

**BOROUGH OF PENNINGTON
RESOLUTION 2023-6.6**

**RESOLUTION AWARDING LOCAL RETAIL CANNABIS LICENSE
TO JERSEY MEDS MANAGEMENT, LLC,
PURSUANT TO THE NEW JERSEY CANNABIS REGULATORY,
ENFORCEMENT ASSISTANCE, AND MARKETPLACE MODERNIZATION
ACT, N.J.S.A. 24:6I-31, ET SEQ., AND PENNINGTON ORDINANCE 2021-9**

Regulatory Framework

WHEREAS, the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31, et seq. (the “Personal Use Act”) legalizes the recreational use of marijuana by adults 21 years of age or older and establishes a comprehensive regulatory and licensing scheme for commercial production, distribution and sale of cannabis items;

WHEREAS, the Personal Use Act authorizes municipalities to adopt regulations by ordinance governing the number of cannabis establishments, distributors and delivery services allowed to operate within their borders, regulating the location, manner and times of operation of these establishments, distributors and delivery services, and establishing civil penalties for the violation of any such regulations, provided the time of operation of delivery services shall be subject only to regulation by the New Jersey Cannabis Regulatory Commission (N.J.S.A. 24:6I-45.a);

WHEREAS, by Ordinance 2021-9, entitled “Amended Ordinance Restricting the Number, Location and Operation of Cannabis Retailers, Medical Cannabis Dispensaries and Cannabis Delivery Services and Prohibiting All Other Cannabis Businesses and Operations in the Borough, Amending the Code of the Borough of Pennington” (hereafter “Ordinance” or “Ordinance 2021-9”), the Borough of Pennington has authorized as a conditional use the establishment of a single retail store for the sale of personal-use cannabis, subject to the following requirements: :

1. the store shall be licensed by the Cannabis Regulatory Commission (“CRC”) as a Class 5 retailer under the Personal Use Act;
2. the store shall be located in either the B–H Highway Business zoning district or the OB-Office Business zoning district;
3. the store shall be regulated as a “conditional use,” requiring the owner to satisfy as a condition of operation the restrictions on the number, location, manner and time of operation set forth in the Ordinance, as amended from time to time, including:
 - (a) the floor area of the licensed facility shall not exceed 2,500 square feet, as defined in Chapter 215 of the Borough Code;
 - (b) the operating hours of the dispensary shall be between 9 am and 8 pm daily;
 - (b) the store shall be accessible directly from a right-of-way through a separate entrance independent from any other retail ingress;
 - (c) no cannabis product shall be visible from a public sidewalk, public street or right-of-way or any other public place;
 - (e) all cannabis products shall be stored securely, indoors and onsite;
 - (f) consumption of cannabis products, by any means of ingestion, shall not be permitted in the licensed facility or adjacent grounds;
 - (g) the licensed facility shall implement odor control measures approved by the Board of Health;

(h) the licensed facility shall develop and implement security protocols subject to review and approval by the Pennington Borough Police Department;

(i) At a minimum, the following security measures must be undertaken:

[1] a video recording security system shall be employed covering all areas of the facility and the exterior of the building with a 24/7 recording system that records for a minimum 30-day archive;

[2] the facility and adjacent right-of-way shall be monitored by staff and kept free of loitering, litter and other debris, and the sidewalks shall be swept and cleaned on a regular basis;

4. the design of the building or structure required by the licensed facility shall conform to the general character of the area in which it is located;

5. the facility shall provide off-street parking and site access as required by Borough ordinances and applicable approvals of the Borough Planning Board;

6. the facility shall also comply with all applicable zoning, signage and site plan requirements and the specifications and standards of Sections 215-79 and 215-81 and other applicable provisions of Chapter 215 of the Borough Code, as may be amended from time to time;

WHEREAS, as authorized by the Personal Use Act, the Ordinance establishes a separate local licensing requirement as part of Borough restrictions on the number of cannabis retailers and their location, manner and times of operation, to the full extent permitted by law, and such license must be renewed annually;

WHEREAS, the issuance or renewal of a local license shall require a resolution of Borough Council finding that the applicant complies with all applicable Borough restrictions on the number of cannabis businesses and the location, manner and times of their operation, including continued compliance with all zoning and land use approvals and related conditions and standards;

WHEREAS, Borough Council may deny or revoke a local license or take other adverse action based on failure of compliance with restrictions, conditions and standards which are the basis for licensure, and to the extent permitted by law, possession of a valid local license shall be a condition precedent to operation of a cannabis business in the Borough;

WHEREAS, Borough Council shall notify the CRC in every case that Council either approves or denies an application for local licensure;

WHEREAS, the local licensing requirement shall be in addition to any land use approvals within the jurisdiction of the Borough Planning Board; .

WHEREAS, as authorized by the Personal Use Act and N.J.S.A. 40:48I-1.a (1), Ordinance 2021-9 imposes a transfer tax of up to two percent (2%) on the sale of cannabis or cannabis items by a cannabis retailer located in the Borough;

WHEREAS, municipalities imposing a transfer tax by ordinance are required by N.J.S.A. 40:48I-1.a (2) to include in the ordinance a user tax, equivalent to the transfer tax rate, payable by any concurrent license holder in the municipality operating more than one cannabis establishment and transferring cannabis or cannabis items to any of the license holder's other cannabis establishments, whether located in the same or other municipality, based on the value of each such transfer or use not otherwise subject to the transfer tax;

WHEREAS, any violation of the provisions of the Ordinance or the conditions of the

zoning permit granted, inclusive of any agreements or conditions imposed by the Planning Board, shall be punishable by a civil fine of no less than \$1,000.00 and no more than \$2,500.00, and all violations shall be reported to the CRC or other appropriate state authority;

Application for Local License by Jersey Meds Management, LLC

WHEREAS, Jersey Meds Management, LLC (“Jersey Meds”) has applied for a local license to locate and operate a retail cannabis store as lessee of Unit 5 in the Pennington Square Shopping Center, Block 206, Lot 3 on the Pennington Borough Tax Map, also known as 7 Route 31 North in the Borough of Pennington;

WHEREAS, the proposed location is in the BH - Business-Highway Zoning District of the Borough;

WHEREAS, in support of this application, New Jersey Meds has submitted the following information and related documents:

1. On May 2, 2022, Borough Council approved Resolution 2022-5.23, titled “Resolution in Support of Application of Jersey Meds Management, LLC for Class 5 Cannabis Retail License.” The Resolution was adopted as proof of local support for the suitability of the location proposed by Jersey Meds, proof required to be submitted by Jersey Meds as part of its application to the CRC for State licensure. This Resolution confirmed Jersey Meds’ commitment to comply with all conditions of use and other requirements contained in the Ordinance and set forth above. The Resolution was also contingent upon a detailed review of Jersey Meds’ proposed physical plant and plan of operations by applicable local authorities in accordance with the Ordinance and such zoning and land use approvals required by law. A copy of Resolutions 2022-5.23 is attached.

2. On June 10, 2022, the Pennington Borough Zoning Officer issued a letter to the attorneys for Jersey Meds certifying that Jersey Meds’ cannabis retail store and intended operation at 7 Route 31 North in Pennington will conform with local zoning requirements allowing the operation of a cannabis retailer as a “conditional use,” provided that before the store will be permitted to open it must obtain necessary land use approvals from the Pennington Planning Board, including a determination that the store will in fact satisfy the conditions for conditional use set forth in the zoning ordinance. Jersey Meds also required this Letter as part of its application for licensure to CRC. A copy of this Zoning Letter is attached.

3. Jersey Meds subsequently received from the CRC a “Final Agency Decision – Approval of Conditional License Application” dated July 29, 2022, issued for the location in the Pennington Square Shopping Center at 7 Route 31 North in Pennington. A copy of this Conditional License approval is attached.

4. Jersey Meds then applied to the Planning Board for approval as a conditional use under the Ordinance and, after published notice as well as mailed notice to all property owners within 200 feet, presented testimony at a hearing before the Board on December 14, 2022. Jersey Meds’ application to the Board included a sealed Conditional Use Plan dated November 17, 2022 prepared by Tristate Engineering and Surveying, PC (Project No. 22-139, 1 sheet); sealed Traffic Impact Study captioned “Trip and Parking Generation letter,” dated November 10, 2022, prepared by McMahon, A Bowman Company, signed by Victor C. Anosike, P.E.; a sealed floor plan, dated October 11, 2022, prepared by Ben Catarinicchia, AIA of Zacs International, LLC (Project No. Z22-023, 2 sheet); and the sealed drawing for the proposed signage, dated November 9, 2022, prepared by Albert B. Varosi, P.E., P.P., C.M.E. from Blazing Visual (1 sheet). These documents are on file with the Secretary to the Board.

5. The hearing before the Planning Board included reports by the Borough Planner, the Borough Engineer and the Pennington Police Department, testimony by Jersey Meds’ Cannabis Consultant (Siegel), Architect (Catarinicchia) and Engineer and Planning Consultant (Mancini), as well as testimony by the Board’s Planning Consultant (Kyle) and Engineering Consultant (Perry). One member of the public also spoke.

6. With respect in particular to security requirements, the Planning Board considered the report

of the Pennington Police Department, dated December 6, 2022, by Chief Douglas M. Pinelli, As reported, based on the Chief's review of Jersey Meds' security plans, floor layout, preliminary map of camera locations, and consultation with Jersey Meds' security team, the plans were determined to be sufficient to meet all standards of both the local safety protocol and the federal and state rules and regulations. The report expresses confidence as well that Jersey Meds will work with the Borough during the opening phase to address any concerns that may arise. A copy of this Report is attached.

7. At the conclusion of the hearing on December 14, 2022, by a vote of 8 to 0, the Planning Board conditionally approved the Jersey Meds' application. This approval was memorialized by a Resolution adopted by the Board on January 11, 2023. A copy of this Resolution is attached.

8. The Planning Board approval finds that Jersey Meds' proposed use complies with all of the conditional use requirements set forth in the Ordinance (now Section 215-81 of the Borough Code), that there is adequate parking for this business within the Pennington Square Shopping Center, that Jersey Meds has developed an online ordering system for cannabis products which will permit prescribed pickup times to avoid congestion at peak times of day, and that Jersey Meds has also arranged for off-duty police officers to assist with the control of customers and traffic at the initial opening of the business.

9. The Planning Board approval is subject to the following conditions:

(a) That Jersey Meds shall at all times operate this retail business in accordance with the requirements of Section 215-81 of the Borough Zoning Code (the Ordinance), the CRC Rules and Regulations (N.J.A.C. 17:30, et seq.) and the Personal Use Act;

(b) That with respect to odor control, based on the representation by the Board of Health that it does not have the capability of evaluating and approving the ventilation system, Jersey Meds must retain a private licensed engineering firm to select a ventilation system to satisfy this condition of approval, and after installation, certify to the satisfaction of the Borough Engineer that the proposed ventilation system includes all of the odor control measures, including carbon-filter ventilation, needed to prevent odors from emanating from the property, with provision for maintenance and monitoring the system annually to ensure that it is working properly at all times;

(c) That Jersey Meds shall provide the Borough Clerk and Board Secretary copies of the Class 5 license required to operate the business, once it is received from CRC;

(d) That as part of the security plan, Jersey Meds must confiscate any fraudulent identification documents presented in an effort to purchase cannabis products on the property and immediately contact the Pennington Borough Police Department;

(e) That within 30 days of publication of the notice of this approval by the Planning Board Secretary, Jersey Meds must arrange with the owner of the Shopping Center to bring current all real property taxes and sewer and water charges owed by the Center.

10. Jersey Meds has since submitted to the Borough a report by Professional Engineer Albert B. Varosi, P.E., dated April 24, 2023, certifying among other things that he is a New Jersey licensed professional engineer retained by Jersey Meds, that he will ensure that the odor control system installed on the property, including carbon-filtered ventilation, will be satisfactory to mitigate cannabis-related odors emanating from the interior of the property, and that the activated carbon air filters will be installed in the return air filter track of the HVAC rooftop unit and both exhaust fans at the garage and bathroom locations, with the recommendation that they be replaced every four months.

11. Jersey Meds' Conditional License approval by CRC does not permit it to purchase, possess, or sell cannabis or cannabis products (N.J.A.C. 17:30-7.6(e)) until the Conditional License is replaced by an approved annual license. Jersey Meds has applied to the CRC for the annual license and its application is pending.

12. On June 5, 2023, officers of Jersey Meds appeared before Borough Council, provided testimony and responded to questions by Council Members.

13. Jersey Meds has represented that it will report its gross sales to the Borough quarterly **[INSERT DATES]** and will, in addition, work with the Borough to ensure that it has the supplemental information on gross sales necessary to permit the Borough to estimate expected revenues for the new budget cycle beginning at the end of the calendar year.

Findings

WHEREAS, on the basis of this record, Borough Council makes the following findings:

1. Except as specifically noted below, Jersey Meds' proposed Class 5 retail store complies with all applicable Borough restrictions on the number of cannabis businesses in the Borough and the location, manner and times of their operation, including compliance with all zoning and land use approvals and related conditions and standards, as required by the Ordinance (Section 215-81(15) of the Borough Code).

2. Exceptions, which shall be conditions precedent to issuance of a local license, are the following:

(a) Submission of expert certification to the Borough Engineer upon installation of the store's ventilation system, as required by Condition D at page (5) of the Planning Board Resolution of January 11, 2023 ("Planning Board Resolution");

(b) CRC Issuance of an annual Class 5 retail license to Jersey Meds, entitling Jersey Meds to open for business, and delivery of a copy of same to the Pennington Borough Clerk and to the Secretary to the Planning Board, consistent with Condition E at page (6) of the Planning Board Resolution;

(c) Documented confirmation that the owner of the Pennington Square Shopping Center has brought current all real property taxes and sewer and water charges for the Center, as required by Condition G at page (6) of the Planning Board Resolution;

(d) Documented confirmation that Jersey Meds has brought current all municipal land use application and escrow charges for its conditional use application before the Planning Board, as also required by Condition G at page (6) of the Planning Board Resolution;

(e) Jersey Meds and the Borough must agree upon a protocol for the reporting of gross sales data and the payment of transfer taxes and any user taxes as appropriate;

(f) In addition to fees and charges paid or payable to the Pennington Planning Board, Jersey Meds shall pay the Borough all required application and registration fees.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, as follows:

1. Borough Council adopts the recitals and findings set forth above.

2. Issuance of a local license to Jersey Meds for the operation of a Class 5 retail store at 7 Route 31 North in the Borough of Pennington is hereby approved subject to the following conditions precedent:

(a) Written confirmation by the Borough Engineer that a satisfactory expert certification has been submitted in accordance with Finding 2(a) above;

(b) Written confirmation by the Borough Clerk that the CRC has issued to Jersey Meds an annual license in accordance with Finding 2(b) above;

(c) Written confirmation by the Borough Tax Assessor that the owner of the Princeton Square Shopping Center has brought taxes and sewer and water charges current, in accordance with Finding 2(c) above;

(d) Written confirmation by the Secretary to the Planning Board that Jersey Meds has

brought current all land use application and escrow charges in accordance with Finding 2(d) above.

- (e) Agreement between the Borough and Jersey Meds on procedures for the payment of transfer and any applicable user taxes and the reporting of related gross revenue data, in accordance with Finding 3 above; .

3. The required writings in satisfaction of the above conditions may be received and approved by the Borough Administrator and need not require prior approval by Borough Council before issuance of the license.

4. The local license shall be issued to Jersey Meds by the Borough Clerk over the signatures of the Mayor and the Borough Clerk and in a form determined by them to be suitable for display on the premises of the Jersey Meds' store.

5. Issuance of the local license shall also be subject to the following continuing conditions:

- (a) Continued compliance with all applicable New Jersey State laws and regulations, including in particular the Personal Use Act, CRC Rules and Regulations, the requirements of Ordinance 2021-9 and the Code of the Borough of Pennington, all as may be amended from time to time.
- (b) Continued compliance with the conditions of Conditional Use approval by the Pennington Planning Board, as memorialized in the Planning Board Resolution including, inter alia, the required reporting of attempted use of fraudulent identification documents presented in an effort to purchase cannabis products, as set forth in Condition F at page (6) of the Planning Board Resolution.
- (c) Payment of all required taxes and fees owed to the Borough in accordance with the Ordinance and Borough Code, as may be amended from time to time.
- (d) The local license shall be prominently displayed in the Jersey Meds' store, visible to customers.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone					Marciante				
Chandler					Stern				
Gnatt					Valenza				

This is to certify that the foregoing is a true copy of a Resolution adopted by the Borough Council of the Borough of Pennington at a meeting on June 5, 2023.

Elizabeth Sterling, Borough Clerk