

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

ORDINANCE NO. 001-2026

**RE: AN ORDINANCE AMENDING CHAPTER 20, ZONING, OF THE CODE OF UPPER TOWNSHIP
TO CREATE A CANNABIS OVERLAY ZONE WITHIN THE CM2 ZONING DISTRICT AND TO
ALLOW CLASS 5 CANNABIS RETAIL SALES WITHIN THE CANNABIS OVERLAY DISTRICT**

WHEREAS, on November 3, 2020, registered New Jersey voters approved by a ratio of 67.08% voting in favor of legalizing recreational cannabis and 32.9% voting against, Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of recreational cannabis for adults at least twenty-one (21) years of age; and

WHEREAS, in the Township of Upper, a majority of the registered voters voted in favor of legalizing recreational cannabis in the State of New Jersey; and

WHEREAS, February 22, 2021, New Jersey Governor Philip Murphy signed the ‘New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act’ (the “Act”), N.J.S.A. 24:6I-1 et seq., into law, thereby effectively legalizing cannabis throughout the State of New Jersey; and

WHEREAS, the Act legalized the recreational use of cannabis and established a comprehensive regulatory and licensing scheme for the creation of a commercial cannabis industry within the state of New Jersey and specifically created six (6) distinct classes of commercial cannabis licenses related to growing, processing, distributing, wholesale, delivery, and retail uses; and

WHEREAS, the Act expressly authorized Municipalities the right to prohibit and/or permit the operation of any one or more classes of cannabis licenses, with the exception of the right of an outside delivery service to deliver cannabis within the jurisdiction of the municipality; and

WHEREAS, through the adoption of Ordinance 011-2021 on May 10, 2021, the Township of Upper previously enacted and Ordinance prohibiting the operation of any class of cannabis businesses within the Township of Upper’s geographical boundaries and amended Chapter 20, Section 1.5, of the Revised General Ordinances of the Township of Upper to reflect the same; and

WHEREAS, despite the prior adoption of Ordinance 011-2021, the Township of Upper is now permitted to amend Chapter 20 of the Revised General Ordinances of the Township of Upper to permit all or certain classes of cannabis businesses to operate within the Township of Upper upon approval by the Township Committee; and

WHEREAS, Chapter 20, Zoning, of the Municipal Code of the Township of Upper outlines permitted and prohibited land uses throughout the Township of Upper within all existing zoning districts; and

WHEREAS, upon consideration of the overwhelming number of New Jersey voters, specifically the majority of voters within the Township of Upper, who voted to approve Public Question No. 1 on November 3, 2020, the Township Committee of the Township of Upper finds it appropriate to exclusively permit one (1) Class 5 Cannabis Retail License to operate within the boundaries of the Township of Upper and further finds it necessary to amend Chapter 20 of the Municipal Code of the Township of Upper to permit cannabis retail sales within the Township of Upper; and

WHEREAS, The Township Committee of the Township of Upper deems it appropriate to prohibit Class 1 Cannabis Cultivation Licenses; Class 2 Cannabis Manufacturing Licenses; Class 3 Cannabis Wholesaler Licenses; Class 4 Cannabis Distributor Licenses; and Class 6 Cannabis Delivery Licenses for deliveries not conducted by a licensed Class 5 Cannabis Retail Sales licensee, throughout the Township of Upper.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Upper, County of Cape May, and State of New Jersey that Chapter 20, Zoning, of the Municipal Code of the Township of Upper, be and hereby is amended as follows:

SECTION 1. The following subsections of **Chapter 20, Zoning**, are hereby added and/or amended as follows:

§ 20-1.5(b)(2) – Prohibited Uses shall be amended to read as follows: “Drug paraphernalia shop, commonly referred to as “head” shops, except persons registered with the State Health Commissioner or referred to in N.J.S.A. 24:21-10, and also exempting any Class 5 Cannabis Retail licensee lawfully operating a cannabis retail sales facility within the Township of Upper.

§ 20-1.5(b)(4) - Prohibited Uses is amended to delete the entirety of the existing Code section and to replace the Code section as follows: “Prohibited uses shall also include the following classes of cannabis licenses created pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, set forth at N.J.S.A. 24:6I-1, et seq.;

Class 1 Cannabis Cultivation Licenses;
Class 2 Cannabis Manufacturing Licenses;
Class 3 Cannabis Wholesaler Licenses;
Class 4 Cannabis Distributor Licenses; and
Class 6 Cannabis Delivery Licenses for deliveries not conducted by a licensed Class 5 Cannabis Retail Sales licensee.

Nothing contained herein shall prohibit the delivery of cannabis items and related supplies by an approved and licensed cannabis delivery service.”

SECTION 2. § 20-2.1 - **Definitions** shall be amended to add the following:

CANNABIS

“Cannabis” means all part 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 the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, P.L.2021, c.16 (C. 24:6L-1, et seq.) for use in cannabis products, and medical cannabis intended for consumption by 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.); but shall under no circumstance include marijuana as defined in N.J.S. 2C:35-27 and applied to any offense set forth in Chapter 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 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 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 Delivery Services shall hold either a Class 5 Cannabis Retail License and maintain required approvals and authorizations outlined within N.J.A.C. 17:30-14.8 and N.J.S.A. 24:6I-44, or a Class 6 Cannabis Delivery license.

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 items 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. This person or entity shall hold a Class 5 cannabis retail license. The Holder of a Class 5 cannabis retail license shall also be permitted to provide delivery services subject to the provisions of N.J.A.C. 17:30-14.8 and N.J.S.A. 24:6I-44 and subject to obtaining the necessary authorizations and approvals from the New Jersey Cannabis Regulatory Commission.

SECTION 3. § 20-4.23 shall be enacted as follows:

Cannabis Overlay Zone

The Cannabis Overlay Zone shall be located within the CM2 Zoning District and same shall be specifically confined to Block 735, Lot 48; Block 735, Lots 50-52; Block 735, Lot 56; Block 735, Lots 61, 62.01, 62.02, 64, and 65; Block 736, Lots 42-43. The Cannabis Overlay Zone created herein shall be the only zone located within the boundaries of the Township of Upper where Class 5 Cannabis Retail Sales shall be permitted.

A. Purpose.

- (1) The CM2 Cannabis Overlay Zone is hereby enacted order to ensure that class 5 cannabis retail licenses are confined to specific areas of the CM2 Zoning District that are deemed to be appropriate locations for such use.
- (2) The CM2 Cannabis Overlay Zone establishes regulations in an effort to facilitate this type of use while protecting and promoting the general welfare of the community and the quality of life of existing residential and commercial uses located in close proximity to same.

B. Impact on underlying zoning.

- (1) The CM2 Cannabis Overlay Zone shall not replace the existing CM2 zoning regulations.
- (2) Any individual or entity seeking to develop property within the CM2 Cannabis Overlay Zone shall have the option to utilize or develop the property in accordance with the regulations of either the underlying CM2 zone or regulations outlined herein.

C. Permitted Uses.

- (1) All uses deemed to be permitted within the CM2 Zoning District;
- (2) Class 5 Cannabis Retail Stores.

D. Area and Yard requirements.

- (1) The area and bulk requirements of the underlying CM2 zone shall apply to the permitted uses within the CM2 Cannabis Overlay Zone.

E. Additional Requirements.

- (1) There shall be no more than one (1) Class 5 Cannabis Retail License issued in the Cannabis Overlay Zone of the CM2 Zoning District. Cannabis retail stores shall not be permitted within any other zoning district located within the Township of Upper.
- (2) Submission of a license application that is approved by the State of New Jersey and/or State of New Jersey Cannabis Regulatory Commission that permits the individual or entity to engage in the retail sales of cannabis shall be required to be provided to the Township of Upper prior to operation of a Cannabis Retail Store by a licensee.
- (3) Submission of a copy of the application for a Class 5 Cannabis Retail Sales license that was submitted to and approved by the State of New Jersey and/or Cannabis Regulatory Commission, along with all attachments submitted therewith, shall be required to be provided to the Township of Upper prior to operation of a Cannabis Retail Store by a licensee.
- (4) Compliance with any, and all, requirements that are set forth within the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, codified at N.J.S.A. 24:6I-1, et seq.
- (5) Compliance with all the area and bulk requirements of the CM2 Zoning District of the Township of Upper.
- (6) The design of any building must conform to the general character of the area and shall not adversely affect the safe and comfortable enjoyment of property rights in the zone in which it is located. All signage on any Class 5 Cannabis Retail Facility property shall be non-descript and shall not contain any pictorial display of cannabis plants, cannabis leaves, or any other commonly associated cannabis-related items.
- (7) No cannabis retail stores shall be located within 1,000 feet of any residential neighborhood, fire house, school, playground, church, hospital, public building, recreation facility, library, or public institution.
- (8) Hours of operation of any cannabis retail sales facility shall be limited to the hours between 9:00 a.m. and 10:00 p.m., seven days per week.
- (9) Cannabis consumption areas are prohibited on the licensed premises.
- (10) All cannabis delivery vehicles operating within the Township of Upper shall only be permitted to display the name of the Class 5 Cannabis Retail Facility in non-descript black lettering on the front driver's side and/or front passenger side of the delivery vehicle. No colorful and/or descript signage shall be permitted on cannabis delivery vehicles operating within the Township of Upper at any time.
- (11) All other applicable requirements of this Chapter shall be met.
- (12) To the extent that any of the provisions outlined herein are in conflict with rules and regulations promulgated by the New Jersey Cannabis Regulatory Commission, the rules and regulations of the New Jersey Cannabis Regulatory Commission shall govern and control

F. Site Plan Review.

- (1) Cannabis Retail Stores and/or Cannabis Delivery Stores/Services proposed to be located in existing buildings shall be exempt from site plan review provided no expansion or external renovations are proposed to same, except for the installation of an exterior door to the Cannabis Retail Store that is required to be installed pursuant to the requirements of the New Jersey Cannabis Regulatory Commission and CREAMM Act requirements.
- (2) Cannabis Retail Stores and/or Cannabis Delivery Stores/Services proposed to be located in new construction shall require site plan review and approval by the Planning Board of the Township of Upper.

SECTION 4. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 5. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION 6. This Ordinance shall become effective twenty (20) days after final passage and publication according to law.

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 JANUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT 6:30 P.M., AND PURSUANT TO RESOLUTION NO. 92-2026, ANY, AND ALL, FORMAL ACTION TAKEN BY THE TOWNSHIP COMMITTEE ON FEBRUARY 25, 2026, RELATED TO THIS ORDINANCE HAS BEEN RESCINDED AND THIS ORDINANCE WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A SECOND PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF MARCH AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER