

# **TOWNSHIP OF FREDON**

## **ORDINANCE NO. 2021-11**

### **AN ORDINANCE BY THE TOWNSHIP OF FREDON, COUNTY OF SUSSEX, NEW JERSEY AMENDING CHAPTER 550 (ZONING) TO PERMIT CANNABIS CULTIVATION AND MANUFACTURING AS A CONDITIONALLY PERMITTED USE IN CERTAIN ZONES AND ADDING NEW CHAPTER 160 (CANNABIS TAX) TO THE TOWNSHIP 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 the following six marketplace classes of licensed businesses:

- 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 Distributor 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 31a of the Act authorizes municipalities by ordinance to adopt ordinances or 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 and distributors, but not the time of operation of delivery services, and establishing civil penalties for the violation of any such regulations; and

**WHEREAS**, section 31b of the Act requires municipalities that wish to prohibit or regulate one or more classes of cannabis-related activities do so only pursuant to an ordinance enacted pursuant to the specific authority to do so by section 31b, and invalidates any ordinance prohibiting one or more types of cannabis-related activities within the jurisdiction of the municipality enacted prior to February 22, 2021 as null and void,

**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, but not to prohibit the delivery of cannabis items and related supplies by a delivery service; 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**, section 40 of the Act permits a municipality to adopt an ordinance imposing a transfer tax on the sale of cannabis or cannabis items by a cannabis establishment that is located in the municipality on receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator; receipts from the sale of cannabis items from one cannabis establishment to another cannabis establishment; receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; or any combination thereof and to set its own rate or rates, but in no case exceeding: two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and two percent of the receipts from each sale by a cannabis retailer; and

**WHEREAS**, on August 12, 2021 the Township Committee adopted Ordinance No. 2021-08 prohibiting the operation of all six (6) classes of cannabis businesses within the Township; and

**WHEREAS**, after due consideration and consultation with the Planning Board, the Township of Fredon has determined that allowing and regulating one or more classes of cannabis business within the Township is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Township’s residents and members of the public who visit, travel,

or conduct business in the Township, and amending Township's zoning regulations to permit those cannabis-related activities, including land use and development, specified herein within certain geographic boundaries within the Township;

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of Fredon, County of Sussex, State of New Jersey, that:

### **SECTION 1**

All cannabis related uses of any nature or business license class are prohibited in all zones except as set forth hereinbelow.

### **SECTION 2**

No more than one cannabis establishment limited to one cannabis cultivator with ancillary cannabis manufacturing shall be permitted to locate in the Township of Fredon.

### **SECTION 3**

Subsection 550-78 (Conditional Uses) of Article XIII (MUMD – MIXED-USE MARKET ZONE DISTRICT) is amended to add new subsection (c) as follows:

Cannabis Cultivator and cannabis manufacturer (as such term is defined in Section 3 of P.L.2021, c. 16 - C.24:6I-33).

#### **§ 550-78(c)**

Cannabis Cultivator with ancillary manufacturer shall meet the following conditions when permitted as a conditional use:

1. Location: The property and facility shall have frontage on and direct access to Route 94.
2. Minimum Lot Size: The Lot shall not be less than ten (10) acres in size.
3. Building Size: The building's size shall be proportionate with the lot on which it is situated as follows:
  - A. No building or cultivation/manufacturer use shall occur on a lot less than 10 acres;
  - B. A building up to 45,000 sq. ft. may be situated on a lot of 10 acres or more;
  - C. A building with square footage up to 15% of the total area of the lot may be situated on a lot of 20 acres or more.
4. Building Requirements: The building shall be constructed as a permanent structure. No cultivation or manufacturing operations may take place in the following:
  - A. Greenhouse;
  - B. Shed;
  - C. Hoop House;
  - D. Open field.
5. Buffering Requirements: The following buffering requirements shall apply:
  - A. The building shall be located no less than 1,500 ft. from any property used for school purposes;
  - B. The building shall be located no less than 750 ft. from a private residence.

6. Signage: Signs shall be limited to street address and identification/name of business. Signage shall not promote consumption of any cannabis products. All other signage regulations in the Zone shall be met.

7. Allocation of Building Use: Cannabis manufacturing may only occur in a building used for cannabis cultivation. No more than twenty (20%) percent of a building used for cultivation may be allocated for manufacturing by a cannabis manufacturer, as well as office use in connection with the cultivation and manufacturing business.

8. Site Plan Approval: All Cannabis Cultivators require major site plan and conditional use approval. A Zoning Certificate cannot be issued until Board approval is obtained. When seeking site plan approval, Cannabis Cultivators shall submit the following for Board approval:

A. A safety and security plan, which shall include, but shall not limited to:

- a. Security lighting;
- b. Fencing, including the proposed height and materials;
- c. Security cameras;
- d. Fire evacuation;
- e. Chemical exposure and spill response plan.

B. An emergency services access plan;

C. Disposal plan for cannabis waste;

D. Water treatment, usage and discharge plan;

E. Septic System and waste plan;

F. Vehicle Parking and Traffic Circulation plan.

9. Product Consumption: No cannabis products shall be permitted to be consumed on-site.

10. Odor Control: The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the property line of the subject property. Odor from the facility shall be monitored periodically at the discretion of the Township by a licensed, qualified contractor chosen by the Township and paid for by the Operator.

#### **SECTION 4**

Subsection 550-84 (Conditional Uses) of Article XIV (LI - LIGHT INDUSTRIAL) is amended to add new subsection (c) as follows:

#### **§ 550-84(c)**

Cannabis Cultivator with ancillary manufacturer shall meet the following conditions when permitted as a conditional use:

1. Location: The property and facility shall have frontage on and direct access to Route 94.
2. Minimum Lot Size: The Lot shall not be less than ten (10) acres in size.
3. Building Size: The building's size shall be proportionate with the lot on which it is situated as follows:

A. No building or cultivation/manufacturer use shall occur on a lot less than 10 acres;

B. A building up to 45,000 sq. ft. may be situated on a lot of 10 acres or more;

C. A building with square footage up to 15% of the total area of the lot may be situated on a lot of 20 acres or more.

4. Building Requirements: The building shall be constructed as a permanent structure. No cultivation or manufacturing operations may take place in the following:

- A. Greenhouse;
  - B. Shed;
  - C. Hoop House;
  - D. Open field.
5. Buffering Requirements: The following buffering requirements shall apply:
- A. The building shall be located no less than 1,500 ft. from any property used for school purposes;
  - B. The building shall be located no less than 750 ft. from a private residence.
6. Signage: Signs shall be limited to street address and identification/name of business. Signage shall not promote consumption of any cannabis products. All other signage regulations in the Zone shall be met.
7. Allocation of Building Use: Cannabis manufacturing may only occur in a building used for cannabis cultivation. No more than twenty (20%) percent of a building used for cultivation may be allocated for manufacturing by a cannabis manufacturer, as well as office use in connection with the cultivation and manufacturing business.
8. Site Plan Approval: All Cannabis Cultivators require major site plan and conditional use approval. A Zoning Certificate cannot be issued until Board approval is obtained. When seeking site plan approval, Cannabis Cultivators shall submit the following for Board approval:
- A. A safety and security plan, which shall include, but shall not limited to:
    - a. Security lighting;
    - b. Fencing, including the proposed height and materials;
    - c. Security cameras;
    - d. Fire evacuation;
    - e. Chemical exposure and spill response plan.
  - B. An emergency services access plan;
  - C. Disposal plan for cannabis waste;
  - D. Water treatment, usage and discharge plan;
  - E. Septic System and waste plan;
  - F. Vehicle Parking and Traffic Circulation plan.
9. Product Consumption: No cannabis products shall be permitted to be consumed on-site.
10. Odor Control: The facility shall provide an air treatment system with sufficient odor absorbing ventilation and exhaust systems such that any odor generated inside the facility is not detectable by a person of reasonable sensitivity at the property line of the subject property. Odor from the facility shall be monitored periodically at the discretion of the Township by a licensed, qualified contractor chosen by the Township and paid for by the Operator.

## **SECTION 7**

A new Chapter 160, “Cannabis Tax”, shall be adopted as follows:

### **Chapter 160. Cannabis Tax**

#### **§ 160-1 Purpose.**

It is the purpose of this chapter to adopt an ordinance imposing a transfer tax and user tax permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), which shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon such property/facility.

## **§ 160-2 Imposition of tax.**

### **A. Transfer Tax**

1. There is hereby established in the Township of Fredon a transfer tax on sales that occur within the Township on:

(a) receipts from the sale of cannabis by a cannabis cultivator and/or cannabis manufacturer;

(b) receipts from the sale of cannabis items by a cannabis cultivator and/or cannabis manufacturer; and

2. The following rates apply to the transfer tax: two percent of the receipts from each sale by a cannabis cultivator; and two percent of the receipts from each sale by a cannabis manufacturer.

### **B. User Tax**

There is hereby established in the Township of Fredon a user tax, at the equivalent transfer tax rates, on any concurrent license holder, as permitted by section 33 of P.L.2021, c. 16 (C.24:6I-46), operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to § 27-2(a), from the license holder's establishment that is located in the Township of Fredon to any of the other license holder's establishments, whether located in the Township or another municipality.

## **§ 160-3 Collection of tax by cannabis establishments.**

A. The transfer tax or user tax shall be collected or paid, and remitted to the Township of Fredon by the cannabis establishment from the cannabis establishment purchasing or receiving the cannabis or cannabis item, or from the consumer at the point of sale, on behalf of the Township by the cannabis retailer selling the cannabis item to that consumer. The transfer tax or user tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable, or equivalent value of the transfer, for the cannabis or cannabis item.

B. Every cannabis establishment required to collect a transfer tax or user tax shall be personally liable for the transfer tax or user tax imposed, collected or required to be collected. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment or the consumer as if the transfer tax or user tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax or user tax was a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the chief financial officer of the Township shall be joined as a party in any action or proceeding brought to collect the transfer tax or user tax.

C. No cannabis establishment required to collect a transfer tax or user tax shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the transfer tax or user tax will not be separately charged and stated to another cannabis establishment or the consumer, or that the transfer tax or user tax will be refunded to the cannabis establishment or the consumer.

#### **§ 160-4 Remittance of tax revenue; Enforcement**

A. All revenues collected from a transfer tax or user shall be remitted to the chief financial officer of the Township of Fredon. The chief financial officer shall collect and administer any transfer tax or user tax and the Township shall enforce the payment of delinquent taxes or transfer fees in the same manner as provided for municipal real property taxes.

B. In the event that the transfer tax or user tax is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year.

C. The Township shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

#### **§ 160-5 Definitions**

As used in this Chapter:

“Cannabis” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis cultivator” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis establishment” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis items” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis manufacturer” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis retailer” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Cannabis wholesaler” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Consumer” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

“Premises” means the same as that term is defined in section 3 of P.L.2021, c. 16 (C.24:6I-33).

## **SECTION 8**

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid by a Court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance. All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

## **SECTION 9**

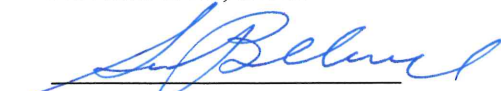
The Township Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. The Township Clerk is further directed to refer this Ordinance to the Township Planning Board, pursuant to N.J.S.A. 40:55D-64. Upon the adoption of this Ordinance, after public hearing, the Township Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

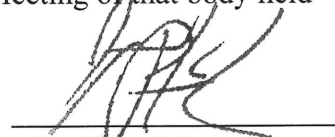
## **SECTION 10**

This Ordinance shall take effect immediately after final passage and publication.

### 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 November 22, 2021.

  
Suzanne Boland, Clerk

  
John Flora, Mayor

Introduced: October 28, 2021

Adopted: November 22, 2021