

ORDINANCE 30-2021

ORDINANCE OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE BOROUGH CODE, ENTITLED “LAND DEVELOPMENT” TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF MADISON

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the State of 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 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 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”; and

WHEREAS, Section 31a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of cannabis establishments, cannabis distributors and 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 to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services

anywhere in the municipality, except for the delivery of cannabis items and related supplies by delivery services based and initiated from outside of 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 21, 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, in 2026, 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 with appropriate approvals within the municipality; and

WHEREAS, any ordinance enacted by a municipality prior to the effective date of the Act addressing the issue of prohibiting one or more types of cannabis-related activities within the jurisdiction of the City is null and void; and

WHEREAS, the New Jersey Cannabis Regulatory Commission (the “CRC”), which is charged with regulating medical and personal-use cannabis industries in the State of New Jersey, has yet to promulgate regulations regarding the Act; and

WHEREAS, upon the promulgation of regulations by the CRC regarding the Act, the Borough Council may wish to revisit the regulation of cannabis businesses within the Borough of Madison; and

WHEREAS, the Borough Council of the Borough of Madison 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 Borough of Madison in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough of Madison’s residents and members of the public who visit, travel, or conduct business in the Borough of Madison, to amend the Borough of Madison’s land development regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough of Madison.

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Madison, County of Morris, 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 Borough of Madison, except for the delivery of cannabis items and related supplies by a delivery service.

Section 2 Chapter 195 of the Borough Code, entitled “Land Development”, subsection 195-5, entitled “Prohibited uses” shall hereby be amended and supplemented, as follows:

195-5 Prohibited uses.

- A. No change.
- B. No change.
- C. ****All classes of cannabis establishments, cannabis distributors and 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 from outside the Borough, shall be prohibited in all zone districts.****

Section 3. Any article, section, paragraph, subsection, clause, or other provision of the Borough Code of the Borough of Madison inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

Section 4. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be unconstitutional or 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.

Section 5. This ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

ROBERT H. CONLEY, Mayor

Attest:

ELIZABETH OSBORNE, Borough Clerk