

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #01-2022

AN ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING PART II, GENERAL LEGISLATION, OF THE BOROUGH CODE TO PROHIBIT LICENSING OF RECREATIONAL CANNABIS BUSINESSES OF ALL CLASSES WITHIN THE BOROUGH.

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,” N.J.S.A. 24:6I-31 et seq. (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 the following six marketplace classes of business licenses to be issued by the State of New Jersey Cannabis Regulatory Commission for the legal operation of cannabis establishments and other types of cannabis marketplace activity in the State, 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 Distributer 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 licensed 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, N.J.S.A. 24:6I-45a, authorizes municipalities to adopt ordinances and regulations prohibiting outright and/or limiting the number of any class of license “cannabis establishments” (defined in section 33 of the Act, N.J.S.A. 24:6I-33, as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors and cannabis delivery services allowed to operate within its municipal boundaries; and the location, manner and times of operation of such cannabis establishments, cannabis distributors and cannabis delivery services, except that the time of operations for cannabis delivery services, shall only be subject to the regulation by the Cannabis Regulatory Commission (the “Commission”); and

WHEREAS, section 31a of the Act, N.J.S.A. 24:6I-45a, also authorizes municipalities to establish certain civil penalties for violations of any ordinance or regulations governing cannabis establishments, distributors or delivery services that may operate in a municipality, as well as to their location, manner and times of operation; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, authorizes municipalities to prohibit, by ordinance, the operation of any one or more classes of cannabis establishments, cannabis distributors, and the principal premises of a cannabis delivery service from anywhere in the municipality, but not the actual delivery of cannabis items and related supplies by a licensed cannabis delivery service operating outside the boundaries of the municipality; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, also stipulates that any municipal ordinance, regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 22, 2021); and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, provides that a municipality’s failure to adopt such ordinances within 180 days, shall result in any cannabis cultivator, manufacturer,

wholesaler, distributor or delivery service to be deemed a permitted use in all industrial zones of the municipality for an initial period of five years, first beginning on August 22, 2021; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, also provides that a municipality's failure to adopt such ordinances within 180 days shall result in a cannabis retailer being authorized to operate in all commercial/retail zones in a municipality as a conditional use, subject to meeting certain conditions of the Borough, or receiving a variance from one or more of those conditions in accordance with the "Municipal Land Use Law," P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.) for a period of five years, five years, first beginning on August 22, 2021;

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a municipality's failure to enact local ordinances, regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but such ordinances would be prospective only and would be inapplicable to any cannabis establishments, cannabis distributors and cannabis delivery services already operating within the municipality; and

WHEREAS, section 31c of the Act, N.J.S.A. 24:6I-45c, authorizes municipalities to impose a separate local licensing or endorsement requirement as part of its restrictions on the number of cannabis establishments, distributors or delivery services; and

WHEREAS, the Mayor and Council of the Borough of Mendham have determined that due to the detrimental impacts that permitting one or more classes of cannabis business might have on New Jersey municipalities in general, and on our community in particular, it is necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough's residents and members of the public who visit, travel, or conduct business in the Borough, to amend the Borough's regulations to prohibit all manner of cannabis-related businesses within the geographic boundaries of the Borough; and

WHEREAS, on May 24, 2021, the Borough adopted Ordinance 10-2021, amending Chapter 215, Zoning, of the Borough Code to prohibit the operation of any class of recreational cannabis business within the Borough; and

WHEREAS, in addition to designating such businesses as prohibited uses through the Borough's Zoning Code, the Mayor and Council wish to further express the Borough's intent to prohibit the operation of any cannabis businesses within the Borough by amending the General Legislation portion of the Borough Code to prohibit the issuance of licenses by the Borough for any class of cannabis business.

THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

SECTION 1. Part II, General Legislation, of the Borough Code is hereby amended to establish new Chapter 70, "Cannabis, Recreational Business Licensees Prohibited" to read as follows:

§ 70-1 Definitions.

Cannabis

Shall mean 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.24:6I-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 Consumption Area

Shall mean and refer to a "Cannabis Consumption Area" as defined under P.L. 2021, c. 16 §3, N.J.S.A. 24:6I-33, of the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act".

Cannabis Cultivator

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

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

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

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer or a cannabis distributor.

Cannabis Item

Any item available for lawful consumption pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.).

Cannabis Manufacturer

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

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

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.

Cannabis Licensed Marketplace

A license issued under relevant State law including a license that is designated as either a:

- A. Class 1 Cannabis Cultivator license
- B. Class 2 Cannabis Manufacturer license
- C. Class 3 Cannabis Wholesaler license
- D. Class 4 Cannabis Distributor license
- E. Class 5 Cannabis Retailer license
- F. Class 6 Cannabis Delivery license

The term shall also include a conditional license for a designated class, except when the context of the provisions of relevant State law otherwise intend to only apply for a license and not a conditional license.

The term shall also include any activity related to cannabis cultivation, cannabis manufacturing, cannabis wholesale, cannabis distribution cannabis retail and/or cannabis delivery service by a pre-existing alternative treatment center deemed to concurrently hold any one or more class(es) of the above-listed cannabis license(s) pursuant to PL. 2021, c. 16 §33, N.J.S.A. 24:6I-46, and P.L. 2021, c.16 §34 of the Act, amending N.J.S.A. 24:6I-7; but shall not include the pre-existing alternative treatment’s activities related to medical cannabis cultivation, medical cannabis manufacturing, medical cannabis processing and/or medical cannabis dispensing by a pre-existing medical cannabis alternative treatment center pursuant to a license or conditional licensed issued by the State of New Jersey pursuant to the “Jake Honing Compassionate Use Medical Cannabis Act,” P.L. 2009, c. 307 (N.J.S.A.24:6I-1 et seq.) and P.L. 2015, c. 158 (N.J.S.A. 18A:40-12.22 et seq.).

Consumption

Shall mean the act of ingesting, inhaling, or otherwise introducing medical cannabis items and/or cannabis items into the human body.

Delivery

Shall mean the transportation of cannabis items and related supplies to a consumer. “Delivery” shall also mean the use by a licensed cannabis retailer of any third party technology platform to receive, process, and fulfill orders by consumers, which third party shall not be required to be a licensed cannabis establishment, distributor, or delivery service, provided that any physical acts in connection with fulfilling the order and delivery shall be accomplished by a certified cannabis handler performing work for or on behalf of the licensed cannabis retailer, which includes a certified cannabis handler employed or otherwise working on behalf of a cannabis delivery service making off-premises deliveries of consumer purchases fulfilled by that cannabis retailer.

Indoor Public Place

Shall mean a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public, including, but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c. 136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c. 492 (C.30:5B-1 et seq.); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single-family dwelling.

Licensee

Shall mean a person or entity that holds a license issued under P.L. 2021, c. 16 (C.24:6I-31 et al.) including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor License, a Class 5 Cannabis Retailer License, a Class 6 Cannabis Delivery license, and also includes: a person or entity that holds a conditional license for a designated class; a person or entity holding a pre-existing Medical Cannabis Cultivator License, pre-existing alternative treatment center permit first issued by the State of New Jersey, Department of Health, Division of Medicinal Marijuana in accordance with the provisions of the “Jake Honing Compassionate Use Medical Cannabis Act” (P.L. 2009, c. 307, N.J.S.A.24:6I-1 et seq., and P.L. 2015, c. 158, N.J.S.A. 18A:40-12.22 et seq.) prior to February 22, 2021, and approved by the Borough to hold a concurrent municipal license to operate as a Class 1 Cannabis Cultivator, Class 2 Cannabis Manufacturer, Class 3 Cannabis Wholesaler and/or Class 4 Cannabis Distributor in accordance with the provisions hereinafter and P.L. 2021, c. 16 §33, N.J.S.A.

24:6I-46, and P.L. 2021, c.16 §34, (amending N.J.S.A. 24:6I-7) of the Act; and/or any other person or entity holding a local annual cannabis license issued by the Borough pursuant to this Code.

Manufacture

Means the drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. “Manufacture” does not include packaging or labeling.

“Personal Use” and/or “Recreational Use”

Means the purchase, sale, possession, and/or consumption of cannabis items by person(s) who are not a Registered Qualifying Patient under the “Jake Honing Compassionate Use Medical Cannabis Act” P.L. 2009, c. 307 (N.J.S.A.24:6I-1 et seq.) and P.L. 2015, c. 158 (N.J.S.A. 18A:40-12.22 et seq.).

“Premises” or “licensed premises”

Means the following areas of a location licensed under P.L.2021, c.16 (C.24:6I-31 et al.): all public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms; all areas outside a building that the Cannabis Regulatory Commission has specifically licensed for the production, manufacturing, wholesaling, distributing, retail sale, or delivery of cannabis items; and, for a location that the commission has specifically licensed for the production of cannabis outside a building, the entire lot or parcel that the licensee owns, leases, or has a right to occupy.

Public Place

Shall mean any place to which the public has access that is not privately owned, including but not limited to any property owned by the Borough of Mendham, the County of Morris, and or any other government subdivision of the State of New Jersey situated within the geographic boundaries of the Borough; or any place to which the public has access where alcohol consumption is not allowed, including, but not limited to, a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, playground, swimming pool, shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library, or any other public building, structure, or area.

Wholesale Trade

Shall mean establishments or places of business primarily engaged in selling merchandise to other businesses, including retailers, industrial, commercial, institutional, or professional business users, other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

§ 70-2 Purpose and Application.

- A. This Chapter has been adopted by the Borough Council of the Borough of Mendham to protect the public health, safety, and general welfare of the residents of the Borough of Mendham by prohibiting the issuance by the Borough of licenses that permit any recreational cannabis business to operate in the Borough.
- B. Applicability. The provisions herein shall apply to all licensees, persons, organizations and businesses operating and/or seeking to operate as any class of licensed cannabis establishment pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L. 2021, c. 16, N.J.S.A. 24:6I-31, et seq.

§ 70-3 Prohibitions on Cannabis Establishments, Cannabis Consumption Areas, and Cannabis Delivery Service Premises.

- A. Pursuant to section 31 of the Act, N.J.S.A. 24:6I-45b, Class 1 Cannabis Cultivation, Class 2 Cannabis Manufacturing, Class 3 Cannabis Wholesale and Class 4 Cannabis Distribution, including any pre-existing alternative treatment center or medical cannabis cultivator seeking to operate concurrently as a cannabis business or facility of any class, are hereby prohibited within the geographic boundaries of the Borough of Mendham.
- B. Pursuant to section 31 of the Act, N.J.S.A. 24:6I-45b, the operation of any Cannabis Retail Establishment and/or the retail sale of cannabis, cannabis items and related supplies by any person or business directly to consumers for recreational consumption, including by a licensed

Class 5 Cannabis Retailer and/or pre-existing alternative treatment center deemed to concurrently hold a Class 5 Cannabis Retailer license, is hereby prohibited within the geographic boundaries of the Borough of Mendham.

- C. Pursuant to section 31 of the Act, N.J.S.A. 24:6I-45b, the operating premises of any cannabis delivery service, including any New Jersey licensed Class 6 Cannabis Delivery Service, is hereby prohibited within the geographic boundaries of the Borough of Mendham. Nothing herein shall be construed to prohibit the delivery of cannabis items and related supplies within the Borough of Mendham by a New Jersey licensed Class 6 Cannabis Delivery Service to a consumer of 21 years of age or older for personal use from the licensed premises of a Class 6 Cannabis Delivery Service located outside the geographic boundaries of the Borough of Mendham.
- D. Pursuant to section 32 of the Act, N.J.S.A. 24:6I-21, Cannabis Consumption Areas are hereby prohibited from being located or otherwise operated within the geographic boundaries of the Borough of Mendham.

§ 70-4 Prohibition on the Issuance of Local Cannabis Licenses.

- A. No local annual cannabis license of any Class shall be authorized to be available for issuance by the Borough pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L. 2021, c. 16, (N.J.S.A. 24:6I-31, et seq.,) first commencing August 22, 2021.
- B. Any person, organization and/or business found to engage in the cultivation, manufacturing, wholesaling, distribution and/or retail sale of cannabis items shall be subject to a civil fine and penalty as set forth herein below.
- C. Any person, organization and/or business found to operate a delivery services from any premises within the geographic boundaries of the Borough shall be subject to a civil fine and penalty as set forth herein below.

§ 70-5 Manner of Delivery of Cannabis and Cannabis Items.

The actual delivery of cannabis and cannabis items by any Class 6 Cannabis Delivery services to a consumer occurring within the Borough shall be prohibited from taking place in any public place and shall only be permitted to take place within the confines of private property or indoor public places, and then only with the express written permission and authorization of the owner of the property.

§ 70-6 Civil Fines and Penalties.

- A. Any person(s), firm(s), business(es), corporation(s) and/or other organizations, including any licensed medical and/or cannabis establishment, found in violation of any provision(s) of this Code shall be subject to a civil fine and penalty not exceeding \$2,000.
- B. Each and every day any person(s), firm(s), business(es), corporation(s) and/or other organizations, including any licensed medical and/or cannabis establishment remains in violation of the provisions of this Code after the deadline for compliance set forth in any notice of violation issued by the enforcing officer(s) of the Borough shall be considered a continuing violation punishable as a separate and distinct offense and subject to a separate civil fine and penalty for each and every day the violation continues.
- C. The Municipal Court or Superior Court shall have jurisdiction to hear and decide any action(s) brought to enforce the provisions of this code, the hearing for which shall be conducted in a summary manner pursuant to N.J.S.A. 2B12-16a, and any final order imposing fines and penalties for a violation of this code shall be enforceable in the Municipal Court or Superior Court and collectible as a lien against the property of the violator in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12.

SECTION 2. All ordinances of the Borough of Mendham that are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon final passage and publication in the manner according to law.

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Introduction: January 12, 2022
Public Hearing: January 24, 2022

CERTIFICATION

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance introduced by the Council of the Borough of Mendham at a duly noticed regular meeting held on _____.

// Robin R. Kline //

Robin R. Kline, MAS, RMC, CMR
Municipal Clerk