

**CITY OF NIAGARA FALLS, NY
PROPOSED ZONING ORDINANCE AMENDMENTS**

JUNE 13, 2022 AMENDMENTS - HIGH ENERGY USAGE OVERLAY DISTRICT

Additional definitions: “Cannabis,” “Cannabinoid Hemp,” “Cryptocurrency,” “Cryptocurrency Mining,” “Cryptocurrency Mining Facility,” “Cultivation,” “Data Center,” “Distributor,” “Hemp,” “High-Energy Uses,” “Industrial Hemp,” “Medical Cannabis,” “Microbusiness,” “Processor,” and “Registered Organization”.

Amendments as shown as underscored language to be added to Chapter Sections 1302.2.3, 1302.2.4, 1302.2.8, 1302.2.9, 1302.2.13, 1302.2.16, 1302.2.18, 1319.5, and 1326.4

SECTION I The CITY OF NIAGARA FALLS, NY ZONING ORDINANCE Is hereby amended as follows:

1303 DEFINITIONS

1303.2 List of Definitions:

1303.2.3 “C”

CANNABIS - All parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include hemp, cannabinoid hemp or hemp extract as defined by the New York State Marijuana Regulatory and Tax Act section 52, or any drug products approved by the federal Food and Drug Administration.

CANNABINOID HEMP - Any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of a percent delta-9 tetrahydrocannabinol.

CONTAINERS or SHIPPING CONTAINERS – A unit originally or specifically designed or used to store goods or merchandise during shipping or hauling by container upon ships, rail, or other types of transportation and are usually 8' wide and 8'6" high by either 20' or 40' length. Any container, including shipping containers, which has been converted and installed so as to be compliant with the requirements of a “building” pursuant to the New York State Building Code shall not be considered a Container or Shipping Container for purposes of this Section 1303.

CRYPTOCURRENCY - Digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds which do not require the backing of banking institutions. Cryptocurrency includes but is not limited to Bitcoin, Ethereum, and Litecoin.

CRYPTOCURRENCY MINING - The operation of specialized computer equipment for the purpose of processing cryptocurrency transactions to verify and add such transactions to a public ledger, known as a blockchain, or any data processing required to release new units of cryptocurrency. This activity typically involves the solving of algorithms as part of the development and maintenance of a blockchain which is a type of distributed ledger maintained on a peer-to-peer network. Typical physical characteristics of cryptocurrency mining include specialized computer hardware; High Density Load (HDL) electricity use; a high Energy Use Intensity (EUI) where the operating square footage as determined by the Utility is above 250kWh/ft²/year, or with a high load factor, in addition to the use of equipment to cool the hardware and operating space. For the purposes of the associated regulations, cryptocurrency mining does not include the exchange of cryptocurrency or any other type of virtual currency nor does it encompass the use, creation, or maintenance of all types of peer-to-peer distributed ledgers.

CRYPTOCURRENCY MINING FACILITY- Any facility where Cryptocurrency Mining is occurring, including a bitcoin blockchain verification facility or a bitcoin mine.

CULTIVATION, CANNABIS - Growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants for sale to certain other categories of cannabis license- and permit-holders.

1303.2.4 “D”

DATA CENTER – A physical facility used for the storage, management, processing, and/or transmission of digital data, which houses business computer systems, networking equipment, power supplies including generators, subsystems, and other associated components related to digital data operations. Data Centers do not include the generation or mining of cryptocurrency. They may also include other associated infrastructure used to support digital data operations such as ventilation/cooling systems, offices, conference rooms, and other administrative space for the purposes of supporting digital data operations.

DISTRIBUTOR - Any person who sells at wholesale any cannabis product, except medical cannabis, for the sale of which a license is required under the provisions of the New York State Marijuana Regulatory and Tax Act.

1303.2.8 “H”

HEMP - The plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration (THC) of not more than three-tenths of a percent on a dry weight basis. It shall not include "medical cannabis" as defined in this section.

HIGH-ENERGY USES – Business activities that require high energy consumption compared to other businesses in the applicable district(s) of the City of Niagara Falls. Cryptocurrency mining, data center, and cannabis cultivation are high-energy use activities, as defined in this Article.

1303.2.9 “I”

INDUSTRIAL HEMP - The plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

1303.2.13 “M”

MEDICAL CANNABIS - Cannabis, as defined in this section, intended for a certified medical use, as determined by the New York State Cannabis Control Board in consultation with the commissioner of health.

MICROBUSINESS, CANNABIS - A licensee that may act as a cannabis producer for the cultivation of cannabis, a cannabis processor, a cannabis distributor and a cannabis retailer provided such licensee complies with all requirements imposed by the New York State Marijuana Regulatory and Tax Act licensed producers, processors, distributors and retailers to the extent the licensee engages in such activities.

1303.2.16 “P”

PROCESSOR, CANNABIS - A licensee that extracts concentrated cannabis and/or compounds, blends, extracts, infuses, or otherwise manufactures concentrated cannabis or

cannabis products, but not the cultivation of the cannabis contained in the cannabis product.

1303.2 18 “R”

REGISTERED ORGANIZATION - A medical cannabis organization registered under Article 3 of the New York State Marijuana Regulatory and Tax Act.

1319 – OVERLAYS

1319.5 High Energy Usage Overlay District

The High Energy Usage Overlay District is intended to accommodate certain businesses, with operations and facilities that require high energy consumption compared to other businesses in the underlying district(s), and, if not properly regulated, can compared with other industrial uses also create high-noise levels and other negative impacts. The City of Niagara Falls recognizes that the use of equipment and facilities for certain businesses, such as cryptocurrency mining, data centers, and cannabis cultivation, have a significant impact on energy consumption which may run counter to the City’s commitment to further New York State’s energy goals through the Climate Leadership and Community Protection Act (CLCPA) and Green Amendment. As an Environmental Justice community, the City must protect the public health, safety, and general welfare of the City’s residents resulting from disproportionate environmental impacts.

To limit the cumulative impact that these businesses may have on the City, the City has determined that such businesses shall only be permitted within the boundaries of this overlay district. The City will impose conditions on businesses to mitigate impacts from high energy consumptions and other environmental impacts that may result from these businesses. This overlay district shall create incentive for new development in the area enhancing economic benefits, while protecting the public health and safety of the City’s residents.

1319.5.1 Applicability; Process

A. The High Energy Usage Overlay District is restricted to the following zoning districts: Business Park (I1) and Industrial (I2).The High Energy Usage Overlay District is superimposed over the base zoning districts as set forth in Schedule 8: Zoning Map. The regulation in this section shall only apply to those lands located within the boundaries of the High Energy Usage Overlay District. In such overlay district, proposed land uses are subject to the requirements set forth in this section, and, unless specified otherwise, in

addition to the requirements and standards applicable to the underlying district, including site plan requirements.

B. Applicants seeking to operate a Permitted Use identified in subsection 1319.5.2 shall petition the City Council for rezoning to High Energy Usage District pursuant to the procedure for Amendments under 1302.4 of this Ordinance.

C. Level 2 Site Plan Review pursuant to Section 1324.4.2 of this Ordinance shall be required.

D. A Special Use Permit shall be required for each use allowed in this District.

1319.5.2 Permitted Uses

A. Cryptocurrency Mining Facility

1. Cryptocurrency mining is prohibited as a home occupation or as an accessory use to any other use.

B. Data Centers

C. Cannabis Cultivation Facilities

1319.5.3 SEQRA

A rezoning under this Article shall be classified as Type I, under the State Environmental Quality Review Act ("SEQRA") and shall be subject to review pursuant to SEQRA codified at Environmental Conservation Law Article 8, its implementing regulations at 6 NYCRR Part 617, and the City of Niagara Falls Zoning Ordinance Section 1326. All applications shall submit a full Environmental Assessment Form in accordance with SEQRA, which shall include an evaluation by a qualified professional of sound levels and characteristics (such as pitch and duration) generated from proposed facilities in accordance with New York State Department of Environmental Conservation guidance for Assessing and Mitigating Noise Impacts.

1319.5.4 Supplemental Regulations

A. General Requirements

All proposed developments of cryptocurrency mining facilities, data centers, and cannabis cultivation facilities shall meet the following standards:

- 1. All activities authorized by this Article shall be conducted only in "Buildings," as that term is defined in Section 202 of the 2020 Existing Building Code of New York State. The use of shipping containers, railroad cars, semi-truck trailers or similar storage containers, whether existing structures or new structures, is prohibited as any component of an operation within the High Energy Usage Overlay District**

- unless such containers comply with all applicable provisions for a building under the 2020 Existing Building Code of New York State.
2. No façade shall have more than twenty percent (20%) of the area exposed with apparatus, including but not limited to, vents, fans, and HVAC systems.
 3. Electric fields shall not create interference with off-site premises, including telecommunications services.
 4. Environmental and Energy Impact Plan
 - a. Each applicant must provide an environmental and energy impact plan, prepared by a NY licensed engineer, in addition to the environmental assessment form required by SEQRA.
 - b. At a minimum, this environmental and energy impact plan will describe: the source of energy, anticipated energy impact of the development, mitigation efforts to offset energy consumption, energy efficiency of the development. The submission shall include an assessment of the proposed use's potential electrical consumption on the capacity available to serve the other needs of the neighborhood (as defined by the electric circuit or substation for the property).
 - c. It will also include verification that any e-waste generated from the facility will be handled by a New York State Department of Environmental Conservation-licensed recycling firm.
 5. Cryptocurrency Mining Facilities shall be required to develop or purchase sufficient renewable energy to offset 100 percent of the electricity to be consumed by the cryptocurrency mining operation. It shall be the responsibility of the Cryptocurrency Mining Facility to demonstrate compliance with this requirement at the time of application, and on an annual basis by use of a renewable energy source directly servicing the Facility, and/or by acquiring renewable energy credits. Annual reporting shall occur by March 31 of each year on a form to be provided by the City. A facility governed hereunder shall be allowed to acquire any credits necessary to remedy any deficit by March 31 of the following year, any surplus credits shall carry over to the following year. If a Cryptocurrency Mining Facility fails to acquire sufficient renewable energy or fails to file the required reporting on a timely basis, the City Council may, after a public hearing and opportunity to respond, terminate the special use permit of the Cryptocurrency Mining Facility.
 6. Site Plan Review of projects with a High Energy Usage District shall consider whether additional landscaping, fencing, or other mitigation is required to mitigate noise and visual impacts.
 7. In addition to noise limitations in any other City ordinance, it shall be unlawful for noise levels generated by a high energy use facility, which includes all buildings, structures, containers, and/or ancillary equipment of the facility on the same lot, to exceed 1) forty (40) dBA between the hours of 10:00 pm and 7:00 am, daily, and any time during weekend hours, and 2) fifty (50) dBA during any other time. For purposes of this section, noise levels shall be measured
 - a) by a Sound Level Meter (SLM), an instrument (commonly handheld) designed to measure sound levels in a standardized way. At a minimum, it is comprised of a microphone, a preamplifier, signal processing components and a display. For the purposes of this document, it shall be a Type 1 or 2 SLM (handheld

Commented [PR1]: Kept this term consistent with the rest of the City's Zoning Ordinance.

type) meeting the American National Standards Institute (ANSI) S1.4 criteria standard;

b) at the nearest residential property line of the noise source.

Commented [SD2]: This is the basic concept on noise. If we are only going to have a noise ordinance, then this paragraph will be removed

B. Bulk Regulations

All permitted uses and their structures within the boundaries of the High Energy Usage Overlay District shall comply with the bulk regulation of the underlying district.

1. Setbacks

All permitted uses and their structures in a High-Density Overlay District are subject to the greater of the setbacks of the underlying zone or the following setback requirements. Notwithstanding requirements of an underlying district, no maximum setbacks apply.

<u>Minimum Front Yard Setback</u>	<u>40 feet</u>
<u>Minimum Side Yard Setback</u>	<u>20 feet</u>
<u>Minimum Rear Yard Setback</u>	<u>20 feet</u>

2. Buffer

Buildings utilized for High Energy Uses shall be two hundred (200) feet from other Residential, Neighborhood Commercial, or Downtown zoned parcels.

C. Non-Conforming Uses or Structures

1. Notwithstanding any other law or provision of the City of Niagara Falls to the contrary, lawful nonconforming uses governed by this Article shall have ninety (90) days from the effective date of this provision to come into compliance with the law. The period for which the nonconforming use is permitted to continue can be extended an additional six (6) months by the City Council.

2. Nothing in this section shall be read as authorizing or permitting any High-Energy Use governed by this Article, whether or not in a Building, to operate for any period of time after the effective date of this provision, where that use and the structure housing it are not both fully compliant with all applicable laws on the effective date of this provision.

D. Cannabis Cultivation Facilities

Proposed cannabis cultivation facilities will be subject to the following standards:

1. Cannabis cultivation facilities must have a New York State license.
2. Cannabis cultivation facilities must comply with New York State energy standards, and any future energy standards promulgated by the Cannabis Control Board or Office of Cannabis Management.

3. **Facilities must be used only for the purposes of cultivating cannabis unless they meet one of the following requirements:**
- a. **The proposed cultivation facility may also conduct activities related to processing and/or distribution in conjunction with cultivation, so long as they are licensed by New York State to conduct such additional activities.**
 - b. **If the proposed development is classified as a “microbusiness” as defined in the MRTA, the proposed development may conduct additional activities of processing, distributing, and retail selling of cannabis so long as the development is also used for cultivation.**
 - c. **If the proposed development is classified as a medical cannabis organization, defined in the MRTA as a “registered organization,” such proposed development may conduct additional activities of processing, distributing, and retail selling of cannabis so long as the development is also used for cultivation.**

1319.5.5 Conflict.

In the event of a conflict between this Section 1319 and any other portion of the City Of Niagara Falls, NY Zoning Ordinance, the provisions of this Section 1319 shall supersede and govern.

1326 - ENVIRONMENTAL QUALITY REVIEW

1326.4 - Type I Actions

B. The granting of a zoning change to a High Energy Usage Overlay District, at the request of an applicant, that meets the requirements and standards of Section 1319.5.

Schedule 1 – Use Table

See attached

SECTION 2 Severability Clause.

- a) If any part of this Ordinance Amendment is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Amendment or the Ordinance.
- b) If any specific requirement for a permit under Section 1319, or for a use permitted under Section 1319, is for any reason held to be unconstitutional or invalid, such decision shall not

affect the remaining requirements for any required permit for a use permitted under Section 1319.

c) The City Council of the City of Niagara Falls hereby declares that it would have passed this Local Law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid