

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 011-2021

**RE: AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF
CANNABIS BUSINESSES WITHIN THE TOWNSHIP OF UPPER’S
GEOGRAPHICAL BOUNDARIES AND AMENDING CHAPTER 20, SECTION 1.5 OF
THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF UPPER**

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, 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 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 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 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 times of operation 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 in 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 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 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 Upper 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 Township of Upper in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Township of Upper's residents and members of the public who visit, travel, or conduct business in the Township of Upper, to amend the Township of Upper's zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Township of Upper; and

WHEREAS, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (those organizations being the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts; and

WHEREAS, pursuant to N.J.S.A. 40:55D-89 the Upper Township Planning Board undertook reexamination of its Master Plan in August 2018, November 2018 and March 2020 to determine the major problems and objectives relating to land development within the Township; and

WHEREAS, the Planning Board's Master Plan Reexamination identified the need to provide and create the appropriate land use controls if the sale and production of marijuana is legalized, including the prohibition of same in the Township; and

WHEREAS, this amendment to the Upper Township Zoning Ordinance prohibiting marijuana – related land use and development was recommended in the periodic reexamination of the Master Plan by the Planning Board; and

WHEREAS, pursuant to N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26, this ordinance was referred by the Township Committee to the Upper Township Planning Board to determine the consistency of this ordinance with the Master Plan; and

NOW THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Upper, in the County of Cape May, State of New Jersey, as follows:

SECTION 1: Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the Township of Upper, except for the delivery of cannabis items and related supplies by a delivery service.

SECTION 2: Chapter 20, Section 1.5, entitled “Prohibited Uses”, of the Revised General Ordinances of the Township of Upper, is hereby amended as follows:

Add the following in Section 20-1.5(b):

4. All classes of cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service.

SECTION 3: REPEALER: All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 4: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 5: EFFECTIVE DATE: This Ordinance shall take effect immediately upon the final publication as required by law.

SECTION 6: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the section referred to above.

ATTEST:

BARBARA L. YOUNG, Township Clerk

RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 12TH DAY OF APRIL, 2021 AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD EXCLUSIVELY BY ELECTRONIC MEANS, ON THE 10TH DAY OF MAY, 2021 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

BARBARA L. YOUNG, TOWNSHIP CLERK
TOWNSHIP OF UPPER

Legislative History:

Introduced: April 12, 2021

Publication: April 16, 2021

Newspaper(s): The Press of Atlantic City

Second Reading & Public Hearing: May 10, 2021

Final Adoption: May 10, 2021

Final Publication Date: May 14, 2021

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on May 10, 2021 and notice of adoption was thereafter published pursuant to law in the Press of Atlantic City on May 14, 2021.

BARBARA L. YOUNG, Township Clerk