

**ORDINANCE 10-2021**

**AN ORDINANCE OF THE TOWNSHIP OF MENDHAM, COUNTY OF MORRIS, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE TOWNSHIP'S GEOGRAPHICAL BOUNDARIES AND AMENDING CHAPTER XXI, ZONING REGULATIONS OF THE LAND USE ORDINANCES OF THE TOWNSHIP OF MENDHAM CODE**

**WHEREAS**, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called "cannabis" for adults at least 21 years of age; and

**WHEREAS**, on February 22, 2021, Governor Philip Murphy signed into law P.L. 2021, c. 16, known as the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (the "Act"), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and

**WHEREAS**, the Act establishes six (6) marketplace classes of licensed businesses, including:

- **Class 1:** Cannabis Cultivator License, for facilities involved in growing and cultivating cannabis;
- **Class 2:** Cannabis Manufacturer License, for facilities involved in the manufacturing, preparation, and packaging of cannabis items;
- **Class 3:** Cannabis Wholesaler License, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;
- **Class 4:** Cannabis Distributor License, for businesses involved in transporting cannabis plants in bulk from on licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to another;
- **Class 5:** Cannabis Retailer License for locations at which cannabis items and related supplies are sold to consumers; and
- **Class 6:** Cannabis Delivery License, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchases items to a consumer, and which service would include the ability of a consumer to make a purchase directly through the cannabis delivery service which would be presented by the delivery service for fulfillment by a retailer and then delivered to a consumer.

**WHEREAS**, Section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in Section 3 of the Act as "a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer"), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location, manner and operation times of such establishments, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, Section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere within the municipality; and

**WHEREAS**, Section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

**WHEREAS**, pursuant to Section 31b of the Act, the failure to do so shall mean that for a period of five (5) years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and

**WHEREAS**, at the conclusion of the initial and any subsequent five (5) year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

**WHEREAS**, the Township Committee of the Township of Mendham has determined that, due to present uncertainties regarding the potential future impacts allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on Township of Mendham in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Township of Mendham's residents and members of the public who visit, travel, or conduct business in Township of Mendham, to amend Township of Mendham's zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of Township of Mendham.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Mendham, County of Morris, State of New Jersey, as follows:

**SECTION 1.** Chapter XXI, Zoning Regulations, of the Land Use Regulations of the Township of Mendham, Subsection 21-2 Establishment of Districts, is hereby supplemented to establish as new Section 21-2.4 entitled "Cannabis Businesses Prohibited," to read as follows:

**21-2.4 Cannabis Businesses Prohibited**

**A. Definitions.**

For purposes of this Chapter, the following definitions shall apply:

"**Cannabis**" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L. 2016, c. 16 for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307 (C.24:61-1 et al.) and P.L.2015, c.158 (C.15A:40-12.22 et al.); marijuana as defined in N.J.S.2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L.2001, c.114 (C.2C:35B- 1 et seq.), or marijuana as defined in section 2 of P.L.1970, c.226 (C.24:21-2) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226

(C.24:21-1 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.).

**"Cannabis cultivator"** means any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

**"Cannabis delivery service"** means any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer.

**"Cannabis distributor"** means any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

**"Cannabis establishment"** means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

**"Cannabis manufacturer"** means any license person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

**"Cannabis retailer"** means any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to consumers from a retail store, and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. A cannabis retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a cannabis delivery service which will be delivered by the cannabis delivery service to that consumer.

**"Cannabis wholesaler"** means any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

**"Medical cannabis organizations"** means any person or entity licensed, or an applicant for a license, to operate as medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary, clinical registrant or an alternative treatment center under the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (c. 24:61-1 et al).

#### **B. Cannabis establishments, distributors and delivery services prohibited.**

1. Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16) (N.J.S.A. 24:61-45b) all cannabis

establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the Township, except for the delivery of cannabis items and related supplies directly to a consumer for personal use by a New Jersey licensed cannabis delivery service having its license premises based at a location outside the geographic boundaries of the Township, and which the delivery of such cannabis items and related supplies is initiated from such licensed location.

2. This prohibition shall be read and construed to apply equally to any and all Medical Cannabis Organizations holding a license, or applicants for such a license, issued under the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (c. 24:61-1 et al), to the extent such Medical Cannabis Organizations, or applicants for such licenses, seek to concurrently operate or to otherwise hold a cannabis a Class 1 Cannabis Cultivator license, Class 2 Cannabis Manufacturer license, Class 3 Cannabis Wholesaler license, Class 4 Cannabis Distributor license, Class 5 Cannabis Retailer License and/or a Class 6 Cannabis Delivery License under section 33, (C.24:61-46a(3)(a)(i) thru (3)(a)(iv) of "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act."
3. The concurrent operation of a cannabis a Class 1 Cannabis Cultivator license, Class 2 Cannabis Manufacturer license, Class 3 Cannabis Wholesaler license, Class 4 Cannabis Distributor license, Class 5 Cannabis Retailer License and/or a Class 6 Cannabis Delivery License under section 33, (C.24:61-46a(3)(a)(i) thru (3)(a)(iv) of "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Moderation Act" is hereby prohibited at any premises of a licensed Medical Cannabis Organization or applicant for such license, under the Jake Honig Compassionate Use Medical Cannabis Act, P.L. 2009, c. 307 (c. 24:61-1 et al).

**SECTION 2.** Any article, chapter, section, paragraph, subsection, clause, or other provision of the Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

**SECTION 3.** In case, for any reason, any portion or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other portion or provision of this Ordinance, except so far as the portion or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof

**SECTION 4.** This ordinance shall take effect twenty (20) days following final passage, approval, and publication as required by law.

INTRODUCED: June 28, 2021

ADVERTISED: July 03, 2021

PUBLIC HEARING: July 26, 2021

ADOPTED: July 26, 2021

ADVERTISED: July 30, 2021

ATTEST:

TOWNSHIP OF MENDHAM  
IN THE COUNTY OF MORRIS

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Maria F. Coppinger, Township Clerk

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Sarah Neibart, Mayor