

**TOWNSHIP OF MONTGOMERY
SOMERSET COUNTY, NEW JERSEY**

ORDINANCE NO. 21-1665

**AN ORDINANCE BY THE TOWNSHIP OF MONTGOMERY IN SOMERSET
COUNTY, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF
CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND
AMENDING SECTIONS 3-20 AND 16-1.5 OF THE TOWNSHIP OF MONTGOMERY
MUNICIPAL 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, the majority of residents voting on Public Question No. 1 in the Township of Montgomery voted 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 (6) marketplace classes of licensed businesses, including:

- Class 1 Cannabis Cultivator license, for facilities involved in the 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 licenses;
- Class 4 Cannabis Distributer license, for businesses involved in transporting cannabis plants in bulk 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 (on February 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 conditional use in all commercial and retail zones; and

WHEREAS, at the conclusion of the initial and any subsequent five (5) year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulation 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 Township Committee of the Township of Montgomery recognizes that a marijuana arrest in New Jersey can have a debilitating impact on a person’s future, including consequences for one’s job prospects, housing access, financial health, familial integrity, immigration status, and educational opportunities; and

WHEREAS, black and brown New Jerseyans are nearly three times more likely to be arrested for marijuana possession than white New Jerseyans, despite similar usage rates; and

WHEREAS, the Township Committee of the Township of Montgomery 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

Township of Montgomery particularly, it is necessary and appropriate, and in the best interest of the health, safety and welfare of the Township of Montgomery's residents and members of the public who visit, travel, or conduct business in the Township of Montgomery, to amend the Township of Montgomery's zoning regulations to prohibit all manner of marijuana-related land use and development within the geography boundaries of the Township of Montgomery; and

WHEREAS, 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 the Township of Montgomery; 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 the Township of Montgomery would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review; and

WHEREAS, the Township Committee will continue to monitor and study the potential impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on the Township of Montgomery particularly; and

WHEREAS, The Township Committee reserves the right to modify the Township of Montgomery zoning ordinances, at any time, regarding one or more classes of cannabis businesses as new information becomes available regarding the impact such zoning amendment may have on the Township of Montgomery

NOW THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Montgomery, in the County of Somerset, 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 Township of Montgomery, except for delivery of cannabis items and related supplies by a delivery service.

SECTION 2. Chapter 3, Police Regulations, Section 20 "Prohibition on Marijuana", of the Code of the Township of Montgomery, is hereby renamed "Prohibition on Cannabis".

SECTION 3. Chapter 3, Police Regulations, Section 20.1 "Conduct Prohibited", of the Code of the Township of Montgomery, is hereby repealed and replaced with the following:

"The growing, cultivation, production, manufacturing, storage, distribution and/or sale of regulated or unregulated cannabis, cannabis products, and any ancillary or related paraphernalia, and facilities, businesses or establishments, are hereby prohibited within the Township of Montgomery."

SECTION 4. Chapter 16, Land Development, Section 1.5 "Prohibited Uses", paragraph c. of the Code of the Township of Montgomery is hereby repealed and replaced with the following:

“c. Pursuant to the provisions of § 3-20 of this Code, facilities, businesses, establishments, structures and uses for or in connection with the growing, cultivation, production, manufacture, storage, distribution, and/or sale of regulated or unregulated cannabis, cannabis products and any ancillary or related paraphernalia, are hereby prohibited throughout the Township of Montgomery. This prohibition shall include, but not be limited to, 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 supplied by a delivery service.”

SECTION 5. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Township of Montgomery, inconsistent with the provisions of this Ordinance is hereby repealed to the extent of such inconsistency.

SECTION 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.

SECTION 7. This Ordinance shall take effect upon its passage and publication and filing with the Somerset County Planning Board, and as otherwise provided for by law.

ATTEST:

Clerk

Mayor