

ORDINANCE 2021-10

*Borough of Metuchen
County of Middlesex
State of New Jersey*

AN ORDINANCE BY THE BOROUGH OF METUCHEN IN THE COUNTY OF MIDDLESEX, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION 110-93 OF THE METUCHEN CODE

WHEREAS, the Borough of Metuchen is supportive of the concept of the sale and distribution of cannabis but requires time for state regulation to be finalized; and

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, as set forth in more detail below, the Act requires that any municipal prohibition by the Borough of Metuchen must be adopted within 180 days of the effective date of the Act (i.e., by August 21, 2021), and that the failure to timely act shall mean that for a period of five years thereafter, the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall automatically 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 preclude a municipality from prohibiting cannabis establishments and operations within its municipal limits within the 180 days of the effective date of the Act and thereafter authorizing and/or permitting any one or more of the cannabis establishments (defined in section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”) within the municipality; and

WHEREAS, the State’s newly created Cannabis Regulatory Commission is charged with adopting rules including those for licensing applications and eligibility; the number of permissible licenses of each type; security requirements for licensees; labeling and packaging requirements; retailer employee eligibility criteria; and advertising and marketing limitations, however, to date has not yet promulgated such rules and regulations; 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 period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts; and

WHEREAS, the Council of the Borough of Metuchen has determined that it is in the best interest of the Borough to prohibit cannabis operations and establishments within the Borough until such time as the State promulgates rules and regulations relating to the various aspects of cannabis operations, licensing, eligibility, security, labeling, and marketing and the Borough has had the opportunity to thoroughly review and analyze all classes of cannabis licensing and establishments, as described below, along with the Borough's specific zoning districts, regulations and needs and the potential impact it may have upon the Borough and its residents; 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.

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

NOW THEREFORE, BE IT ORDAINED, by the Municipal Council of the Borough of Metuchen, in the County of Middlesex, 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 Borough of Metuchen, except for the delivery of cannabis items and related supplies by a delivery service.

2. Section 110-93, of the Metuchen Code, entitled, "Specific prohibited uses" is hereby amended by adding subsection "Z" to the list of specific prohibited uses, to include and state 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."

3. The Borough Clerk is hereby directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Middlesex County Planning Board and all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15, including to the Clerks of adjoining municipalities. The Borough Clerk shall execute Affidavits of Proof of Service of the

notices required by this Section, and shall keep the Affidavits on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

4. After introduction, the Borough Clerk is hereby directed to submit a copy of this Ordinance to the Planning Board of the Borough of Metuchen 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 Mayor and Council, within thirty-five (35) days after referral, a report including identification of any provisions in this proposed Ordinance which are inconsistent with the Borough’s Master Plan and recommendations concerning any inconsistencies and any other matters as the Board may deem appropriate.

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

6. 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.

7. This Ordinance shall take immediately upon: (i) adoption; (ii) publication in accordance with the laws of the State of New Jersey; and (iii) filing of the final form of adopted Ordinance by the Borough Clerk with the Middlesex County Planning Board pursuant to N.J.S.A. 40:55D-16.

Introduction: June 14, 2021
 Date of Publication: June 18, 2021

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB	
DELIA	X				KOSKOSKI	X				
HIRSCH	X				RASMUSSEN	X				
KANDEL	X				RUBIN	X				
MOTION	KOSKOSKI			SECOND		RASMUSSEN				
X – INDICATES VOTE				AB- ABSENT			NV- NOT VOTING			

I hereby certify the foregoing to be a true copy of an ordinance introduced by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on June 14, 2021.

 Deborah Zupan
 Acting Borough Clerk

Adopted: June 28, 2021
Date of Publication: July 2, 2021

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
DELIA	X				KOSKOSKI	X			
HIRSCH	X				RASMUSSEN	X			
KANDEL	X				RUBIN	X			
MOTION	KOSKOSKI				SECOND	RASMUSSEN			
X – INDICATES VOTE		AB- ABSENT			NV- NOT VOTING				

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on June 28, 2021

Deborah Zupan
Acting Borough Clerk

ATTEST:

BOROUGH OF METUCHEN

Deborah Zupan
Acting Borough Clerk

By: _____
Jonathan M. Busch
Mayor