

BOROUGH OF CRESSKILL
ORDINANCE NO. 21-23-1573

AN ORDINANCE BY THE BOROUGH OF CRESSKILL IN THE COUNTY OF BERGEN, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION §275 ET SEQ OF THE ORDINANCE OF THE BOROUGH OF CRESSKILL

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 marijuana 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 Distributer license, for businesses involved in transporting cannabis plants in bulk from on 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 purchases 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, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

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

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

WHEREAS, the Borough of Cresskill has determined that the sale and distribution of marijuana presents special concerns of safety, security and general nuisances that arise as the result of the use of drugs and substances that can affect the youth of the Borough and others; and

WHEREAS, given the current Comprehensive Master Plan of the Borough of Cresskill and the Development Ordinances implementing the plan there is no area where the sale of and or distribution of medicinal and or recreational marijuana can be safely established given the overwhelming security and safety concerns; and

WHEREAS, in Colorado, where the use of marijuana was legalized in 2012 and the sale of recreational marijuana was legalized in 2014, a comprehensive analysis undertaken by the Denver Post and coroners reports have shown that the number of drivers involved in fatal crashes in Colorado who tested positive for marijuana has risen sharply each year since 2013, more than doubling in that time, which facts have been confirmed in both federal and state data; and

WHEREAS, the Denver Post analysis of the data and coroner reports also revealed that increasingly potent levels of marijuana were found in positive-testing drivers who died in crashes, including nearly a dozen in 2016, had levels five times the amount allowed by law, and one at 22 times the limit, whereas levels were not as elevated in earlier years; and

WHEREAS, the statutory provisions establishing a safety and security obligation were recently amended and supplemented by the legislature, P.L. 2017 c.312, and the Borough now likewise amends its Zoning Ordinance to comply with the revisions to the statute.

WHEREAS, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (those organizations being the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise

regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts;

NOW THEREFORE, BE IT ORDAINED, by the Council of the Borough of Cresskill, in the County of Bergen, State of New Jersey, as follows:

1. Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in Borough of Cresskill, except for the delivery of cannabis items and related supplies by a delivery service.

BE IT FURTHER ORDAINED, Chapter 275 is hereby amended as follows:

1. Article III, Zones and Zoning Map, §275-4, "Zones established" to be amended as follows:

§275-4.1 is hereby re-adopted in its entirety.

New Provision: §275-4.2

Every Zone noted in §275-4, "Zones established" shall unequivocally preclude the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

BE IT FURTHER ORDAINED:

2. Article IV, R-40, R-15, and R-10 One-Family Residence Zones, §275-8, "Permitted Uses" to be amended as follows:

New Provision: §275-8.1

In an R-40, R-15, and R-10 One-Family Residence Zone, the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited in the R-40, R-15, and R-10 One-Family Residence Zones within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

§275-8.2 is hereby re-adopted in its entirety

No building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

The Remaining Provisions of §275-8 are re-adopted in their entirety.

BE IT FURTHER ORDAINED,

3. Article V, P Professional Office Zone, §275-11, “Permitted Uses” to be amended as follows:

New Provision: §275-11.1

In a P Professional Office Zone, the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited in any zone within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

§275-11.2 is hereby re-adopted in its entirety

No building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

The Remaining Provisions of §275-11 are re-adopted in their entirety.

BE IT FURTHER ORDAINED:

4. Article V, P Professional Office Zone, §275-12, “Prohibited Uses” to be amended as follows:

§275-12.1 is hereby re-adopted in its entirety

All uses not listed in §275-11 of this chapter are prohibited.

New Provision: §275-12.2

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

BE IT FURTHER ORDAINED:

5. Article VI, DU Dual Use Zone, §275-15, “Permitted and conditional uses” to be amended as follows:

New Provision: §275-15.1

In a DU Dual Use Zone, the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

The Remaining Provisions of §275-15 are re-adopted in their entirety.

BE IT FURTHER ORDAINED:

6. Article VI, DU Dual Use Zone, §275-16, “Prohibited uses” to be amended as follows:

§275-16.1 is hereby re-adopted in its entirety
All uses not listed in §275-11 are prohibited.

New Provision: §275-16.2

In a DU Dual Use Zone, the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

BE IT FURTHER ORDAINED

7. Article VII, Commercial Zone, §275-19, “Permitted uses” to be amended as follows:

New Provision: §275-19.1

In a C Commercial Zone, the operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

§275-19.2 is hereby re-adopted in its entirety

No building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following, which shall be permitted, conditional upon approval as to use by the Planning Board in accordance with the procedures and subject to the general conditions set forth in Chapter 218, Site Development Plan, and all such establishments shall have at least one person in attendance during hours of operation. Permitted uses are as follows:

The Remaining Provisions of §275-19 are re-adopted in their entirety.

BE IT FURTHER ORDAINED:

8. Article VII, Commercial Zone, §275-21, “Prohibited uses” to be amended as follows:

§275-21.1 is hereby re-adopted in its entirety
All uses not listed in §275-19 are prohibited.

New Provision: §275-21.2

Marijuana establishments, prohibition. The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering,

dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

BE IT FURTHER ORDAINED:

9. Article VIII, P and L Professional Office and Research, Design and Development Laboratories Zone, §275-24, “Permitted uses” to be amended as follows:

New Provision: §275-24.1

In a P and L Professional Office and Research, Design and Development Laboratories Zone, marijuana establishments, prohibition. The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

§275-24.2 is hereby re-adopted in its entirety

No building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following, and conditional upon approval as to use by the Planning Board in accordance with the provisions of Chapter 218, Site Development Plan, and in accordance with performance standards procedure as set forth in Article XIV. Permitted uses are as follows:

The Remaining Provisions of §275-24 are re-adopted in their entirety.

10. Article VIII, P and L Professional Office and Research, Design and Development Laboratories Zone, §275-26, “Prohibited uses” to be amended as follows:

§275-26.1 is hereby re-adopted in its entirety

All uses not listed in §275-11 are prohibited.

New Provision: §275-26.2

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

11. Article IX, RA Residential Apartment Zone, §275-29, “Permitted uses” to be amended as follows:

New Provision: §275-29.1

In a RA Residential Apartment Zone, marijuana establishments, prohibition. The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing,

labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

§275-29.2 is hereby re-adopted in its entirety

No building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following, and conditional upon approval as to use by the Planning Board in accordance with the provisions of Chapter 218, Site Development Plan. Such approval shall also be required for the erection or enlargement of all related accessory structures and prior to issuance of certificates of occupancy for a change of use. Permitted uses are as follows:

The Remaining Provisions of §275-29 are re-adopted in their entirety.

BE IT FURTHER ORDAINED

12. Article IX, RA Residential Apartment Zone, §275-31, “Prohibited uses” to be amended as follows:

§275-31.1 is hereby re-adopted in its entirety

All uses not listed in §275-29 of this chapter are prohibited.

New Provision: §275-31.2

Marijuana establishments, prohibition. The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill

BE IT FURTHER ORDAINED,

13. Article X, Zone Bulk and Parking Regulations, §275-39, “RA Residential Apartment Zone” to be amended as follows:

New Provision: §275-39(C)

Marijuana establishments, prohibition. The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill

BE IT FURTHER ORDAINED:

14. Article X, Zone Bulk and Parking Regulations, §275-40, “R-SC Senior Citizens Residence Zone” to be amended as follows:

§275-40 (A) is hereby re-adopted in its entirety

In a Senior Citizens Residence Zone (R-SC) the regulations for an R-10 Zone contained in §275-35 of the Code of the Borough of Cresskill shall apply.

New Provision: §275-40 (B)

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill

BE IT FURTHER ORDAINED:

15. Article X, Zone Bulk and Parking Regulations, §275-40.1, “Downtown Affordable Housing Overlay Zone (DAHO)” to be amended as follows:

New Provision: §275-40.1 (C) (1)

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill

BE IT FURTHER ORDAINED:

16. Article X, Zone Bulk and Parking Regulations, §275-40.2, “Affordable Housing Site II Zone” to be amended as follows:

New Provision: §275-48.2 (C) (1)

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill

The Remaining Provisions of §275-40.2 are re-adopted in their entirety.

BE IT FURTHER ORDAINED

17. Article XII, Nonresidential Buildings, §275-48, “Supplementary Regulations” to be amended as follows:

New Provision: §275-48 (E)

The operation of medicinal and retail marijuana establishments, which includes retail marijuana and/or marijuana paraphernalia stores, marijuana cultivation, facilities, marijuana products manufacturing facilities, and marijuana testing facilities; and the operation of retail marijuana social clubs are prohibited within the Borough of Cresskill and, therefore, all activities related to the above mentioned retail uses such as, but not limited to cultivation, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring and distributing are expressly prohibited in any zone within the Borough of Cresskill.

Any article, section, paragraph, subsection, clause, or other provision of the Ordinances of the Borough of Cresskill inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

This ordinance shall take effect upon its passage and publication and filing with the County of Bergen Planning Board, and as otherwise provided for by law.