

ORDINANCE NO. 3016

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

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

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

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

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

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

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

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

WHEREAS, it is the intention of Sussex County to permit Marijuana Establishments in an appropriate zoning district, with reasonable requirements concerning the proximity to

schools, churches, substance abuse treatment facilities and other Marijuana Establishments;  
and

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

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

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

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

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

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

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

...

**B.**

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

...

***Marijuana Commissioner***

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

***Marijuana Cultivation Facility***

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



*Marijuana Establishment*

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

*Marijuana Product Manufacturing Facility*

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

*Marijuana Products*

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

*Marijuana Testing Facility*

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

...

*Retail Marijuana Store*

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

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

§ 115-20. Permitted Uses.

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

...

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

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

§ 115-77. Permitted Uses.

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

...

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

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

§ 115-83.2. Permitted Uses.

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

...

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

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

§ 115-83.18. Permitted Uses.

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

...

(1) Agriculture-related uses.

(a) Greenhouse, commercial

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

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

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

§ 115-83.19A. Conditional Uses.

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

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

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

§ 115-94. Permitted Uses.

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

...

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

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

§ 115-102. Permitted Uses.

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

...

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

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

§ 115-110. Permitted Uses.

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

A. General enumeration.

...

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



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

*§ 115-194.6. Marijuana Establishments.*

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

- A. No Retail Marijuana Store shall be located within three miles of any municipal boundary.*
- B. No Retail Marijuana Store shall be located within three miles of any other Retail Marijuana Store.*
- C. No Retail Marijuana Store shall be located within three miles of any church, school, college, or substance abuse treatment facility as defined under §2203 of Title 16 of the Delaware Code.*
- D. Retail Marijuana Stores may only operate between the hours established for them by Title 4 of the Delaware Code.*
- E. Any approved and licensed Marijuana Establishment in existence as of the date of adoption of this Ordinance shall be considered a legal, nonconforming use. Any licensed and approved pre-existing, legally nonconforming Retail Marijuana Store shall be subject to the hours of operation set forth in subsection D. herein.*

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

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
Agriculture-Related Uses							
<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>			
Sales and Rental of Goods, Merchandise, and Equipment							
<i>Retail Marijuana Store</i>				<i>CU</i> <sup>5</sup>			

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

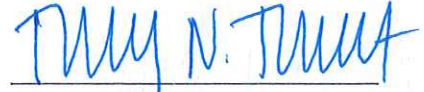
Section 12. Severability.

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

**Section 13. Effective Date.**

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

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 3016 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14<sup>TH</sup> DAY OF MAY 2024.**



**Tracy N. Torbert**  
**Clerk of the Council**