

**BOROUGH OF NEW PROVIDENCE
ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE,
COUNTY OF UNION, STATE OF NEW JERSEY
PROHIBITING THE OPERATION OF ANY CLASS OF
CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES**

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 Philip 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 (6) 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 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.

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

WHEREAS, officials from two prominent non-profit organizations established for the purpose of advising New Jersey municipalities on legal matters (New Jersey State League of Municipalities, and 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 district 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 Mayor and Council of the Borough of New Providence, County of Union, 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 Borough of New Providence, except for the delivery of cannabis items and related supplies by a delivery service.

2. Section 310-12 of the Code of the Borough of New Providence shall be amended to add the following: "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" so as to include such as prohibited uses.

3. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of New Providence 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. After introduction, the Borough Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Council of the Borough of New Providence within 35 days after referral, a report, including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

6. After introduction, the Borough Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least ten (10) days prior to the scheduled hearing, a copy of this Ordinance and a notice of hearing in accordance with N.J.S.A. 40:55D-15 to:

a. The Clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected property; and

b. The Union County Planning Board.

7. After adoption, the Borough Clerk is hereby directed to file a copy of this Ordinance with the Union County Planning Board in accordance with N.J.S.A. 40:55D-16.

8. The Ordinance shall become effective immediately upon its adoption, passage and publication according to law and filing with the Union County Planning Board.

INTRODUCTION: May 11, 2021
PUBLIC HEARING: June 15, 2021
ADOPTION:

Approved

Wendi B. Barry, Clerk
Borough of New Providence

Allen Morgan, Mayor
Borough of New Providence