

ORDINANCE NO. 8-2021

AN ORDINANCE BY THE TOWNSHIP OF EAST HANOVER IN THE COUNTY OF MORRIS, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING CHAPTER 95 LAND USE AND ZONING, SECTION 95-46.1 OF THE EAST HANOVER MUNICIPAL 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 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 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.

WHEREAS, section 31(a) 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 31(b) 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 31(b) of the Act further stipulates, however, that any municipal regulation or prohibition must be adopted within one hundred-eighty (180) days of the effective date of the Act (i.e. by or before August 22, 2021); and

WHEREAS, pursuant to section 31(b) of the Act, the failure to adopt such a regulation or prohibition 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 Mayor and the Township Council of the Township of East Hanover 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 East Hanover 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 East Hanover's residents and members of the public who visit, travel, or conduct business in the Township of East Hanover, to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Township of East Hanover as is permitted by the Act; 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 recreational 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.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of East Hanover, in the County of Morris, State of New Jersey, as follows:

1. Pursuant to section 31(b) 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 East Hanover, except for the delivery of cannabis items and related supplies by a delivery service.

2. Section 95-46.1 of the East Hanover Municipal Code is hereby amended by adding to the list of prohibited uses in all zones within the Township of East Hanover, the following under a new subsections G and H:

G. 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. Such uses include the following:

(1) “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 Cultivators refer to those uses that require possession of a Class 1 Cannabis Cultivator license under the P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

(2) “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 manufacturers refer to those uses that require a Class 2 Cannabis Manufacturer license under the P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

(3) “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. Cannabis wholesalers refer to those uses that require of a Class 3 Cannabis Wholesaler license under the P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

(4) “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 distributors refer to those uses that require possession of

a Class 4 Cannabis Distributor license under the P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

(5) “Cannabis retailer” means any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators¹ 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 retailers refer to those uses that require possession of a Class 5 Cannabis Retailer license under the P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

(6) “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 delivery services refer to those uses that require possession of a Class 6 Cannabis Delivery license.

H. Any business that, as part of its operations engages in the practice of gifting, sharing or otherwise giving away cannabis, cannabis items and/or related supplies. For purposes of this paragraph, “gifting, sharing or otherwise giving away” shall refer to instances in which (i) cannabis, cannabis items and/or related supplies are given away contemporaneously with another reciprocal transaction between the same parties; (ii) a gift of cannabis, cannabis items and/or related supplies is offered or advertised in conjunction with an offer for the sale of goods or services; or (iii) a gift of cannabis, cannabis items and/or related supplies is contingent upon a separate reciprocal transaction for goods or services.

3. Any article, section, paragraph, subsection, clause, or other provision of the Township of East Hanover inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

4. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

5. This ordinance shall take effect upon its passage and publication and filing with the Morris County Planning Board, and as otherwise provided for by law.

Attest:

TOWNSHIP OF EAST HANOVER

Paula A. Massaro, Township Clerk

Joseph Pannullo, Mayor

Introduced: June 7, 2021

Adopted: July 6, 2021

I, Paula A. Massaro, Township Clerk of the Township of East Hanover, County of Morris, do hereby certify the foregoing to be a true copy of an Ordinance adopted by the Township Council at a duly convened meeting held on July 6, 2021.

Paula A. Massaro, RMC, Township Clerk