

**CITY OF UNION CITY
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE 2021 – 7

**ORDINANCE AMENDING CHAPTER 223, TO PROHIBIT THE OPERATION OF
CANNABIS ESTABLISHMENTS, DISTRIBUTORS AND DELIVERY SERVICES
WITHIN THE CITY OF UNION CITY AND AMENDMENT TO SECTION 50
THEREOF**

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the City of Union City (“City”) is a municipality as defined by Title 40 of the New Jersey Statutes; and

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 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 marketplace classes of licensed businesses, consisting of:

- 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 one 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 purchased 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; and

WHEREAS, Section 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”; and

WHEREAS, Section 31a of the Act authorizes municipalities, including the City, to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and

WHEREAS, Section 31a of the Act also authorizes municipalities to adopt by ordinance regulations governing the local licensing endorsement, location, manner and times of operation of cannabis establishments and cannabis distributors, and the location and manner of cannabis delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, Section 31b of the Act authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality, except for the delivery of cannabis items and related supplies by a delivery service based and initiated from outside of 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 21, 2021); and

WHEREAS, pursuant to Section 31b of the Act, the failure to do so shall mean that for a period of five 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-year period following a failure to enact local regulations or prohibitions, the municipality shall again, in 2026, 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 with appropriate approvals within the municipality; and

WHEREAS, the Board of Commissioners has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on the City in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the City’s residents and members of the public who visit, travel, or conduct business in the City,

to amend the City's zoning regulations to prohibit all manner of cannabis-related land use and development within the geographic boundaries of the City, at this time; and

WHEREAS, the City of Union City wishes to amend Chapter 223, Article VI of the Code of the City of Union City to include Section 51 entitled "Prohibition on the Operation of Any Class of Cannabis Businesses Within the City of Union City" as authorized by N.J.S.A. 40:48-2 and section 31 of the Act; and

WHEREAS, the City of Union City wishes to make clear that this Ordinance is not intended or shall be read as prohibiting or otherwise affecting or impacting the establishment or operation of medical marijuana (now termed "medical cannabis" under the Act) alternative treatment centers within the City as presently permitted under Section 50 within Article VI of Chapter 223, of the Code of the City of Union City, and to update the terms of said Section's provision's reference to reflect the current statutory language of New Jersey's "Jake Honig Compassionate Use Medical Cannabis Act" P.L.2009, c.307 (C.24:6I-1 et al.) and P.L.2015, c.158 (C.18A:40-12.22 et al.) as amended by the Act, and related recent cannabis legislation; and

WHEREAS, after introduction of this Ordinance, but prior to its final adoption by the Board of Commissioners, the Municipal Clerk will have referred this Ordinance to the Planning Board of the City of Union City for its consideration and considered any report issued by it, if any, as may be required by N.J.S.A. 40:55D-64 and 55D-26a; and

WHEREAS, after introduction of this Ordinance, but prior to its final adoption, the Municipal Clerk will have provided all required notices of its consideration for final adoption as may be required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the City of Union City, County of Hudson, State of New Jersey that the Code of the City of Union City is hereby amended and revised as follows:

SECTION ONE

Chapter 223, Article I, Section 5 titled "Definitions" is hereby supplemented to include the following definitions relevant to the prohibition on cannabis uses within the City.

"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.2021, c.16 (C.24:6I-31 et al.) 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.24:6I-1 et al.) and P.L.2015, c.158 (C.18A: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 marihuana 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 licensed 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.

“**MARIJUANA**” has the meaning given in N.J.S.A 24:6I-3.

“MEDICAL CANNABIS” has the meaning given to it in N.J.S.A. 24:6I-33
“MEDICAL CANNABIS ALTERNATIVE TREATMENT CENTER” has the meaning given in N.J.S.A. 24:6I-3 and 24:6I-33.

SECTION TWO

There Shall be included a Section 51 within Article VI of Chapter 223, of the Code of the City of Union City, that shall read as follows:

§ 223-51 “Cannabis establishments, distributors and delivery services prohibited.

- A. Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), (“the Act”) all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the City of Union City (“City”) and shall also be considered a prohibited use for all purposes under this Chapter, and for purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., in all zones, districts and areas of the City, except for the delivery of cannabis items and related supplies by a licensed cannabis delivery service based and initiated from a cannabis delivery service licensed location outside of the City.
- B. It is the purpose of the City in enacting this Section that all Cannabis activity otherwise permitted by the Act, but as to which the City may prohibit within 180 days of the effective date of the Act, pursuant to Section 31b thereof entitled “Municipal Regulations or Ordinances,” be prohibited, and that this Section be understood, read and applied as broadly as possible to effectuate such purpose.
- C. Nothing in this Section, however, is intended or shall be read as prohibiting or otherwise affecting or impacting the establishment or operation of medical marijuana alternative treatment centers within the City, authorized by, and operated in full compliance with, New Jersey’s Compassionate Use Medical Marijuana Act. P.L. 2009, c.307 (2010), codified at N.J.S. 24:6I-1, et seq., as may otherwise have been permitted by the Code of the City of Union City, including Chapter 223, Article VI, Section 50 thereof, at the time of the adoption of P.L. 2021, c. 16, or medical cannabis alternative treatment centers, as provided for in Section Three of this Ordinance.

SECTION THREE

Chapter 223, Article VI, Section 50 of the Code of the City of Union City, is hereby amended to read as follows:

§ 223-50 Medical Cannabis Alternative Treatment Centers

- A. Medical cannabis alternative treatment centers may be established and operate within the City of Union City, so long as such centers are authorized by, and operate in full compliance with the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.). Medical cannabis alternative treatment centers are

the only entities authorized to distribute medical cannabis within the City of Union City. No other entity may purchase, sell, resell, manufacture, prepare, package or otherwise cause to enter into commerce, marijuana or any derivative thereof.

- B. Nothing in this Section, however, is intended or shall be read as prohibiting or otherwise affecting or impacting the establishment or operation of medical marijuana alternative treatment centers within the City, authorized by, and operated in full compliance with, New Jersey’s Compassionate Use Medical Marijuana Act. P.L. 2009, c.307 (2010), codified at N.J.S. 24:6I-1, et seq., as may otherwise have been permitted by the Code of the City of Union City, including Chapter 223, Article VI, Section 50 thereof, at the time of the adoption of P.L. 2021, c. 16.

SECTION FOUR

Severability. If any term or provision of this Ordinance is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in whole or in part, such determination shall not affect the validity of the remaining terms and provisions of this Ordinance.

SECTION FIVE

Repealer. To the extent that any provision of the Code of the City of Union City is found to conflict with this Ordinance, in whole or in part, this Ordinance shall control. In all other respects, the Zoning and Land Use Regulations Ordinance of the City of Union City shall remain unchanged.

SECTION SIX

In order to avoid accidental repeal of existing provisions, the City Clerk and the Corporation Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

SECTION SEVEN

This Ordinance shall take effect upon passage and publication as required by law.

Commissioners	Yea	Nay	Abstain/Present	Absent
Lucio P. Fernandez				
Wendy Grullon				
Celin J. Valdivia				
Maryury A. Martinetti				
Mayor Brian P. Stack				

I HEREBY CERTIFY this to be a true and correct Ordinance of the City of Union City Board of Commissioners, introduced on April 20, 2021 and was further considered and adopted after a Public Hearing held on May 4, 2021 at Union Hill Middle School, 3808 Hudson Avenue, Union City, New Jersey.

INTRODUCED: April 20, 2021

ADOPTED: May 4, 2021

ATTEST:

Erin Knoedler
City Clerk

DATE

SUMMARY OF ORDINANCE

This ordinance amends the zoning provisions of the Code to prohibit the operation of cannabis establishments, cannabis distributors, or cannabis delivery services in the City of Union City to the maximum extent permitted by Section 31 of P.L. 2021, c. 16. This ordinance does not prohibit or otherwise affect or impact the establishment or operation of medical marijuana alternative treatment centers within the City of Union City, otherwise permitted by the Code and updates such code provision permitting such centers.