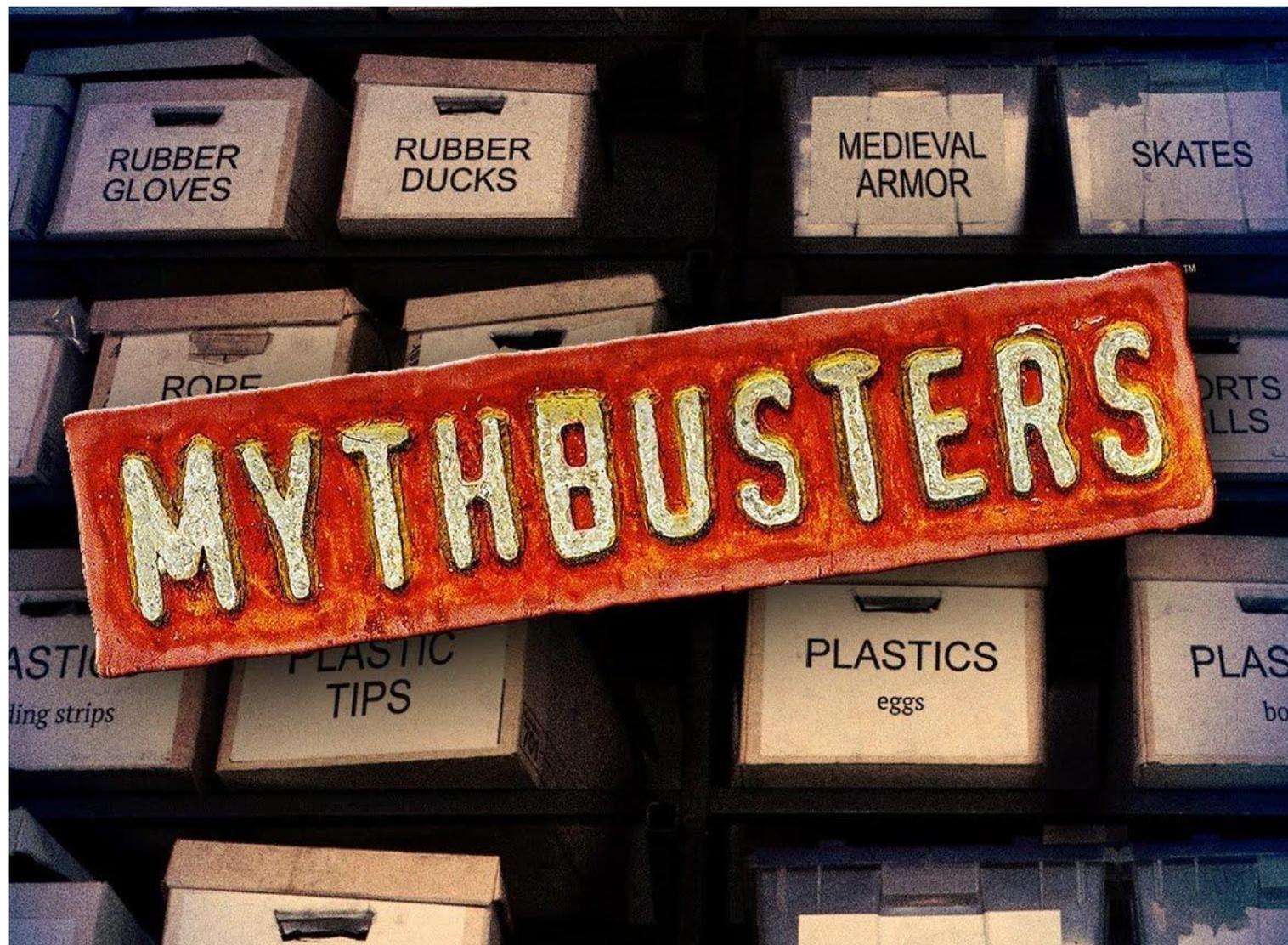
# Cannabis Retailer (Class 5 License)

- **Cannabis retailer**
  - Purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacture or cannabis wholesalers, and sells these to consumers from a retail store.
  - May use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers.
  - Must accept consumer purchases to be fulfilled from its retailer store that are presented by a cannabis delivery services to be delivered to the consumer.



Hybrid  
Indica

1	Blue Dream
2	Girl Scout Cookies
3	Wedding Cake
4	Gelato
5	Zkittlez
6	Gorilla Glue
7	Purple Punch
8	Blueberry
9	Strawberry Cough
10	Jack Herer
11	White Widow
12	Super Lemon Haze
13	Cherry Pie
14	OG Kush
15	Blueberry Cheesecake
16	Strawberry Cough
17	Jack Herer
18	White Widow
19	Super Lemon Haze
20	Cherry Pie
21	OG Kush
22	Blueberry Cheesecake
23	Strawberry Cough
24	Jack Herer
25	White Widow
26	Super Lemon Haze
27	Cherry Pie
28	OG Kush
29	Blueberry Cheesecake
30	Strawberry Cough
31	Jack Herer
32	White Widow
33	Super Lemon Haze
34	Cherry Pie
35	OG Kush
36	Blueberry Cheesecake
37	Strawberry Cough
38	Jack Herer
39	White Widow
40	Super Lemon Haze
41	Cherry Pie
42	OG Kush
43	Blueberry Cheesecake
44	Strawberry Cough
45	Jack Herer
46	White Widow
47	Super Lemon Haze
48	Cherry Pie
49	OG Kush
50	Blueberry Cheesecake
51	Strawberry Cough
52	Jack Herer
53	White Widow
54	Super Lemon Haze
55	Cherry Pie
56	OG Kush
57	Blueberry Cheesecake
58	Strawberry Cough
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62	Cherry Pie
63	OG Kush
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86	Strawberry Cough
87	Jack Herer
88	White Widow
89	Super Lemon Haze
90	Cherry Pie
91	OG Kush
92	Blueberry Cheesecake
93	Strawberry Cough
94	Jack Herer
95	White Widow
96	Super Lemon Haze
97	Cherry Pie
98	OG Kush
99	Blueberry Cheesecake
100	Strawberry Cough



# What are your residents most afraid of !@?



This Guy?



Blight on the neighborhood.

Bad influence on children.

Queueing at all hours.  
Bad behavior.  
Noise.  
Smell.  
Ahhhhhh!!!



What if the shops look like this ?



# Cannabis Delivery (Class 6 License)

## Cannabis delivery service

- Provide courier services for consumer purchases of cannabis items fulfilled by cannabis retailer.
- Make deliveries of cannabis items and related supplies to consumers.

## Delivery

- Transportation of cannabis items and related supplies to a consumer.
- Includes the use by a licensed cannabis retailer of any 3<sup>rd</sup> party technology platform to receive, process, and fulfilling orders by consumers.
- Provided that any physical acts in connection with filling the order and delivery must be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer.





# Wholesaler v. Distributor

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## CANNABIS WHOLESALER (CLASS 3 LICENSE)

- Purchases or otherwise obtains, stores, sells, or otherwise transfers.
- 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.

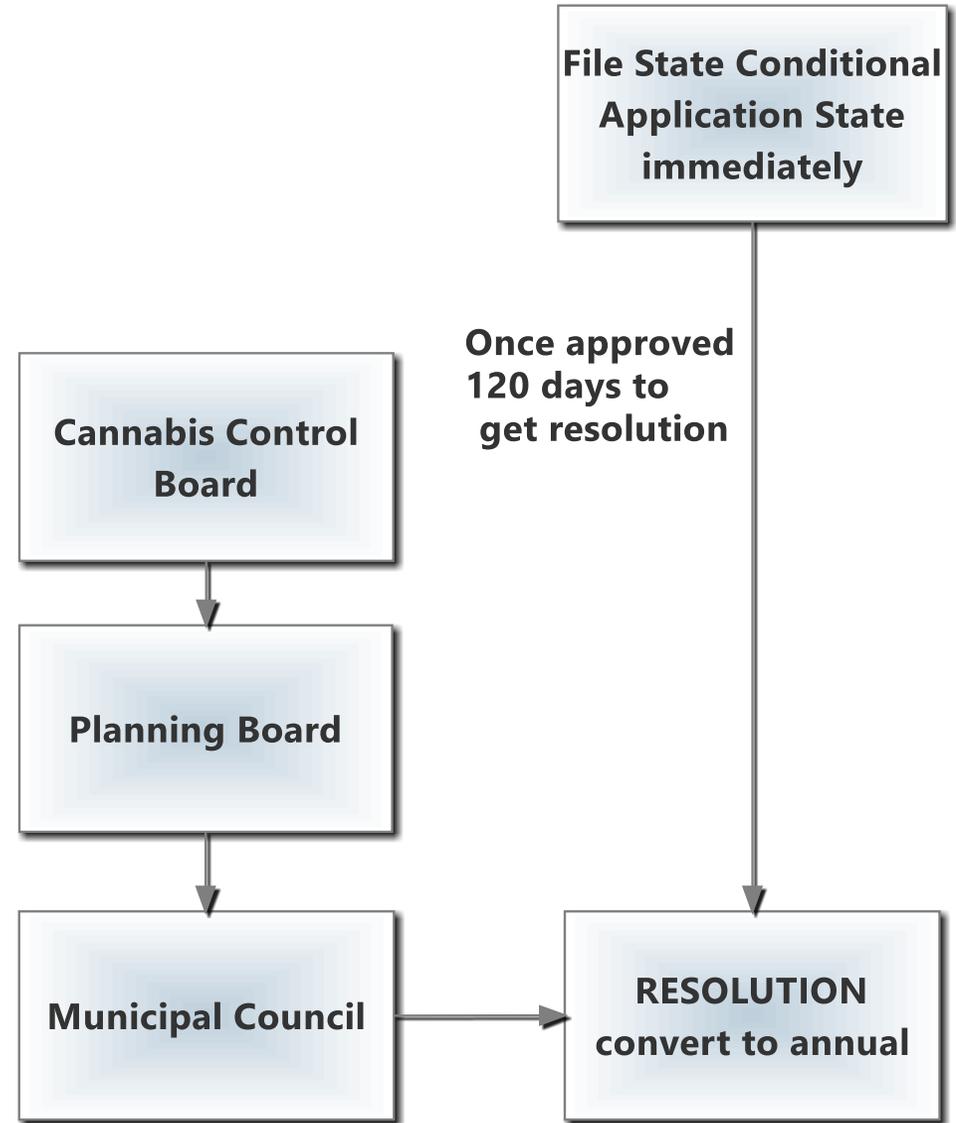
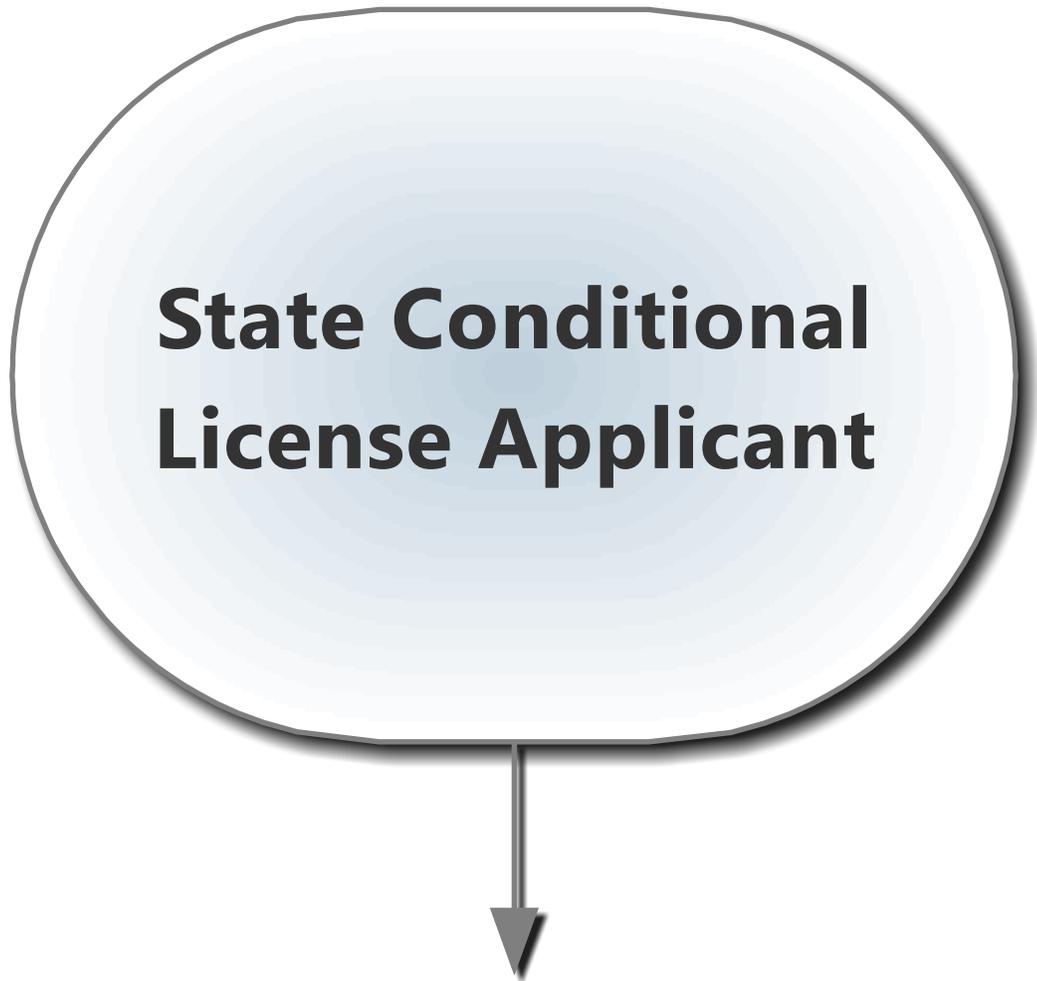
## CANNABIS DISTRIBUTOR (CLASS 4 LICENSE)

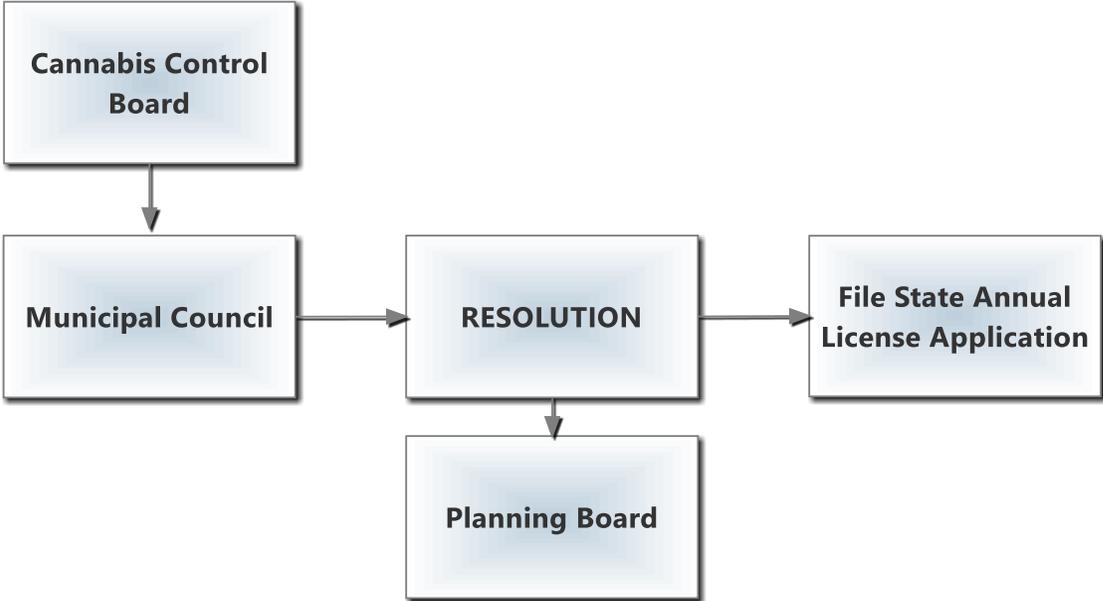
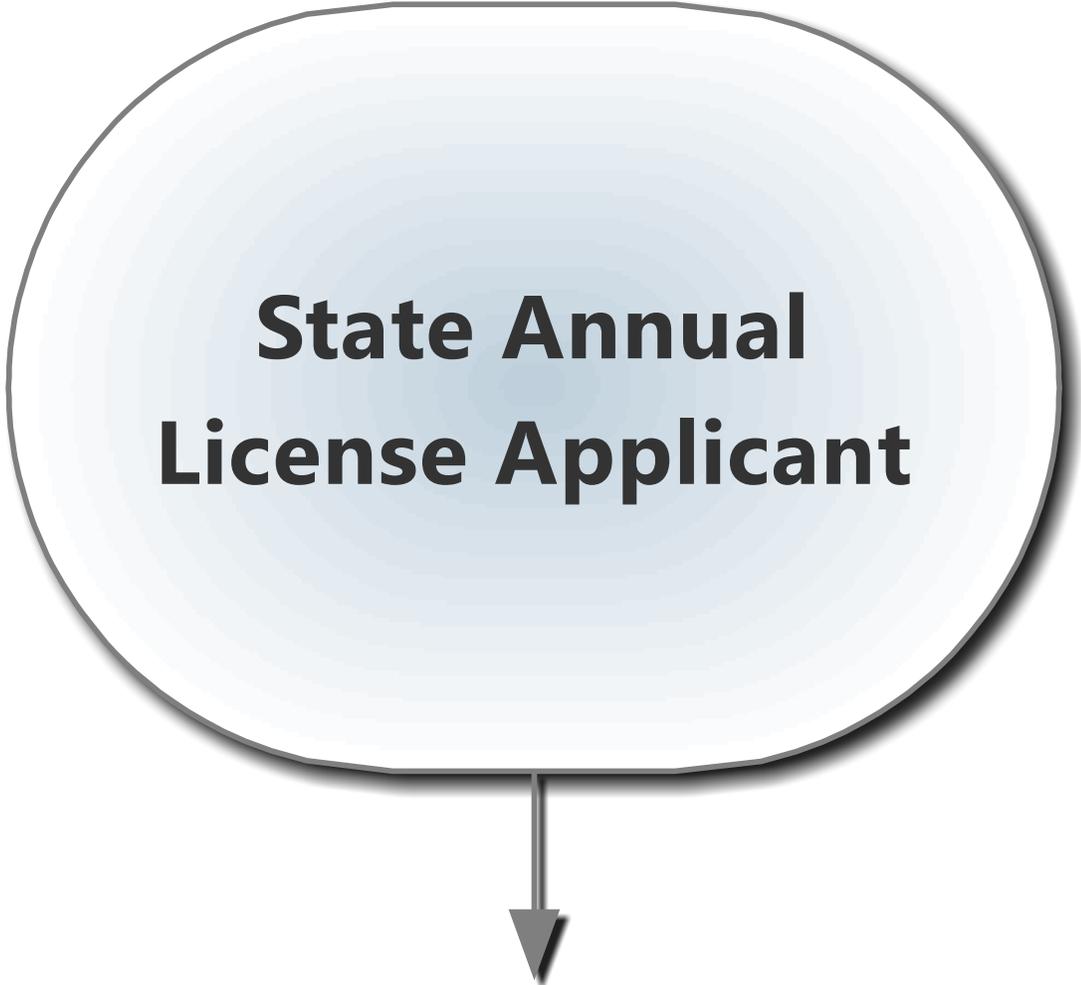
- Transports cannabis items in bulk intrastate from one licensed cannabis establishment to another licensed establishment.
- May engage in temporary storage as necessary to carry out transportation activities.

# Microbusinesses

## Microbusiness

- Person or entity licensed.
  - Cannabis grower, processor, wholesaler, distributor, retailer, or delivery service.
  - Has no more than 10 employees.
  - Operate in space of no more than 2,500 square feet area.
    - Except a grower can operate in space of no more than 2,500 square feet measured on a horizontal plane and grow no higher than 24 feet above that plan.
  - Process no more than 1,000 cannabis plants each month.
    - Except a distributor's possession for transportation.
  - Cannabis cultivator cannot acquire and process more than 1,000 pounds of cannabis in dried form each month.
  - Cannabis wholesaler cannot acquire for resale more than 1,000 pounds each month.
  - Cannabis retailer cannot acquire for sale more than 1,000 pounds each month.





You can file for a State Annual License without obtaining a Resolution of Support from the Governing Body.

- A. True
- B. False

# STATE LICENSING TIMEFRAMES

## Annual Licenses

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- Once an application has been submitted to CRC the Commission must forward a copy to the municipality within **14 days**.
- Municipality must within **28-days** inform the Commission whether or not the application complies with local restrictions on times of operation, location, manner, and the number of cannabis businesses. Failure to respond within this time limit may result in CRC deeming the license application in compliance with any pertinent ordinance or regulation.

## Conditional Licenses

- Once an application has been submitted to CRC the Commission must forward a copy to the municipality where the applicant desires to operate within **14 days**.
- Since conditional licenses do not require municipal approval, there is no requirement that a municipality respond within a certain timeframe.

## Conversion of Conditional Licenses to Annual License

- No specific timeline for municipal review but would presumably be held to the same time limit as the annual license.



# A Two-Tiered Process

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## Resolution of Support

- From the Governing Body
- This is the most **IMPORTANT** piece of the cannabis puzzle
- The CRC will not approve a State cannabis license without it hence this IS Time sensitive

## Local Licensing

- No need to reinvent the wheel
- Use your current licensing process
- This process is **NOT** really Time sensitive
- The cannabis establishment must first obtain the State license

# MUNICIPALITY'S LOCAL LICENSING OR ENDORSEMENT

Municipality may create its own local licensing or endorsement as part of its restrictions on the #, location, manner, or times of operation

If the municipality does so, they SHALL notify CRC that it either approves or denies each application forwarded to it

# NJ MUNICIPALITY CANNABIS STATUTES

## NJSA 24:6I-45

Municipality can enact ordinances not in conflict with NJSA 6I-31 et al.

Govern # of cannabis establishments. Not the Delivery to your town.

Govern location, manner and times of operation

Establish civil penalties for violations of your ordinances

Municipality may impose a separate local licensing or endorsement requirement as part of its restrictions above

# Regulations NJAC 17:30-15.1 – Municipal Authority

## Initial Rules for Personal-Use of Cannabis

### Not Much has Changed for Municipalities

Towns can enact all kinds of ordinances not in conflict with the State Laws or Regulations

Towns can place numerical limits on the number of cannabis businesses

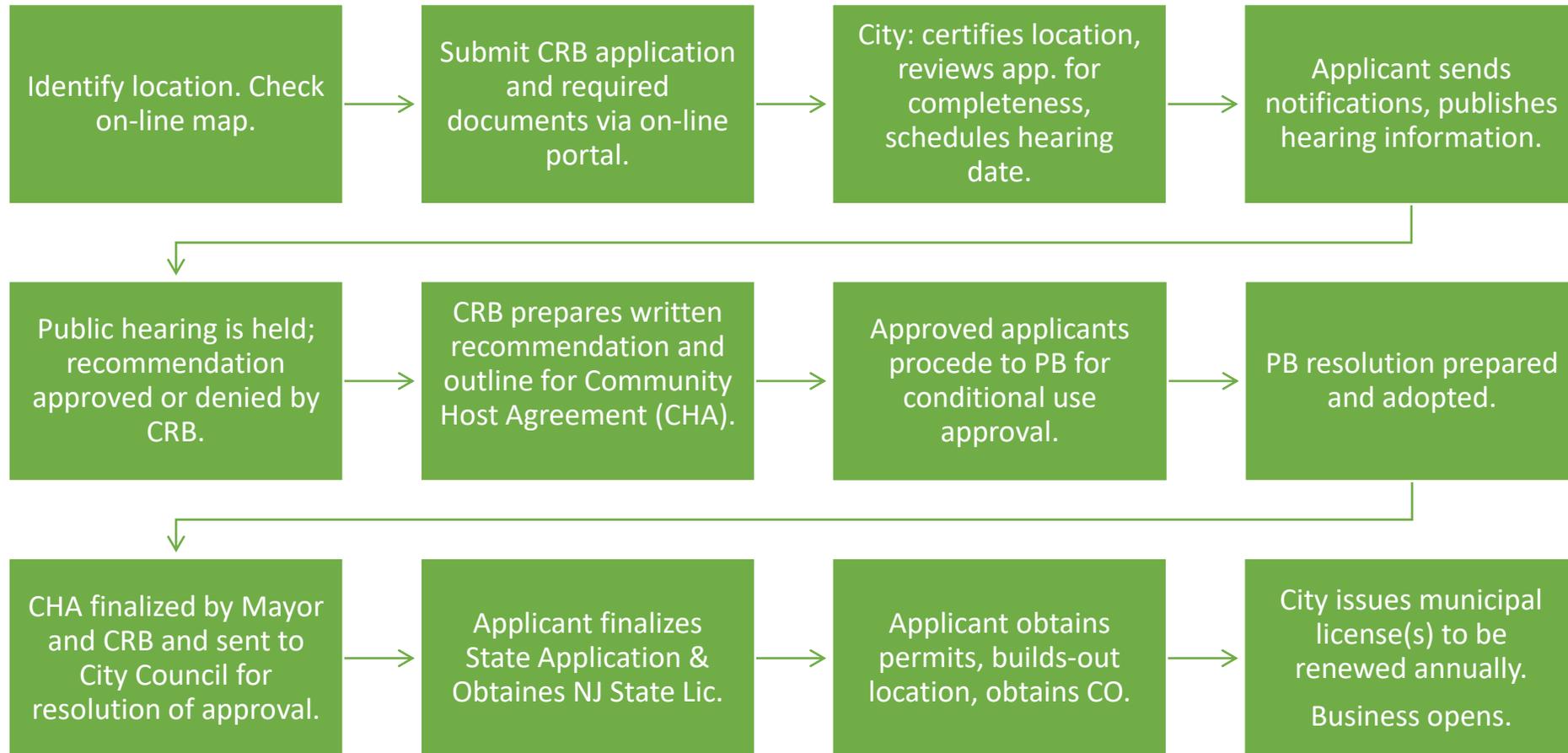
Towns can govern the location (including placing distance restrictions from schools, religious institutions, playgrounds, child daycare facility), manner, and times of operation

Towns can establish civil penalties for violations of the ordinances

Towns can create and impose their **OWN** local licensing requirement

Towns are always free to prohibit any class of cannabis business BUT towns shall not prohibit cannabis from being delivered to its residents or the transportation of cannabis through the municipality to a destination outside that municipality

# City of Hoboken – Steps for Approval of a Cannabis License



NJ State licensing application and approval process may run concurrently with municipal process.

# Interactive City Map: Cannabis Retail/Dispensary Approval Status Viewer

Hoboken NJ Website

## City of Hoboken Cannabis Retailer/Dispensary Approval Status Map Viewer

Department of Community Development

Find address or place

Legend

- Layers
- Cannabis Retailers / Dispensaries
  - Fully Approved (City and State)
  - Pending
- Cannabis Retailer / Dispensary Parcels
  - Fully Approved (City and State)
  - Pending
- Areas within 500 feet of a Cannabis Retailer / Dispensary
- City Wards (redistricted 2022)
- Zoning and Redevelopment Plan Areas
  - C-1 (Permitted)

Map showing various streets and landmarks in Hoboken, NJ, including Kennedy Stadium, Hudson River, and various residential and commercial areas. The map displays the status of cannabis retail and dispensary approvals, with green dots indicating fully approved locations and yellow dots indicating pending locations. The map also shows zoning and redevelopment plan areas, including C-1 (Permitted).

Map coordinates: -73.986 40.742 Degrees

Map scale: 0.2mi

Map data: NGA, USGS, FEMA | Esri Community Maps Contributors, NYC OpenData, New Jersey Office of GIS, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeG

esri

9:41 AM  
6/15/2022

## Best Practices, i.e., ways to make your life easier.

- Set up a web page. Include a map that shows the zones where cannabis business can locate.
- Add a map that shows the zones where cannabis businesses can locate, and where current businesses (or pending applicants) already are.
- Create an Applicant Scorecard.
- Put together a FAQ and make sure everyone in the municipality that might get a call from a resident has a copy.
- Know who in your municipality is handling cannabis application so you can redirect applicants appropriately.
- Be sure to forward any/all communications from the State CRC to those persons overseeing cannabis applications/licenses in your community ASAP. Many are time sensitive.
- Know cannabis application OPRA Rules. Many documents submitted to the municipality as part of a complete application are **NOT public records**.

# Personal Use Cannabis Rules

- The new rules shall be effective for a period NOT to exceed one YEAR, that is August 19, 2022
- Within 28 days of receipt of a license application from the CRC, the municipality shall inform the CRC that the license application complies with the town's ordinances
- Failure may result in the CRC deeming the application in compliance with the town's ordinances
- A municipality can provide written approval for a proposed expanded ATC which approval is based on a determination that the proposed establishment complies with the municipality's restrictions on the number of establishments, as well as the location, manner, and times of operation of establishments or distributors enacted pursuant to section 31 of P.L.2021, c. 16 (C.24:6I-45).
- Any State or local law enforcement or regulatory authority or agency may request that cannabis business personnel performing a transport or delivery present a Cannabis Business Identification Card or a copy of a transport order or delivery request.
- In no case may a municipality restrict the transportation of cannabis items through or delivery of cannabis items within the municipality by adopting an ordinance or any other measure. Any such restriction shall be deemed void and unenforceable.
- § 17:30-10.1 CANNABIS CULTIVATOR PREMISES - In no case shall a cannabis cultivator operate or be located on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

# Limitations of Locations

Grocery stores

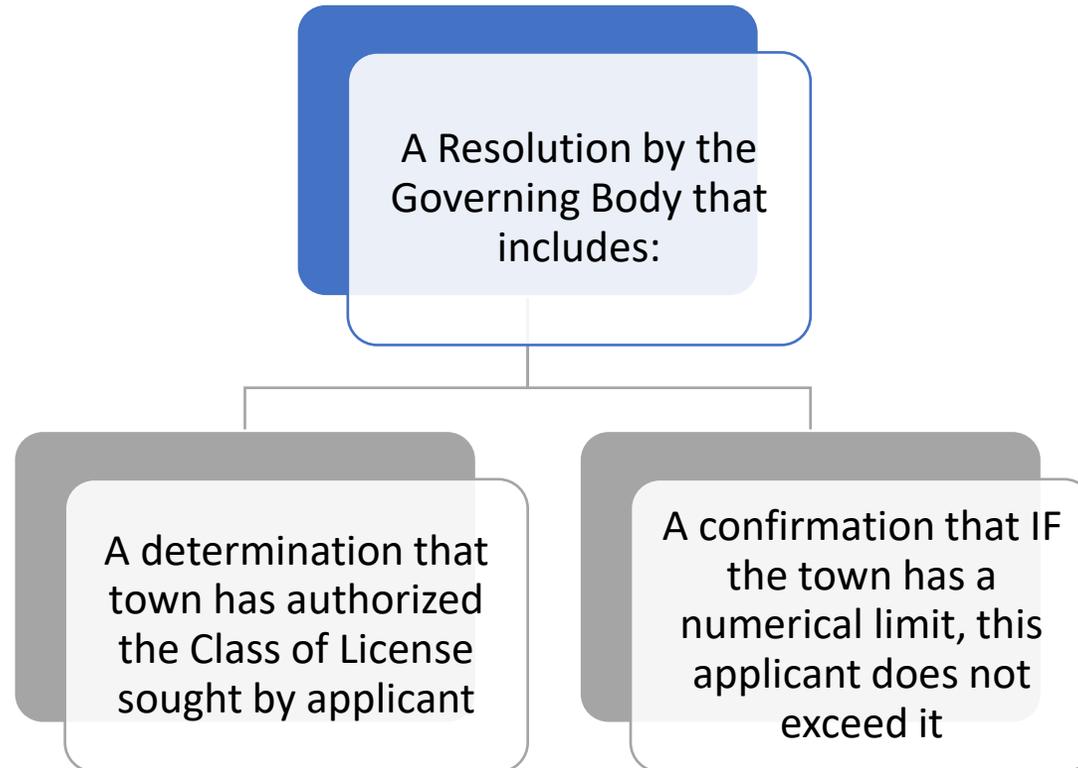
Delis

Indoor food  
markets

Other stores  
engaging in retail  
food

Premises licensed  
for retail sales of  
alcoholic beverages

# PROOF OF LOCAL SUPPORT – Governing Body



A large circle with a blue-to-orange gradient is the central focus. To its top-left is a small orange plus sign and a small orange circle. To its bottom-right is a small orange circle. On the right side of the slide, there is a vertical line with a blue-to-orange gradient.

# PROOF OF LOCAL SUPPORT – Zoning Official

A letter or affidavit from appropriate municipal officials :

- The location will conform to municipal zoning requirements
- In other words, the site is properly zoned for the Cannabis Business
- A Zoning Permit – many towns have an application process to get this

# How Does a Municipality Handle a Cannabis Zoning Application?

Odor

Location near schools, parks, etc. or other marijuana facilities

Signage/ Façade/ Design

Neighborhood Impact

Security/Public Safety

Prohibiting Sales to Minors

Consumption on premises/Smoking outdoors

Traffic or parking issues

Municipal incurred costs of enforcement

Trash Disposal

# Local Cannabis Tax

By ordinance

Cannot exceed:

- 2% cannabis cultivator
- 2% cannabis manufacture
- 1% cannabis wholesaler
- 2% cannabis retailer

Percentage based on receipts on each sale

# How Much \$ For The Town?

Retail - \$9 million to \$12 million gross per year = \$180,000 to \$240,000 (1500-3000 sq ft)

Cultivation - \$12 million to \$15 Million for 15k sq ft gross per year = \$240,000 - \$300,000 per year (16-25 months to ramp up)

Manufacturing - \$20 million to \$25 Million gross per year = \$400,000 - \$500,000 per year

# Any other potential benefits for The Town?

Local Employment - Most towns will require that the cannabis business hire a certain % of local residents

Local Businesses – There is typically an increase in sales for local businesses due to the patrons of the dispensaries

Positive Community Impact – Cannabis Businesses are required to show and make a positive community impact through education, donations, expungement clinics, volunteerism

Commercial Vacancies – there will be a significant decrease in commercial vacancies. Build out will increase assessments.



## CANNABIS REVIEW BOARDS

50<sup>th</sup> ANNIVERSARY EDITION

**CLINT EASTWOOD**



**THE GOOD THE BAD and THE UGLY**

co-starring  
**LEE VAN CLEEF**

also starring  
**ELI WALLACH**  
in the role of TUCO

directed by  
**SERGIO LEONE**

# Host Community Agreements

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It is not readily apparent to us that there is something wrong or unethical about the HCAs in question. Indeed, such agreements are actually required in a similar Massachusetts program. Massachusetts requires applicants for medical marijuana permits to negotiate HCAs with municipalities where they propose to locate. 935 Mass. Code Regs. 500.101(1)(a)(8) – (2019). An HCA “may include a community impact fee for the host community,” provided that the fee is “reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment.” Mass. Gen. Laws ch. 94G, § 3(d) – (2017). Although the Compassionate Use Act does not contain those requirements, and New Jersey need not model its methods after Massachusetts's, it is worth noting that another state has found HCAs valuable to the expansion of its program, rather than rejecting them as unfair tactics by permit applicants.

Matter of the Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, 465 N.J. Super. 343, 396, 243 A.3d 688, 719 (App. Div. 2020)

(i) A county, municipality, or county or municipal government official shall neither solicit nor receive from a cannabis business, and a cannabis business shall not offer, anything of value, including a contribution to a political campaign, political party, or political organization as part of a host community agreement, or demand that any payment be made to a designated official, group, or organization in exchange for zoning approval, proof of local support, or written approval for such cannabis business, or take any other action that would violate N.J.S.A. 40A:9-22.5 of the Local Government Ethics Law. N.J. Admin. Code § 17:30-5.1(i)

# Host Community Agreements

Mass Court said: “Reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment”

- Recoup municipal costs: CFO auditing 2%, police, compliance with local laws
- Employment Opportunities
  - Applicant to sponsor job hiring fairs
  - Attract local residents, women & people of color, reentry candidates
  - Labor Protection Agreement
- Community Education
  - Engage in community outreach events to educate
- Provide State matching funds for Municipality’s drug and alcohol prevention organizations
- Make contributions to local charities and schools, first responders (police, fire or first aid), digital divide organizations, participate in community cleanup or rehabilitation initiatives
- MUST NOT BE a money grab vehicle – build us a new Rec Center or 4 street sweepers
- MUST NOT BE “give us this \$ and we will act favorably on the application” (a/k/a a bribe)

# Host Community Agreements Wait a Minute?

- Letter from Cannabis Business' Attorney AFTER license issued:
  - We are not paying. See you in court. No cannabis business will get to operate for years. Deep pockets will ask for a stay until this issue is resolved. Three years later...
  - Tell us exactly where you are spending the money to the dollar – itemized list of costs
- Not every business can afford a HCA
  - Micro business, social equity applicants
  - Are you asking applicants who were jailed by your town to now pay \$ to benefit the town?
- Why should a cannabis business have to pay more than any other type of business?
- There are no provisions in the statutes or the regulations authorizing a HCA. Nothing preventing it either. Could it be implicitly authorized under the MLUL? Akin to a Developers Agreement?
- This is an agreement. The applicant and town bargain and negotiate this agreement. HCA conditions or “pledges” are not mandatory
- Can the town ask the successful applicant license holder to defend and indemnify the town when the unsuccessful applicant sues them in court?

# Comments, Suggestions & Ideas

Require some level of site control. Even a LOI. Change ordinances to require notice to residents within 200 Feet? This is Due Process at its finest.

Change ordinance to require a Host Community Agreement. Negotiation is with your cannabis board BUT final authority is ALWAYS with the Municipal Council.

A cannabis board and PB “vet” and review the cannabis application BUT the final authority to issue the ALL-important Resolution remains in the sole discretion of the Municipal Council.

# Comments, Suggestions & Ideas

Should there be an appeal process at the municipal level for an aggrieved applicant?

Letters of Support have no place in this adult use cannabis process

Your licensing process should be annual. Keep tabs on the applicant. Are they complying? The annual license renewal will correct deficiencies.

# Municipal Government Officials

## N.J. A.C. § 17:30-5.1(i)

- Do not solicit anything of value from the Cannabis Business
- The Cannabis Business shall NOT offer anything of value
  - In exchange for zoning approval, proof of local support, or written approval for the Cannabis Business or take any action that would violate N.J.S.A. 40A:9-22.5 (Code of ethics for local government officers or employees under jurisdiction of local finance board)

# **SOME DIFFERENCES BETWEEN MEDICAL (ATC) AND ADULT USE CANNABIS**

## **ALTERNATIVE TREATMENT CENTERS**

- **MEDICAL PATIENTS CAN GET UP TO 3 OUNCES FOR A 30-DAY PERIOD**
- **MEDICINAL CANNABIS WILL NOT BE SUBJECT TO SALES TAX AS OF JULY 1, 2022**
- **THERE IS NO AUTHORITY WITHIN JAKE'S LAW (MEDICAL USE) FOR A TOWN TO LEVY A MUNICIPAL TAX OTHER THAN AT DISPENSING**
- **MEDICINAL CANNABIS IS PRIORITIZED OVER AU CANNABIS**
- **CAN HAVE UP TO 3 DISPENSARIES**

## **ADULT/RECREATIONAL USE**

- **ADULT-USE LICENSES CANNOT SELL A CUSTOMER MORE THAN 1 OUNCE IN A DAY, BUT NO 30-DAY PERIOD LIMITATION**
- **6.625% OR URBAN ENTERPRISE ZONE IS HALF**
- **ADULT USE PERMITS UP TO 2% AT ANY POINT IN THE SUPPLY CHAIN**
- **ADULT IS 1 DISPENSARY**



## MAYORS AND COUNCIL MEMBERS

Questions about Cannabis in your Municipality?  
We can help...

The NJ Cannabis Laws present a plethora of issues regarding cannabis for local elected officials to consider.

Is cannabis right for your town?

What cannabis classes of licenses do you want for your town?

Where are you going to allow those cannabis businesses?

What type of zoning are you going to impose?

The complex list of issues seems almost endless. We will guide you.

### Cannabis Legal Services

- Ordinances
- Licensing
- Application Review
- Compliance
- Taxation
- Zoning
- Lawsuit Avoidance Strategies
- Host Community Agreements



### Cannabis Related Services

- Application Process Development
- Application Scoring
- Cost Recovery Analysis
- Provide Subject Matter Expertise



"A knowledge-based website designed specifically for municipalities permitting or prohibiting cannabis"



30 years experience practicing municipal and land use law representing numerous municipalities, planning boards, and boards of adjustment.

- Trustee - NJ Institute of Local Government Attorneys
- Member of the NJ State Bar Cannabis Law Committee since 2018
- Co-Chair of the NJ State Bar Municipal Cannabis Sub-Committee

**RONALD P. MONDELLO**  
ATTORNEY AT LAW

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