



Cannabis Businesses in New Jersey



NJILGA NEW JERSEY INSTITUTE OF
LOCAL GOVERNMENT ATTORNEYS

Presented: November 17, 2022



NJILGA

NEW JERSEY INSTITUTE OF
LOCAL GOVERNMENT ATTORNEYS

NJSBA Cannabis Law Special Committee
NJSBA Cannabis Municipal/Land Use
NJILGA Trustee





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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



HOBOKEN

THE MILE SQUARE CITY

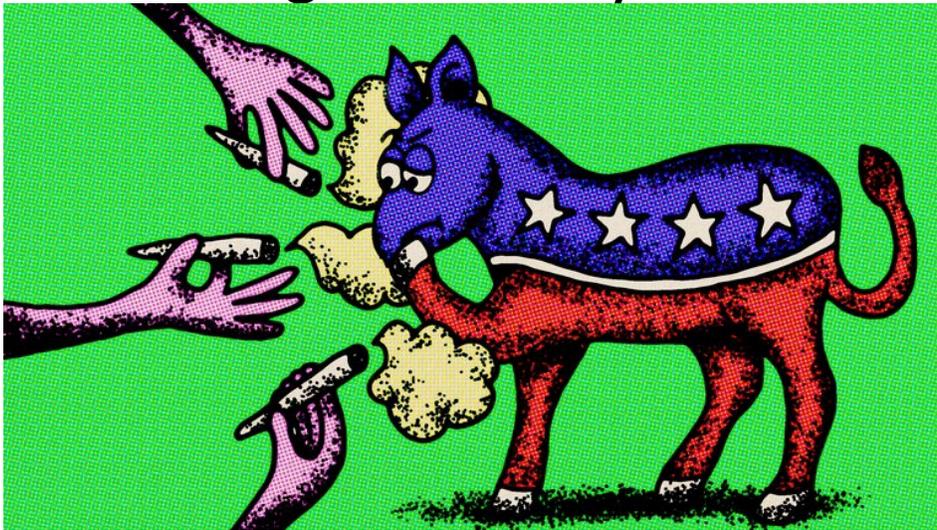


ATLANTIC CITY



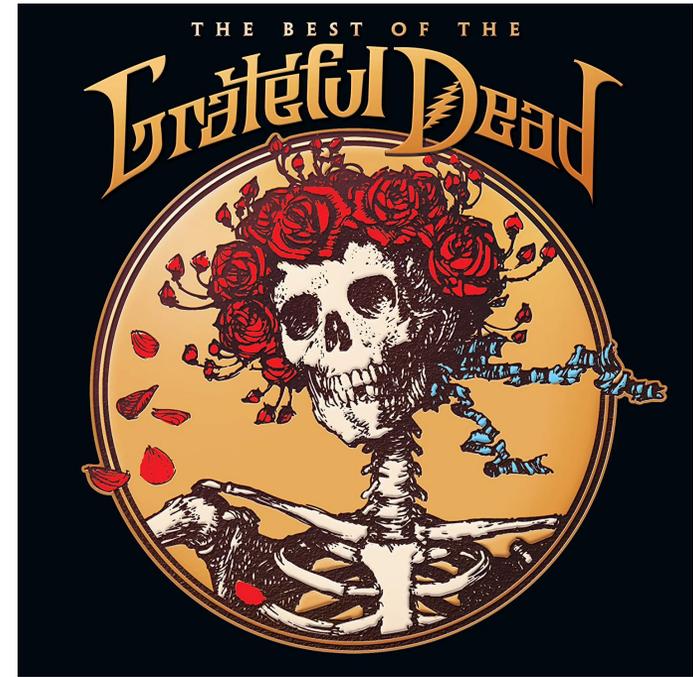
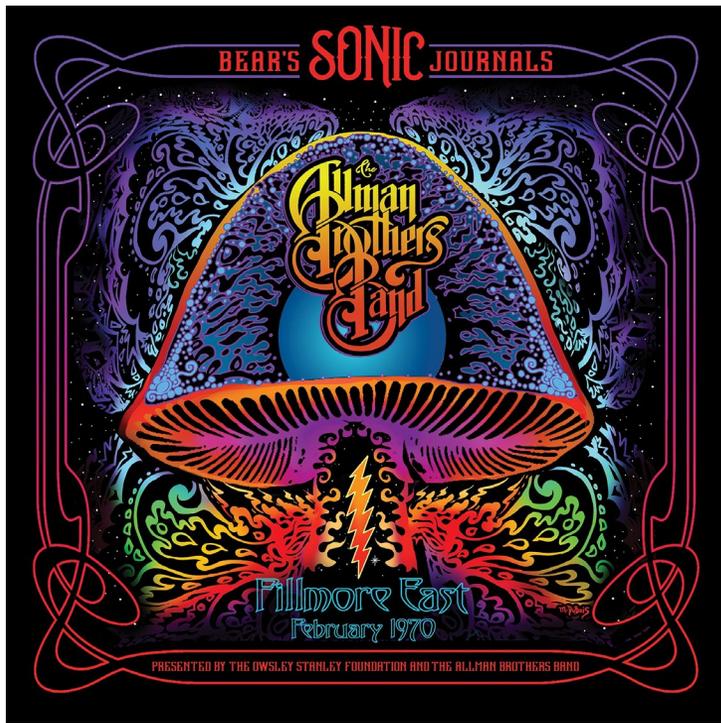
Pot, Politics and Land Use

- Councilman in TWO Towns
- Borough Attorney



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



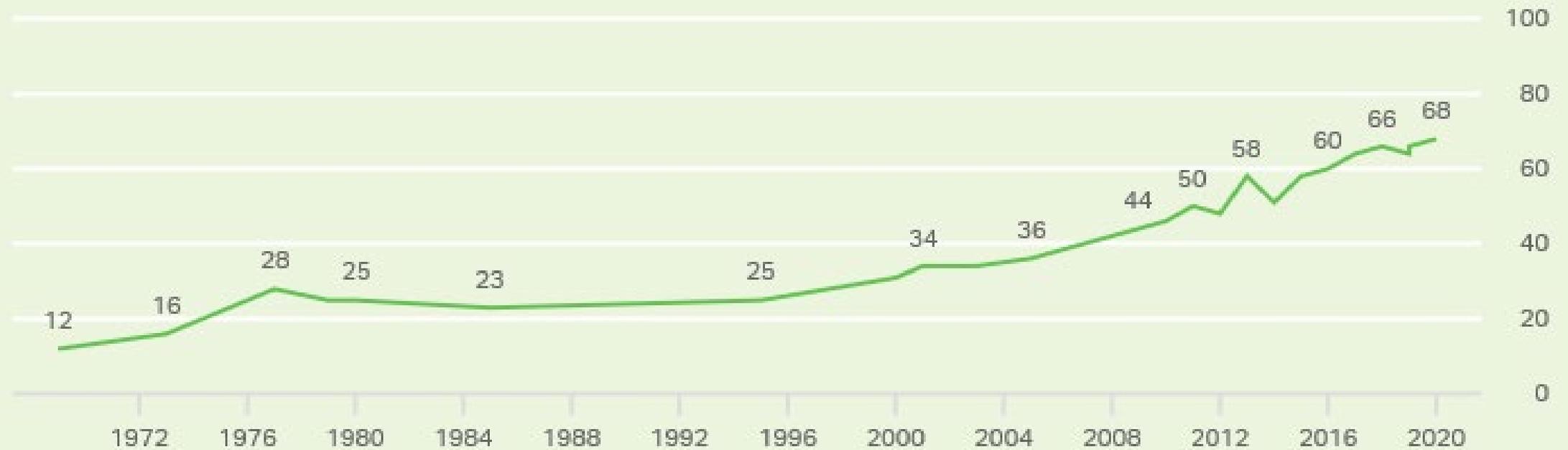


A PRESENTATION FOR MUNICIPALITIES ON
THE PERSONAL-USE RECREATIONAL
CANNABIS RESOLUTION AND LICENSING
PROCESS

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



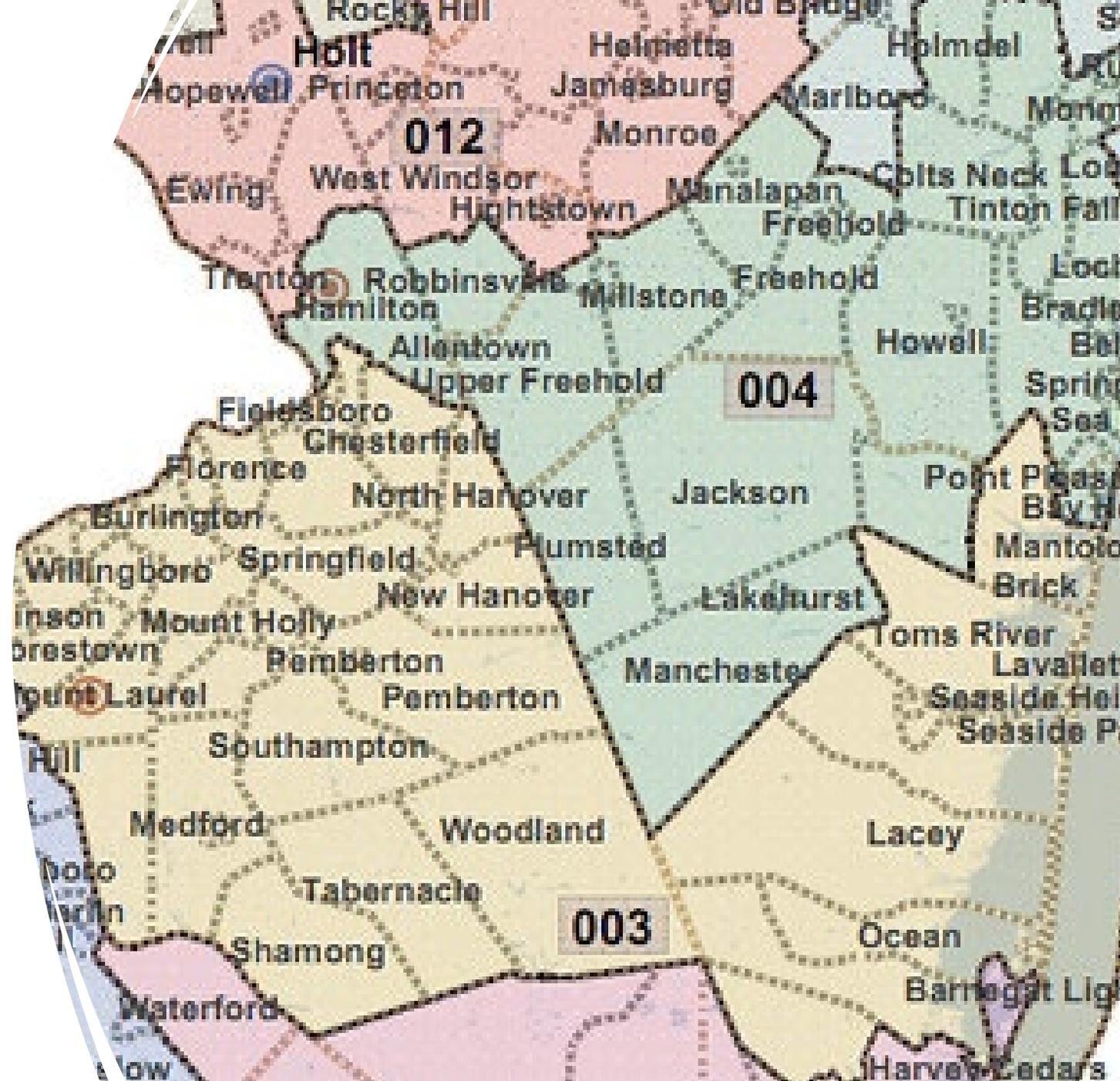
CANNABIS REGULATORY COMMISSION (CRC)



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

NJ IS HOME RULE!

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 sativa,
perfect for the daytime.

BEST VALUE!
LOLA MONTES
By Editor
1x 0.5g Pre-rolled Joint
Only \$9

Get Your Kicks
ROUTE 66
in Route 66

PROUDLY CERTIFIED
ORGANIC
CANNABIS

RAW

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

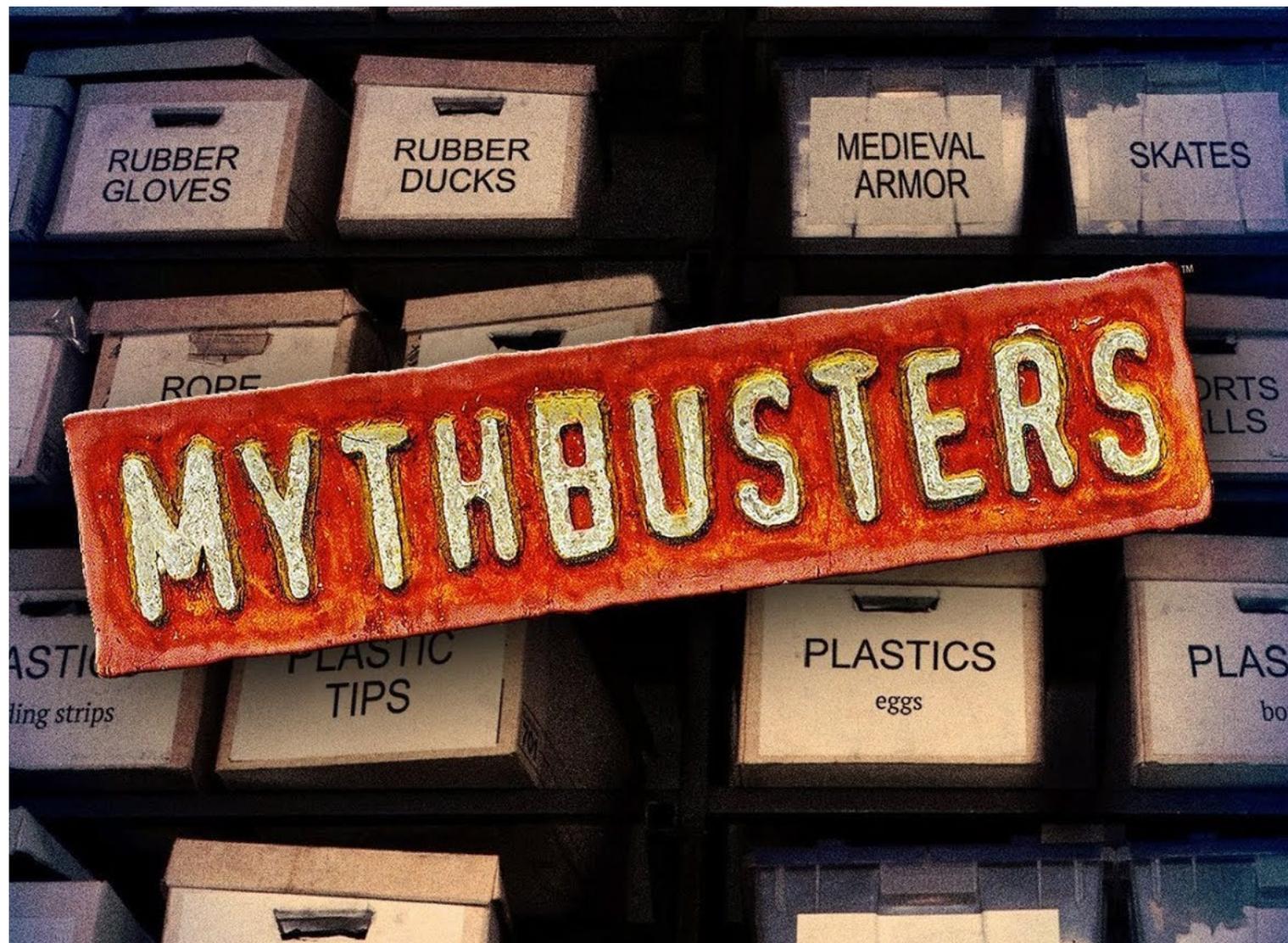
eaze
explore eaze.com

Do It Outdoors Leasing LLC

PA PUC A-6917565
FMCSA MC919609
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.



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 3rd 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

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.

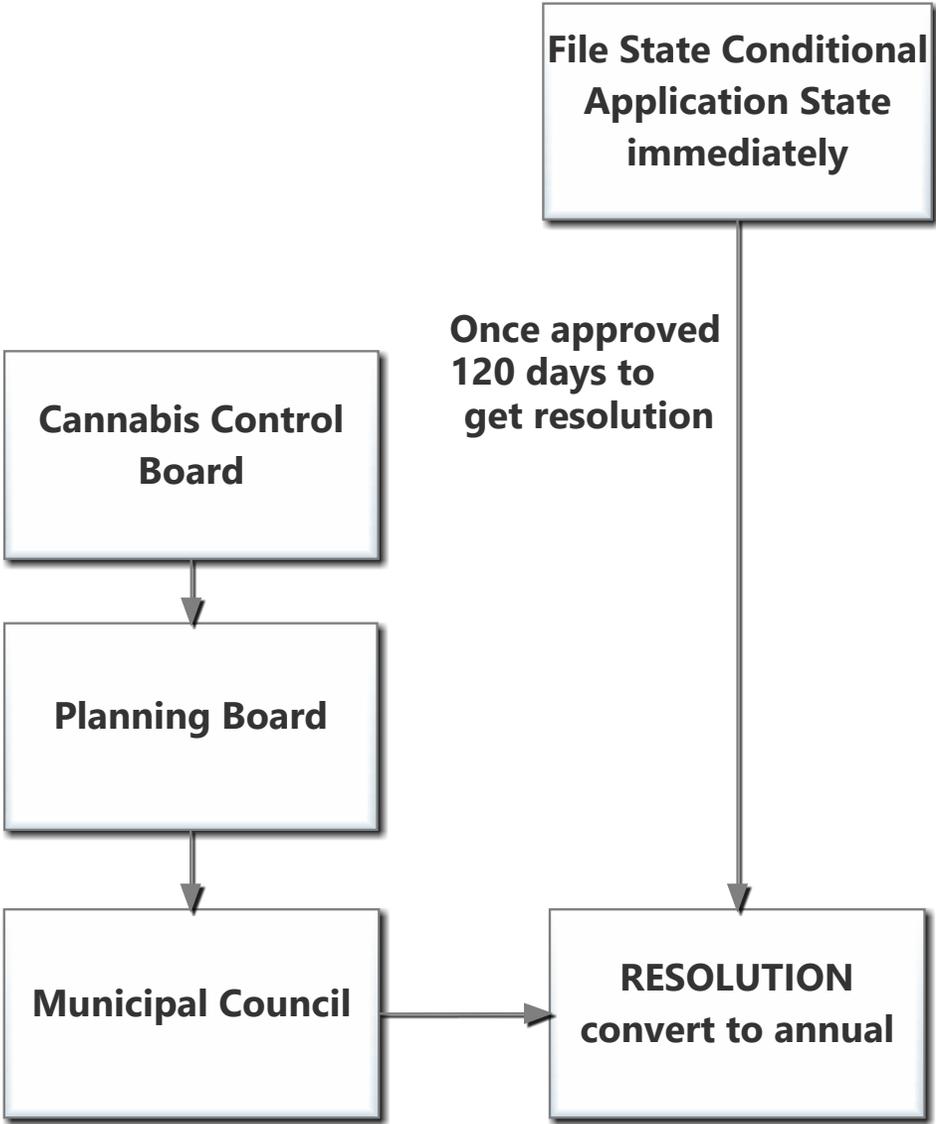
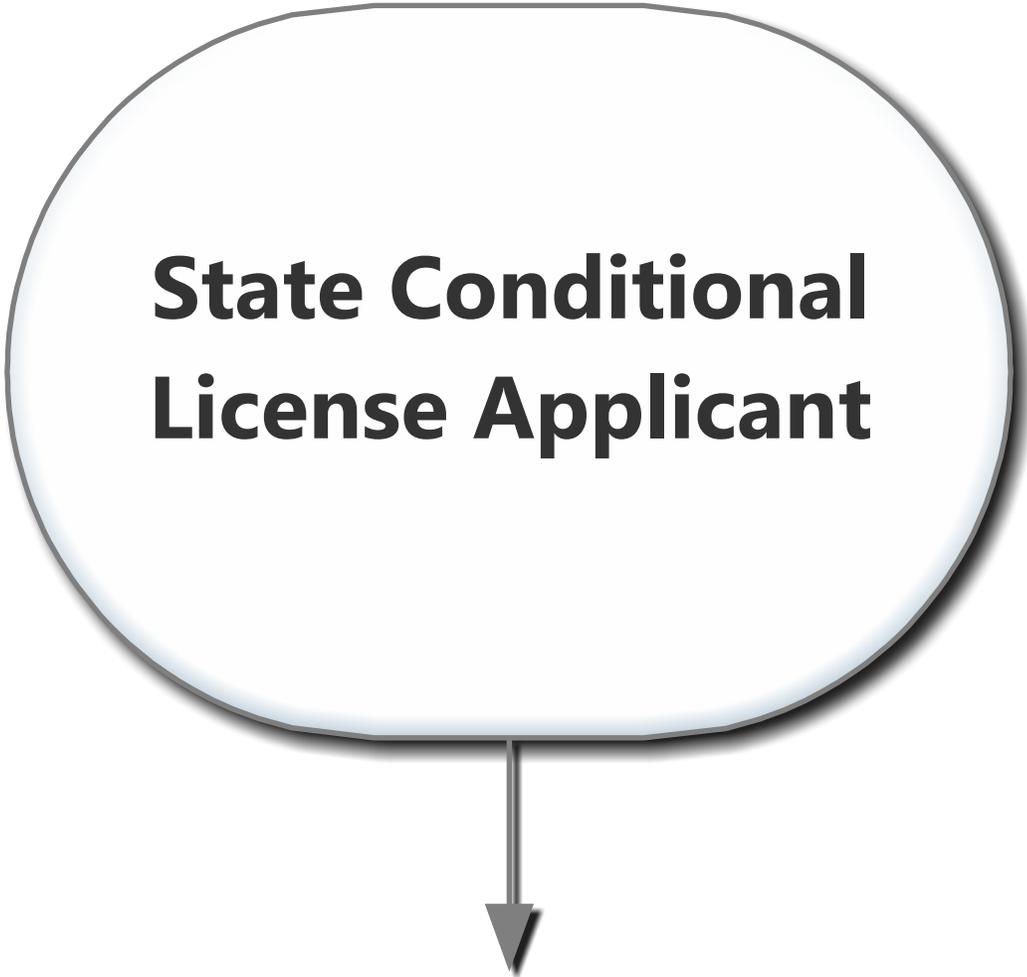
CANNABIS DISTRIBUTOR (CLASS 4 LICENSE)

- 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.

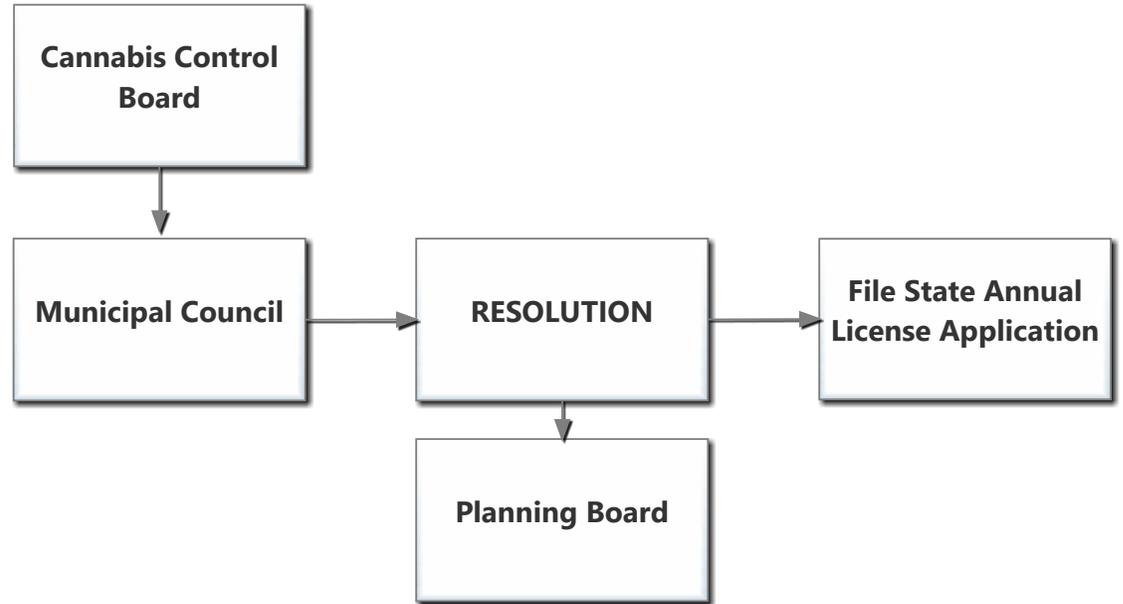
Microbusinesses

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.



State Annual License Applicant



STATE LICENSING TIMEFRAMES

Annual Licenses

- 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

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

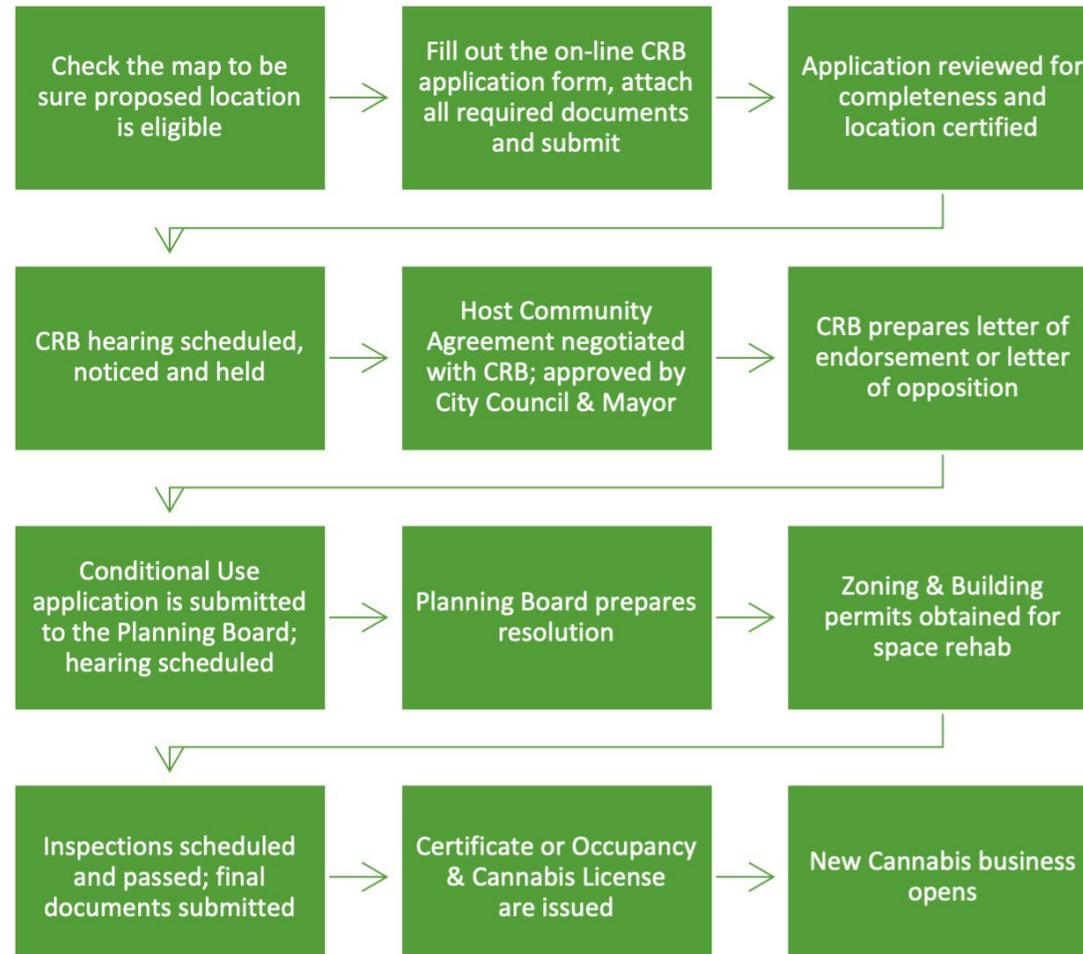
Towns can create and impose their OWN local licensing requirement

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

HOBOKEN CANNABIS APPLICATION PROCESS

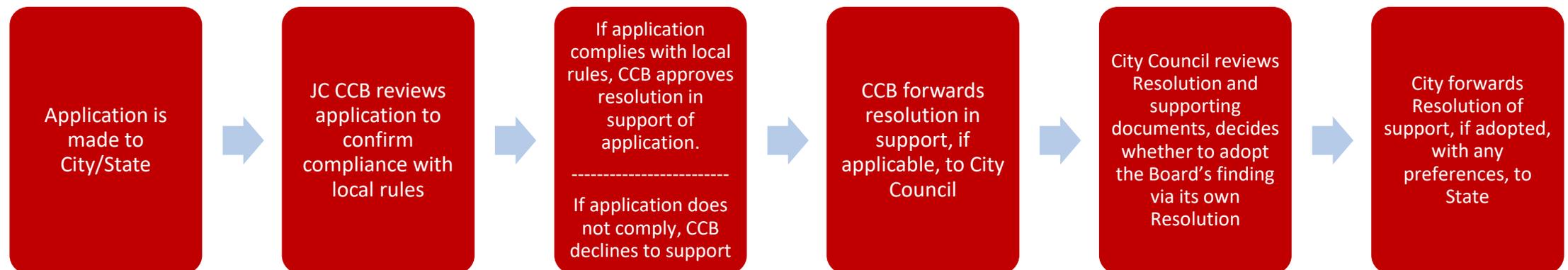
- Phone and Email Inquires from applicants
- Questions about new city ordinances
- Questions about state regulations
- New online forms
- New website page
- New cannabis map
- New Cannabis Review Board procedures
- New Board members

"once this opens up, your gonna get slammed with applications"



Jersey City – Cannabis Application Process

- The State is ultimately responsible for issuing licenses for the operation of all cannabis establishments/distributors.
- The City and CCB will review these applications to ensure compliance with local rules and regulations.
- If the application complies with local rules and regulations, the CCB will notify the State that it supports the application, via board Resolution adopted by City Council.



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

- 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, landmarks, and approval status markers. Key locations include Kennedy Stadium, Hudson River, and various city wards (R-1, R-2, R-3, R-CP, C-1, C-2, C-3, C-4, DPW, South Waterfront, Western Edge, Northwest, and Hoboken Yard). Specific addresses marked include 1427 Grand Street, 51-53 14th Street, 620 Washington Street, 516 Washington Street, 55 Hudson Street, and 86 River Street.

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

Windows Taskbar: Type here to search, 76°F Sunny, 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

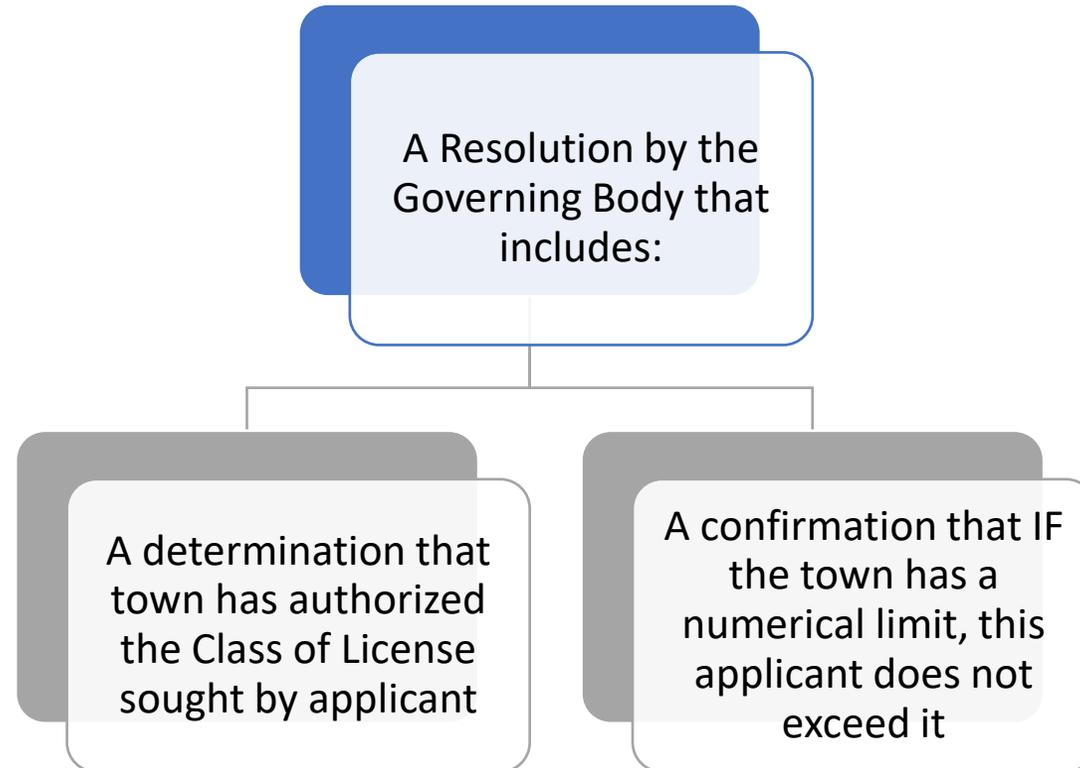
Delis

Indoor food
markets

Other stores
engaging in retail
food

Premises licensed
for retail sales of
alcoholic beverages

PROOF OF LOCAL SUPPORT – Governing Body





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

RECORD KEEPING

- OPRAs of Board Member and Board Professionals Emails and Texts
- Board members should not email/text each other about applications
- Board members should not discuss applications with the public
- Keep track of dates- submission, completeness
- Transcripts of meetings



50th 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

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

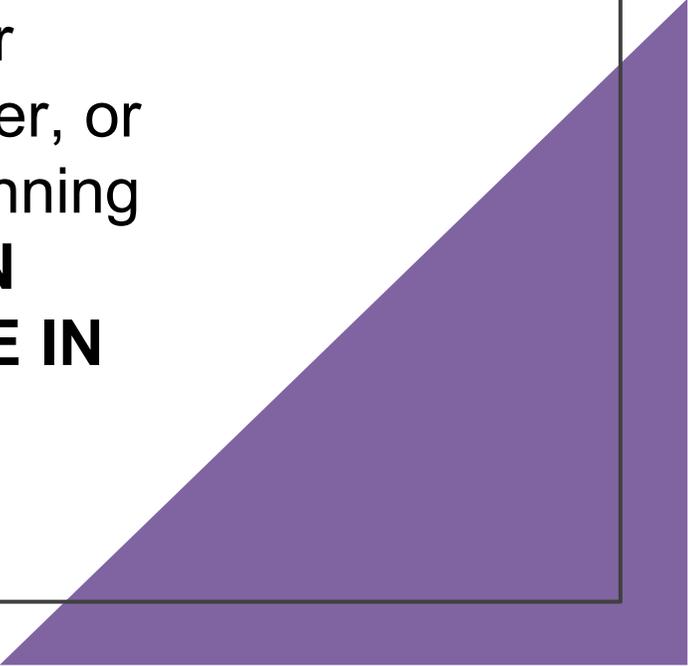
N.J. A.C. § 17:30-5.1(i)

- 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)

Municipal Government Officials

N.J.S.A. § 52:13D-17.2

Any member of the governing body or the municipal judge of a municipality, any member of the planning board or zoning board of adjustment, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment **CAN'T HAVE AN INTEREST IN A CANNABIS BUSINESS ANYWHERE IN THE STATE IF YOUR TOWN HAS OPTED-IN!**



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**

LITIGATION

- Your application scoring was completely inconsistent
- Your decision to approve one cannabis business over another was arbitrary and bias
- Your application considerations were not within your authority or purview





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

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