

TOWNSHIP OF FREDON

ORDINANCE NO. 2021-08

AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE TOWNSHIP OF FREDON AND AMENDING ARTICLE V ENTITLED “GENERAL REGULATIONS” OF THE TOWNSHIP CODE TO INCLUDE NEW SECTION 550-43 PERTAINING TO SAME

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.
- 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 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 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 (5) 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, the Act does not prohibit a municipality from later enacting new regulations, at any point in the future, after its initial adoption of an ordinance prohibiting the operation of one or more classes of cannabis establishments, distributors, or delivery services by the August 22, 2021 prohibition deadline; and

WHEREAS, at the conclusion of the initial and any subsequent five (5) year period following a failure to enact an ordinance prohibiting the operation of any one or more classes of cannabis establishments, distributors, or delivery services, the municipality shall again have 180 days to adopt an ordinance prohibiting such 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 Fredon in Sussex County 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 Fredon in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety, and welfare of Township residents and members of the public who visit, travel, or conduct business in the Township of Fredon, to amend the Code of the Township of Fredon to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Township of Fredon; and

WHEREAS, 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, due to the desire to ensure uniformity throughout the Township regarding the prohibited wholesale or retail sale of cannabis products and related activities in the Township, the Township Committee desires to enact the instant legislation; and

WHEREAS, prior to the hearing on the adoption of this Ordinance, the Township Committee shall refer this Ordinance to the Land Use Board as required by N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26 of the Municipal Land Use Law; and

WHEREAS, the Township Clerk shall provide notice of the date, time, and place of the hearing on the adoption of this Ordinance to the Sussex County Planning Board pursuant to N.J.S.A. 40:55D-15 of the Municipal Land Use Law by personal service or certified mail, which notice shall also state the effective date of the Ordinance and include a copy of same; and

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Fredon, in the County of Sussex, and State of New Jersey as follows:

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 Fredon, except for the delivery of cannabis items and related supplies by a licensed delivery service located outside the Township of Fredon.

2. Article V of the Code of the Township of Fredon entitled “General Regulations” is hereby amended to add new § 550-43 entitled “Cannabis Business” as follows:

ARTICLE V. General Regulations

§ 550-43. CANNABIS BUSINESSES

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 are specifically prohibited in all zone districts of the Township of Fredon, except for the delivery of cannabis items and related supplies by a licensed cannabis delivery service located outside the Township of Fredon. Prohibited uses shall include: (1) facilities involved in growing, cultivating, and producing cannabis and cannabis items, (2) facilities involved in processing, manufacturing, preparing, and packaging cannabis and cannabis items; (3) facilities involved in obtaining, storing, selling, reselling or otherwise transferring cannabis and cannabis items; (4) businesses involved in transporting cannabis and cannabis items in bulk intrastate from one cannabis cultivator, manufacturer, wholesaler, distributor, or retailer to another; and (5) locations at which cannabis and cannabis items and related supplies are sold or dispensed to customers or consumers such as retail cannabis establishments and stores, cannabis consumption areas, and retail cannabis social clubs. Nothing herein shall be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary pursuant to the New Jersey Compassionate Use Medical Marijuana Act, N.J.S.A. 24:61-1 et seq.

3. The Township Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this Ordinance to the Sussex County Planning Board, the clerk of any adjoining municipality, and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63 (if required). Upon adoption of this Ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Sussex County Planning Board as required by N.J.S.A. 40:55D-16. The Clerk shall also forthwith transit a copy of this Ordinance after final passage to the Township Tax Assessor as required by N.J.S.A. 40:49-2.1.

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

5. 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.

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

Attest:

Suzanne Boland, RMC

Guy Masi, Deputy Mayor

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance passed second reading and was adopted by the Fredon Township Committee at a Regular Meeting of that body held on August 12, 2021.

Suzanne Boland, RMC

RECORD OF COMMITTEE VOTES				
COMMITTEE MEMBERS	AYES	NAYES	ABSTAIN	ABSENT
Mayor Flora				x
Committeeman Deitz	x			
Committeeman Lazzaro	x			
Committeeman Masi	x			
Committeeman Richardson				x