

ELSINBORO TOWNSHIP

ORDINANCE NO. 2021-06

AN ORDINANCE AMENDING THE ELSINBORO TOWNSHIP CODE TO PROHIBIT ALL CLASSES AND TYPES OF CANNABIS-RELATED, MEDICAL CANNABIS-RELATED, AND OTHER MARIJUANA-RELATED LAND USES WITHIN ELSINBORO TOWNSHIP

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 on 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 purchases 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; and

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”),

and the number of “cannabis distributors” and “cannabis delivery services,” that are allowed to operate within their boundaries, as well as the location, manner, and times of operation of such establishments, distributors or delivery services, and to establish 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 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 31.b. of the Act, the failure to regulate or prohibit cannabis operations within the 180-day deadline 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, “medical cannabis”, as defined in the Act, has been previously legalized for dispensation to, and use by, registered qualifying patients pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (*N.J.S.A. 24:6I-1, et seq.*) and P.L.2015, c.158 (*N.J.S.A. 18A:40-12.22, et seq.*); and

WHEREAS, the Act includes numerous amendments to the Jake Honig Compassionate Use Medical Cannabis Act; and

WHEREAS, the Elsinboro Township Committee has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis business pursuant to the Act, or otherwise permitting any type of cannabis- or medical cannabis-related land use might have on New Jersey municipalities in general, and on Elsinboro Township in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Elsinboro Township’s residents and members of the public who visit, travel, or conduct business in Elsinboro Township, to amend Elsinboro Township’s zoning regulations to prohibit all manner of cannabis-related, medical cannabis-related, and any other marijuana-related land use and development within the geographic boundaries of Elsinboro Township, except for the lawful transfer and delivery of cannabis items, medical cannabis items, and cannabis- and medical cannabis-related supplies to locations within Elsinboro Township by transfer or delivery services that are based outside of Elsinboro Township, and the lawful possession and lawful private use of cannabis, medical cannabis, or other marijuana-related products by persons within Elsinboro Township; 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 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 deadline in order to ensure sufficient time to carefully review all aspects of the Act and its impacts, including its amendments to the Jake Honig Compassionate Use Medical Cannabis Act;

NOW THEREFORE BE IT ORDAINED, by the Township Committee of the Township of Elsinboro in the County of Salem, 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), Elsinboro Code Chapter 170 "Land Use," Part 2, Article III, Section 170-14 "Prohibited uses; construal of provisions" is hereby amended to include the following new subsection D. to *prohibit* all cannabis-related, medical cannabis-related, and other marijuana-related uses (other than specified lawful transfers, deliveries and uses) in all Elsinboro Township zoning districts:

D. All classes of "cannabis establishments" (including "cannabis cultivators," "cannabis manufacturers," "cannabis wholesalers," and "cannabis retailers"), "cannabis distributors," and "cannabis delivery services," as such terms are defined in Section 3 of the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (P.L. 2021, c. 16) (the "Act"); all medical cannabis-related land use and development, including but not limited to medical cannabis cultivators, medical cannabis manufacturers, medical cannabis dispensaries, and all other "alternative treatment centers" as defined by the Act; and all other cannabis- medical cannabis- and marijuana-related land use and development, whether recreational, medical or otherwise, and whether or not licensed or regulated pursuant to other laws, including but not limited to cannabis, medical cannabis, and marijuana cultivation, production, manufacturing, testing, and sales are prohibited in all Elsinboro Township zoning districts, provided that the lawful transfer and delivery of cannabis items, medical cannabis items, and cannabis- and medical cannabis-related supplies to locations within Elsinboro Township by transfer or delivery services that are based outside of Elsinboro Township, and the lawful possession and lawful private use of cannabis, medical cannabis, or other marijuana-related products by persons within Elsinboro Township, shall not be prohibited. The foregoing prohibitions have been enacted in conformance with Section 31.b. of the Act, to become effective prior to the August 22, 2021 deadline established in Section 31.b. of the Act.

2. The Elsinboro Township Clerk is directed to give notice of this Ordinance pursuant to *N.J.S.A. 40:55D-15* to the Clerks of all municipalities adjoining Elsinboro Township and to the Salem County Planning Board at least ten (10) days prior to the dated scheduled for hearing on the adoption of this Ordinance.
3. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid by a court of competent jurisdiction, such adjudication shall apply only to the section, paragraph subsection, clause or provision so adjudged, and the remainder of the Ordinance shall be deemed valid and effective.
4. Any article, section, paragraph, subsection, clause, or other provision of the Elsinboro Township Code that is inconsistent with the provisions of this Ordinance is hereby superceded to the extent of such inconsistency.
5. This Ordinance shall, following adoption and publication in accordance with the laws of the State of New Jersey, take effect immediately upon its filing with the Salem County Planning Board pursuant to *N.J.S.A. 40:55D-16*.

NOTICE

Notice is hereby given that the foregoing proposed Ordinance No. 2021-06 was introduced and passed on first reading by the Township Committee of the Township of Elsinboro, County of Salem, State of New Jersey, at a regular meeting held on June 7, 2021. A second reading and public hearing on the foregoing Ordinance will be conducted by the Township Committee at a regular meeting to be held on July 6, 2021 at 5:30 p.m., at the Elsinboro Township Municipal Building, 619 Salem Ft. Elfsborg Road, Elsinboro, New Jersey 08079, after which the Ordinance will be considered for final passage.

ATTEST:

Marty R. Uzdhanovics, Township Clerk

Sean Elwell, Mayor

CERTIFICATION

I hereby certify the above to be a true copy of an Ordinance introduced and passed by the Elsinboro Township Committee on second reading following a public hearing at a regular meeting held on July 6, 2021.

Marty R. Uzdhanovics, Township Clerk

DATE: _____