

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**  
2 **CHAPTER 115, ARTICLES I, IV, XI, XIA, XIC, XIII, XIV, AND**  
3 **XV, AND XXV, SECTIONS 115-4, 115-20, 115-77, 115-83.2, 115-**  
4 **83.18, 115-83.19A 115-94, 115-102 AND 115-194.6 TO REGULATE**  
5 **MARIJUANA ESTABLISHMENTS IN SUSSEX COUNTY.**  
6

7 WHEREAS, House Bill No. 2 was enacted by the General Assembly of  
8 the State of Delaware as an amendment to Titles 4, 11, 16 and 30 of the  
9 *Delaware Code* with an effective date of July 5, 2023; and

10 WHEREAS, House Bill No. 2 authorized, among other things, the  
11 creation of the State Office of the Marijuana Commissioner, the issuance  
12 of a total of 125 State-Wide Open, Microbusiness and Social Equity  
13 Licenses for the cultivation and/or sale of marijuana, and authorized the  
14 promulgation of Rules and Regulations for the cultivation, distribution  
15 and sale of marijuana; and

16 WHEREAS, there is an existing medical marijuana industry in Delaware  
17 with approximately 17,000 patients currently participating in that  
18 industry; and

19 WHEREAS, of the total 125 State-wide Open, Microbusiness and Social  
20 Equity Licenses, 60 of them will be for Marijuana Cultivation Facilities,  
21 30 of them will be for Marijuana Product Manufacturing Facilities, 30 of  
22 them will be for Retail Marijuana Stores and 5 of them will be for  
23 Marijuana Testing Facilities as set forth in Title 4, Section 1343 of the  
24 *Delaware Code*; and

25 WHEREAS, Title 4, Section 1351(a) of the *Delaware Code* authorizes  
26 municipalities in Sussex County, to “prohibit the operation of marijuana  
27 cultivation facilities, marijuana product manufacturing facilities,  
28 marijuana testing facilities or retail marijuana stores” as those terms are  
29 defined and many, but not all, municipalities in Sussex County have  
30 adopted ordinances containing such prohibitions; and

31 WHEREAS, Sussex County acknowledges that many municipalities have  
32 prohibited Marijuana Establishments and as a result thereof this  
33 Ordinance creates reasonable distance separation requirements from any  
34 municipal boundary so that municipalities that have prohibited Marijuana  
35 Establishments are not circumvented by having them immediately  
36 adjacent to their municipal boundaries; and

37 WHEREAS, unlike municipalities, pursuant to Title 4, Section 1351(b) of  
38 the *Delaware Code*, Sussex County is not permitted to prohibit Marijuana  
39 Establishments, but instead may enact Ordinances such as this one  
40 governing the time, place, manner and number of Marijuana  
41 Establishment operations; and

42 WHEREAS, it is the intention of Sussex County to permit Marijuana  
43 Establishments in an appropriate zoning district, with reasonable  
44 requirements concerning the proximity to schools, churches, substance  
45 abuse treatment facilities and other Marijuana Establishments; and

46 WHEREAS, Sussex County has determined that it can be appropriate for  
47 Retail Marijuana Stores to operate in the C-3 Heavy Commercial District  
48 with a Conditional Use; and

49 WHEREAS, Sussex County has a rich agricultural history, and the  
50 cultivation of marijuana is not entirely unlike the propagation of other  
51 crops, therefore Sussex County deems it appropriate that Marijuana  
52 Cultivation, Manufacturing and Testing may be a permitted use in the AR-  
53 1 Agricultural Residential Zoning District; and

54 WHEREAS, Because Marijuana Cultivation, Product Manufacturing and  
55 Marijuana Testing Facilities are heavily regulated (including, but not  
56 limited to, tracking, security and environmental controls) by the State of  
57 Delaware and are generally conducted indoors, it is appropriate for them  
58 to also operate in the C-1, CR-1, C-3, LI-1, LI-2 and HI-1 Districts as a  
59 permitted use; and

60 WHEREAS, it has been determined that this Ordinance promotes and  
61 protects the health, safety, convenience, orderly growth and welfare of  
62 the inhabitants of Sussex County.

63  
64 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY**  
65 **ORDAINS:**

66  
67 **Section 1. The Code of Sussex County, Chapter 115, Article I, § 115-**  
68 **4 is hereby amended by inserting the italicized language**  
69 **alphabetically within the definitions as follows:**

70  
71 **§ 115-4. Definitions and Word Usage.**

72 . . .

73  
74 **B.**

75 General definitions. For the purpose of this chapter, certain terms and  
76 words are hereby defined as follows:

77  
78 . . .

79  
80 ***Marijuana Commissioner***

81 *The person appointed by the Governor and confirmed by the Senate who*  
82 *serves as the Marijuana Commissioner for the State of Delaware.*

83  
84 ***Marijuana Cultivation Facility***

85 *An entity licensed by the Marijuana Commissioner to cultivate, prepare,*  
86 *and package marijuana and sell marijuana to retail marijuana stores, to*  
87 *marijuana product manufacturing facilities, and to other marijuana*  
88 *cultivation facilities, but not to consumers. A marijuana cultivation*  
89 *facility may not produce marijuana concentrates, tinctures, extracts, or*  
90 *other marijuana products.*

91

92 ***Marijuana Establishment***

93 *An entity licensed by the Marijuana Commissioner as a marijuana*  
94 *cultivation facility, a marijuana testing facility, a marijuana product*  
95 *manufacturing facility, or a retail marijuana store.*

96  
97 ***Marijuana Product Manufacturing Facility***

98 *An entity licensed by the Marijuana Commissioner to purchase*  
99 *marijuana; manufacture, prepare, and package marijuana products; and*  
100 *sell marijuana and marijuana products to other marijuana product*  
101 *manufacturing facilities and retail marijuana stores, but not to*  
102 *consumers.*

103  
104 ***Marijuana Products***

105 *Products that are comprised of marijuana, including concentrated*  
106 *marijuana, and other ingredients and are intended for use or*  
107 *consumption, such as edible products, ointments, and tinctures.*

108  
109 ***Marijuana Testing Facility***

110 *An entity licensed by the Marijuana Commissioner to test marijuana for*  
111 *potency and contaminants.*

112  
113 . . .

114  
115 ***Retail Marijuana Store***

116 *An entity licensed by the Marijuana Commissioner to purchase marijuana*  
117 *from marijuana cultivation facilities; to purchase marijuana and*  
118 *marijuana products from marijuana product manufacturing facilities;*  
119 *and to sell marijuana and marijuana products to consumers.*

120  
121 **Section 2. The Code of Sussex County, Chapter 115, Article IV, §**  
122 **115-20 is hereby amended by inserting the italicized language therein**  
123 **as follows:**

124

125 **§ 115-20. Permitted Uses.**  
126

127 A. A building or land shall only be used for the following purposes:  
128

129 . . .  
130

131 *(18) Marijuana Cultivation Facilities, Marijuana Product*  
132 *Manufacturing Facilities or Marijuana Testing Facilities.*  
133

134 **Section 3. The Code of Sussex County, Chapter 115, Article XI, §**  
135 **115-77 is hereby amended by inserting the italicized language therein**  
136 **as follows:**  
137

138 **§ 115-77. Permitted Uses.**  
139

140 A. A building or land shall only be used for the following purposes:  
141

141 . . .  
142

143 *Marijuana Cultivation Facilities, Marijuana Product Manufacturing*  
144 *Facilities or Marijuana Testing Facilities.*  
145

146 **Section 4. The Code of Sussex County, Chapter 115, Article XIA, §**  
147 **115-83.2 is hereby amended by inserting the italicized language**  
148 **therein as follows:**  
149

150 **§ 115-83.2. Permitted Uses.**  
151

152 A. A building or land shall only be used for the following purposes:  
153

153 . . .

154

155 *Marijuana Cultivation Facilities, Marijuana Product Manufacturing*  
156 *Facilities or Marijuana Testing Facilities.*

157

158 **Section 5. The Code of Sussex County, Chapter 115, Article XIC, §**  
159 **115-83.18 is hereby amended by inserting the italicized language**  
160 **therein as follows:**

161

162 **§ 115-83.18. Permitted Uses.**

163

164 A. A building or land shall on be used for the following purposes:

165 . . .

166 (1) Agriculture-related uses.

167 (a) Greenhouse, commercial

168 (b) Wholesale, retail nurseries for sale of products produced on  
169 site.

170 (c) *Marijuana Cultivation Facilities, Marijuana Product*  
171 *Manufacturing Facilities or Marijuana Testing Facilities.*

172

173 **Section 6. The Code of Sussex County, Chapter 115, Article XIC, is**  
174 **hereby amended by inserting a new § 115-83.19A “Conditional Uses”**  
175 **as follows:**

176

177 **§ 115-83.19A. Conditional Uses.**

178

179 The following uses may be permitted as conditional uses when approved  
180 in accordance with Article XXIV of this Chapter:

181

182 *Retail Marijuana Store, subject to the requirements of §115-194.6.*

183

184 **Section 7. The Code of Sussex County, Chapter 115, Article XIII, §**  
185 **115-94 is hereby amended by inserting the italicized language therein**  
186 **as follows:**

187  
188 **§ 115-94. Permitted Uses.**  
189

190 A. A building or land shall only be used for the following purposes:

191 . . .

192  
193 *(U) Marijuana Cultivation Facilities, a Marijuana Product*  
194 *Manufacturing Facilities or Marijuana Testing Facilities.*

195  
196 **Section 8. The Code of Sussex County, Chapter 115, Article XIV, §**  
197 **115-102 is hereby amended by inserting the italicized language**  
198 **therein as follows:**

199  
200 **§ 115-102. Permitted Uses.**  
201

202 A. A building or land shall be used for the following purposes, consisting  
203 of general light industrial, warehousing and storage uses, including  
204 certain open or enclosed storage of products, materials and vehicles,  
205 and including the following uses and any similar uses which are not  
206 likely to create any more offensive noise, vibration, dust, heat, smoke,  
207 odor, glare or other objectionable influences than the minimum amount  
208 normally resulting from other uses listed, such listed uses being  
209 generally wholesale establishments, service industries and light  
210 industries that manufacture, process, store and distribute goods and  
211 materials and are, in general, dependent on raw materials refined  
212 elsewhere, and manufacture, compounding, processing, packaging or  
213 treatment, as specified, of the following products or similar products:

214 . . .

215

216 *Marijuana Cultivation Facilities, Marijuana Product Manufacturing*  
217 *Facilities or Marijuana Testing Facilities.*

218

219 **Section 9. The Code of Sussex County, Chapter 115, Article XV, §**  
220 **115-110 is hereby amended by inserting the italicized language**  
221 **therein as follows:**

222

223 **§ 115-110. Permitted Uses.**

224

225 A building or land shall only be used for the following purposes:

226 A. General enumeration.

227 . . .

228

229 *Marijuana Cultivation Facilities, Marijuana Product Manufacturing*  
230 *Facilities or Marijuana Testing Facilities.*

231

232 **Section 10. The Code of Sussex County, Chapter 115, Article XXV**  
233 **“Supplementary Regulations”, is hereby amended by inserting the**  
234 **italicized language therein as a new § 115-194.6 therein as follows:**

235

236 **§ 115-194.6. *Marijuana Establishments.***

237

238 *All Marijuana Establishments shall be subject to the following*  
239 *requirements:*

240

241 *A. No Retail Marijuana Store shall be located within three miles of any*  
242 *municipal boundary.*

243 *B. No Retail Marijuana Store shall be located within three miles of any*  
244 *other Retail Marijuana Store.*

245 *C. No Retail Marijuana Store shall be located within three miles of any*  
246 *church, school, college, or substance abuse treatment facility as*  
247 *defined under §2203 of Title 16 of the Delaware Code.*

248 *D. Retail Marijuana Stores may only operate between the hours of 7:00*  
249 *a.m. and 9:00 p.m.*

250 *E. Any approved and licensed Marijuana Establishment in existence*  
251 *as of the date of adoption of this Ordinance shall be considered a*  
252 *legal, nonconforming use. Any licensed and approved pre-existing,*  
253 *legally nonconforming Retail Marijuana Store shall be subject to*  
254 *the hours of operation set forth in subsection D. herein.*

255

256

257 **Section 11. The Code of Sussex County, “115 Attachment 4, Sussex**  
 258 **County, Table IV Permitted Uses Commercial”, is hereby amended**  
 259 **by inserting the italicized language therein as follows:**

260

Blank = Not Permitted P = Permitted Use SUE =Special Use Exception CU = Conditional Use A = Permitted Accessory Use, see section D =Definition, see section	Zone B- 2	Zone B-3	Zone C-2	Zone C-3	Zone C-4	Zone C-5	Zone I-1
<b>Agriculture-Related Uses</b>							
<i>Marijuana Cultivation Facilities</i>				<i>P</i>			
<i>Marijuana Product Manufacturing Facilities</i>				<i>P</i>			
<i>Marijuana Testing Facilities</i>				<i>P</i>			
<b>Sales and Rental of Goods, Merchandise, and Equipment</b>							
<i>Retail Marijuana Store</i>				<i>CU<sup>5</sup></i>			

261

262 <sup>5</sup> *Subject to the requirements of §115-194.6.*

263

264 **Section 12. Severability.**

265

266 The provisions of this Ordinance are severable and if any of its provisions  
 267 or any sentence, clause, or paragraph or the application thereof to any  
 268 person or circumstance shall be held unconstitutional or violative of the  
 269 Laws of the State of Delaware by any court of competent jurisdiction, the  
 270 decision of such court shall not affect or impair any of the remaining  
 271 provisions which can be given effect without the invalid provision or  
 272 application.

273

274

275 **Section 13. Effective Date.**

276

277 This Ordinance shall take effect immediately upon its adoption by Sussex  
278 County Council.

279