

Borough of Butler

Planning Board Workshop Meeting One Ace Road, Butler, New Jersey May 13, 2021 7:30 PM

1. Meeting Called to Order
2. Sunshine Law Requirements
3. Roll Call: Donnelly, Roche, Veneziano, Morley, Brown, Finelli, Donza, Vath, Councilman Fox, Mayor Martinez, Chairman Nargiso

Correspondence: None

- Discussion:**
1. Review of proposed amendment to the Butler Zoning Ordinance regarding retail sales of marijuana. This is a review of the ordinance as amended by the Governing Body. Copy Attached. Also attached are the complimentary ordinances being reviewed by the Governing Body. Action may be taken.
 2. Zoning Ordinance housekeeping as requested by Mr. Brown. His notes are attached.
 3. Definition of and acceptance of surveys for single family properties when appearing before the Board.
 4. Any other items put forth by Board members or the public.

Any Other Business That May Be Brought To The Attention Of The Butler Planning Board

Adjournment:

Time: _____

LAND USE CONTRADICTIONS

January 2020

Updates March 2021

1.

2004 Master Plan Section 6, Special Planning Considerations, Page 6.8.

Central Business District

There states, "In terms of desired principle uses, retail sales and service are typically the most desired in terms of stability, however, professional offices and apartments also serve as supportive uses."

Borough of Butler Land Development Ordinance

Section 143-119 Purposes (September 2006)

CBD Central Business District. The description is void of any mention of residential use.

Section 143-117/Schedule "C" (September 2006)

Apartments are not permitted in the CBD.

Section 143-123.4 Main Street Redevelopment Area

A. Principal Permitted Uses (September 2006)

7. Mixed uses on a single lot are to be permitted. Mixed uses within a single structure along Main Street are to be encouraged (i.e. Residential uses over first floor mixed retail/office use.

2015 Periodic Reexamination of the Master Plan

This contradiction is NOT addressed in the reexamination report.

The Master Plan supports CBD apartments. And the Ordinance both supports and denies CBD residential use.

2.

Borough of Butler Land Development Ordinance

Section 143-135.1 Decks and Patios (September 2006)

- A. Within all one and two family residential zones, decks and platforms, whether freestanding or attached to a building, when in a rear or side yard, shall meet the following yard setback requirements:
- C. Decks and platforms, whether freestanding or attached to a building are prohibited within the front and side yards.

Are they allowed in the SIDE YARD or not?

OUTSTANDING ISSUES

Land Use Ordinance

143-86F Schedule B

There are Garden Apartments but no Apartments.

Suggest removing the "Garden", thus it applies to all apartments

143-86F Schedule B

Hair Salon and Barber Shops requires 3 three spaces for each Station/Hair Chair.

We have seen in practice, this is an excessive parking requirement.

Might returning to a square foot measurement or Ratio system be better?

143-118 Schedule D

Zone R-5, Multi Story, states that the Minimum Floor Area in Square Feet

R-5 is zoned for 2 family dwellings. The First Floor 600 and Gross is 900. Therefore the second floor need only be 300 Square Feet which is only 55% of the requirement for a Studio apartment yet this allows for a family to live in a studio apartment. For bedrooms the Housing Code requires 105 square feet for the first person and 70 square feet for each additional person. That is just for the bedroom.

I would suggest the the R-5 multi story 2 family gross square feet be changed to 1,200 square feet so each family would have 600 square feet.

Hair Salon support

Current Hair Salons have a requirement of a parking space for each service Station. 10 service chairs equals 30 spaces. The assumption for the parking space requirement is that every chair will be occupied as long as the salon is open for business. Therefore a Salon with, 10 Stylist, 5 Shampoo, 4 Nail stations is 19 Stations at 3 parking spaces per station would require 57 parking spaces plus at least 1 for receptionist/cashier equal 58 parking spaces.

When considering a super market it is not assumed that every aisle will be bumper to bumper with shopping carts from opening to closing. So why is this assumption used for businesses dealing with hair?

I would suggest a ratio system or using the current, 1 space per 200 square feet. A ratio system is used within the NJ construction codes. Depending upon the number of housing units. The electrical code does not assume that in a multi-unit building every unit will be utilizing maximum power all the time. Nor does the plumbing code assume every faucet will be open at the same time or every toilet will be flushed at the same time.

My suggestion is that the salon is required to have 1 space each for the first 15 stations, $\frac{1}{2}$ space each for the next 10 stations and $\frac{1}{4}$ space each for each additional station. . Therefore a Salon with, 10 Stylist, 5 Shampoo, 4 Nail stations is 19 Stations plus each receptionist/cashier.

With a ratio system the requirements would be::

15 for the first 15

2 for the next 4

xx for the rest, and

1 for the receptionist/cashier

A total of 18 Instead of 58 spaces.

BOROUGH OF BUTLER

ORDINANCE NO. 2021 –

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 143, LAND USE, OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BUTLER FOR THE REGULATION OF CANNABIS USES AND ESTABLISHMENTS.

BE IT ORDAINED by the Borough Council of the Borough of Butler, in the County of Morris and State of New Jersey, as follows:

Section 1. Chapter 143, “Land Use,” Article XVII, “Special District Regulations,” of the Revised General Ordinances of the Borough of Butler shall be amended by the inclusion of a new Section 123.5, which shall read in its entirety as follows:

“§143-123.5 Cannabis Retail Conditional Use in HC Zone.

The operation of Cannabis Retail Establishments as defined by P.L.2021, c. 16, shall be a conditional use in the HC Zone—Highway Commercial District as provided in Article XX of this Chapter.”

Section 2. Chapter 143, “Land Use,” Article XX, “Conditional Uses,” of the Revised General Ordinances of the Borough of Butler shall be amended by the inclusion of a new Section 173, which shall read in its entirety as follows:

“§143-173 Cannabis Retail Establishment.

- A. Cannabis Retail Establishments shall only be permitted in the HC Zone—Highway Commercial District.
- B. Minimum setback and bulk requirements shall be as set forth in §143-118 Schedule D, except as to existing structures.
- C. No drive-through window shall be permitted.
- D. Minimum useable floor area of 1,200 square feet.
- E. No Cannabis Retail Establishment shall be located within 2,000 linear feet of another Cannabis Retail Establishment as measured from the property lines.
- F. No Cannabis Retail Establishment shall be located within 1,000 linear feet in any direction of a school, licensed daycare facility, church, synagogue, or religious worship center, public park, library or a licensed substance abuse disorder clinic or facility, as measured from the property lines.
- G. Hours of operation shall be limited to 7 a.m. through 11 p.m. daily.”

Section 3. Chapter 143, “Land Use,” Article XVIII, “General Provisions,” Section 128, “Prohibited Use,” of the Revised General Ordinances of the Borough of Butler shall be amended by the inclusion of a new Sub-Section C, which shall read in its entirety as follows:

“§143-128 Prohibited Use

- C. Except as otherwise provided in Articles XVII and XX of this Chapter, the operation of all classes of cannabis establishments as defined by P.L.2021, c. 16, including but not limited to, cannabis retailers, cultivators, manufactures, distributors, wholesalers, testing facilities, delivery services, medical cannabis dispensaries, alternative cannabis treatment centers, including such operators holding a medical cannabis dispensary permit pursuant to P.L.2009, c.307 (C. 24:61-7), are expressly prohibited uses within the jurisdictional boundaries of the Borough of Butler.”

Section 4. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 5. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Adopted this ____ day of _____, 2021.

Mary O’Keefe, Borough Clerk

, Mayor

BOROUGH OF BUTLER

ORDINANCE NO. 2021 –

AN ORDINANCE ESTABLISH CHAPTER 68, “CANNABIS,” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BUTLER FOR THE LICENSURE OF CANNABIS ESTABLISHMENTS AND REGULATION OF CANNABIS USE.

BE IT ORDAINED by the Borough Council of the Borough of Butler, in the County of Morris and State of New Jersey, as follows:

Section 1. The Revised General Ordinances of the Borough of Butler shall be amended by the inclusion of a new Chapter 68, which shall read in its entirety as follows:

Chapter 68

CANNABIS

ARTICLE I

Sales

- § 68-1. Purpose.
- § 68-2. Word usage.
- § 68-3. Licenses.
- § 68-4. Hours; sale to certain persons.
- § 68-5. Persons under legal age for consumption.
- § 68-6. Revocation of licenses.
- § 68-7. Violations and penalties.

ARTICLE II

Permitted License Type and Conditions for License

- § 68-8. License limited to Retail Establishments.
- § 68-9. Conditions for Issuance and Renewal of License.
- § 68-10. Taxation.

ARTICLE I

Sales

§ 68-1. Purpose.

This Article is enacted to regulate the sale of cannabis products within the Borough of Butler in accordance with the provisions of an Act of the Legislature of the State of New Jersey, entitled "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (hereinafter referred to as "Act") and its supplements and amendments.

§ 68-2. Word usage.

For the purpose of this Article, words and phrases shall have the meanings given in the Act.

§ 68-3. Licenses.

- A. Laws applicable. All applications for licenses, all licenses issued and all proceedings under this Article shall be in accordance with the Act, rules and regulations referred to in § 68-1 and all other applicable laws of the State of New Jersey.
- B. Issuing authority. The Clerk of the Borough is authorized and empowered to issue licenses for the retail sale of cannabis in the Borough in accordance with Chapter 150.
- C. License applications; provisions. No license shall be issued except after written application presented by the proposed licensee in such form and upon complying with the provisions of this Article.
- D. License fees. The initial license fee shall be \$1,000.00. The annual license fee shall be \$500.00.

§ 68-4. Hours; sale to certain persons.

- A. Hours of sale. The holders of licenses in the Borough shall not sell cannabis between the hours of 11:00 p.m. and 7:00 a.m. and on Sunday between the hours of 3:00 a.m. and 11 :00 a.m.
- B. Sale to certain persons. No licensee shall sell, nor shall any licensee suffer or permit the sale, service or delivery of any cannabis product, directly or indirectly, to any minor under the age of 21, mental defective, or any intoxicated person, nor permit such persons to congregate in or about the licensed premises.

§ 68-5. Persons under legal age for consumption.

- A. Presence. No person under the legal age of twenty-one (21) for the purchase of cannabis products shall be allowed in any premises where cannabis products are sold.
- B. Purchase of cannabis products by persons under the legal age. No person under the legal age for the consumption of cannabis products shall consume purchase, attempt to purchase, or have another purchase for him any cannabis product on any premises licensed for the sale of cannabis products.
- C. Purchase of cannabis products for persons under the legal age. No person shall purchase or attempt to purchase cannabis products for a person under the legal age for the consumption of cannabis products.
- D. Misstating age. No person shall misrepresent his age or the age of another person for the purpose of inducing any licensee or his employee to sell, serve or deliver any cannabis product to a person under the legal age for consumption of cannabis products or to permit a person under the legal age for the consumption of cannabis products to remain on any premises in violation of Subsection A.

§ 68-6. Revocation of licenses.

- A. Any license issued under this Article may be suspended or revoked for violation of any of the provisions of this Chapter or any provisions of any applicable statute or any of the rules or regulations of the State of New Jersey.
- B. Unless the immediate suspension is necessary for preservation of public safety, proceedings for the suspension or revocation of any license issued under this Article, shall be commenced by the service of a five-day notice of charges preferred against the licensee by the Clerk and affording a reasonable opportunity for a hearing before the Borough Council. Licenses may be suspended or revoked for any violation of this Chapter.
- C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this Article.
- D. Any license issued by the Borough of Butler under this Article shall be suspended and/or revoked upon the suspension and/or revocation of the licensee's license issued by the State of New Jersey and/or the New Jersey Cannabis Regulatory Commission.

§ 68-7. Violations and penalties.

Any person, firm, or corporation violating any of the provisions of this article shall be subject to such penalties as are provided for in Chapter 230, Violations and Penalties, of the Code of the Borough of Butler.

**ARTICLE II
Permitted License Type and Conditions for License**

§68-8. License limited to Retail Establishments.

The class of cannabis license permitted in the Borough shall be for a Cannabis Retail Establishments. No license for any other class of Cannabis establishment, including cannabis cultivators, manufactures, distributors, wholesalers, testing facilities, delivery services, medical cannabis dispensaries, alternative cannabis treatment centers, including such operators holding a medical cannabis dispensary, shall be available.

§68-9. Conditions for Issuance and Renewal of License.

In addition to the requirements as provided in Article I, the following conditions are required for the issuance and renewal of a Cannabis Retail Establishment license:

- A. Applicant must possess any and all required licenses, permits or authorizations from the State of New Jersey and/or the New Jersey Cannabis Regulatory Commission for the operation of a Cannabis retail Establishment.
- B. The Cannabis Retail Establishment shall be located in the HC Zone—Highway Commercial District.
- C. The Applicant has received conditional use approval from the Planning Board of the Borough of Butler.
- D. No on-premises consumption or use of cannabis shall be permitted.
- E. No on-premises sale, consumption or use of food, alcohol, or tobacco by customers shall be permitted.
- F. Cannabis Retail Establishments must be equipped with security cameras with coverage of exterior parking and loading areas, points of entry and egress, areas open to the public, and cannabis storage areas. Security footage must be maintained for the period required by State law and be subject to immediate inspection and access by the Borough of Butler Police Department upon request.
- G. Cannabis Retail Establishments must prominently display signage indicating that no individual under the age of twenty-one is permitted on the premises and that the on-premises consumption or use of cannabis, food, alcohol, tobacco is prohibited.
- H. Any Cannabis Retail Establishment must possess and prominently display all licenses required by the State of New Jersey and the Borough of Butler for operation.
- I. Cannabis Retail Establishments must be equipped with lockable doors and windows and a security system with audible alarm and direct or third-party notification the Borough of Butler Police Department.
- J. All cannabis products and cash must be stored and secured in a locked safe or hardened container securely attached to the premises.
- K. Licensee shall be current on all State and municipal tax payments.

§ 68-10. Taxation.

All Licensees under this Chapter shall be subject to quarterly remission of municipal taxes as required set forth in Article II of Chapter 210 and shall be compliant with the requirements therein.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Adopted this ____ day of _____, 2021.

Mary O'Keefe, Borough Clerk

, Mayor

BOROUGH OF BUTLER

ORDINANCE NO. 2021 –

AN ORDINANCE AMEND CHAPTER 210, “TAXATION,” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF BUTLER TO INCLUDE NEW ARTICLE CONCERNING CANNABIS SALES TAXATION.

BE IT ORDAINED by the Borough Council of the Borough of Butler, in the County of Morris and State of New Jersey, as follows:

Section 1. Chapter 210 of the Revised General Ordinances of the Borough of Butler shall be amended by the inclusion of a new Article II, which shall read in its entirety as follows:

ARTICLE II Taxation of Cannabis Sales

§ 210-3. Taxation of Cannabis Sales and Transfers.

There is hereby imposed a sale and transfer tax on all cannabis products sold by cannabis retailers within the Borough of Butler. Such tax will be imposed at time of sale or transfer and shall further be imposed upon the value of cannabis products transferred by any concurrent license holder operating more than one establishment of any class, to or from the license holder’s establishment located within the Borough of Butler to any or from the license holder’s other establishments, whether or not such establishment is located within the Borough of Butler.

§ 210-3. Rates.

The tax rate for the retail sale of any cannabis product shall be 2% of the value of each receipt or transaction of sale. The tax rate for any transfer by concurrent license holder of cannabis products shall be 1% of the market value of the transferred cannabis product.

§ 210-4. Remission of taxes.

Every cannabis establishment and/or licensee shall remit taxes collected and due and owing on a quarterly basis to the municipal chief fiscal officer, along with certified copies of sales receipts and product transfer ledgers or documentation. The dates of tax remission shall be on or before April 1, July 1, October 1 and January 2, or as established by the chief fiscal officer. Each licensee shall certify to the truth and accuracy of the receipts and product transfer ledgers or documentation, and shall remit a return in a form determined by the chief fiscal officer.

§ 210-5. Delinquent taxes.

All unpaid taxes as required under this Article shall be subject to the accrual of interest and penalties at rates and penalties set forth and established for delinquent ad valorem taxes within the Borough of Butler.

§ 210-6. Liability for taxes owed.

Each cannabis establishment owner and/or licensee shall be personally liable for any and all taxes imposed under this Article and any interest and penalty accruing thereon. In addition, any unpaid balance and interest and penalties accruing thereon shall constitute a lien on the real property in which the cannabis establishment is located and such liens shall be enforced in the same manner as municipal tax liens.

§ 210-7. Audit.

Every cannabis establishment and/or licensee within the Borough of Butler is subject to audit, no greater than once per annum, of the establishment's or licensee's business records, receipts and accounting books, such audit to be performed at the chief fiscal officer's discretion, by a certified public accountant. Every cannabis establishment and licensee shall be obligated to fully comply with the requirements of an auditor. Failure to cooperate with the audit, or any misrepresentation or fraud committed by the establishment or licensee, shall result in the immediate suspension of the license.

Section 2. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Adopted this ____ day of _____, 2021.

Mary O'Keefe, Borough Clerk

, Mayor

A survey of the subject property shall be submitted with every application. If the survey was prepared not more than seven years from the date of submittal of the application, it shall be accompanied by an "affidavit of no change" signed by the applicant or owner. Except with regard to accessory structures of 200 square feet or less, as set forth below, if the survey was prepared more than seven years from the date of submittal of the application, it shall contain the signature and seal of a certified surveyor attesting that it is an accurate representation of the current conditions on the subject property. If the application involves an accessory structure of 200 square feet or less, the Planning Board shall accept a survey, with or without a seal, of any age, provided the survey is accompanied by an affidavit of no change signed by the applicant or owner. If the affidavit of no change denotes changed conditions which are determined by the Planning Board to not substantively impact or affect the proposed accessory structure of 200 square feet or less, the Planning Board may accept such survey and proceed to process the application. The applicant shall obtain all necessary forms from the Secretary of the Planning Board. The Secretary of the Board shall inform the applicant of the steps to be taken to initiate proceedings and of the regular meeting dates of the Board.