

**ORDINANCE NO. 10-2021**  
**AN ORDINANCE AMENDING BOROUGH CODE § 13-5.2(A)(12.10), ALL ZONES,  
PROHIBITING THE OPERATION OF EVERY CLASS OF CANNABIS BUSINESSES  
WITHIN THE BOROUGH OF MORRIS PLAINS**

**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 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**, the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined by 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**, the Act also stipulates 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**, 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 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 Morris Plains, in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough’s residents and members of the public who visit, travel, or conduct business in the Borough of Morris Plains, to amend the Borough’s zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough; and

**WHEREAS**, the Council wishes to revisit this matter after sufficient data is available concerning the economic and public-health interests affected by allowing one or more classes of cannabis licensees to operate within the Borough, and after sufficient regulatory guidance is provided, and the Borough remains open to amending the Code

at such time to allow one or more classes of cannabis licensees to operate within the Borough as and if determined to be in the best interest of the health, safety and welfare of the Borough's residents and members of the public who visit, travel, or conduct business in the Borough; 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 desires to amend Borough Code 13-5.2(A)(12.10), All Zones, prohibiting all cannabis establishments, cannabis distributors and cannabis delivery services, except for the delivery of cannabis items and related supplied by a delivery service.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Morris Plains, Morris County, New Jersey, that this Ordinance shall be adopted as part of the Morris Plains Borough Code as follows:

**SECTION 1**

Borough Code 13-5.2(A)(12.10), All Zones, is hereby deleted in its entirety and replaced with the following:

**§ 13-5.2(A)(12.10)** All zones. The uses enumerated in this section are prohibited throughout the Borough. This proscription may not be altered, modified or varied, except through amendment of this chapter. No deviation from this prohibition may be authorized pursuant to N.J.S.A. 40:55D-70d. The following uses are prohibited in all zones:

**(a)** Pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all classes of cannabis licenses, including but not limited to, all cannabis establishments, cannabis distributors and/or cannabis delivery services are hereby prohibited from operating anywhere in the Borough of Morris Plains, except for the delivery of cannabis items and related supplies by a delivery service.

## **SECTION 2**

Borough Code 14-8, Prohibited Activities, is hereby deleted in its entirety and replaced with the following:

### **§ 14-8 Prohibited Activities**

**(a)** All acts constituting lewd, immoral or indecent conduct, unlawful destruction of property, willful injuries to or unlawful interference with persons, hazards to the public health and breaches or disturbances of the peace and not expressly mentioned in this article are severally prohibited.

**(b)** The consumption (including smoking) of cannabis is prohibited in all public places within the Borough of Morris Plains.

## **SECTION 3**

If any provision of this Ordinance or the application of this Ordinance to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.

## **SECTION 4**

All ordinances or parts of ordinances or resolutions that are inconsistent or in opposition to the provisions of this Ordinance are hereby repealed in their entirety.

## **SECTION 5**

The Borough Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the Morris County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. The Borough Clerk is further directed to refer this Ordinance to the Borough Land Use Board, pursuant to N.J.S.A. 40:55D-64. Upon the adoption of this Ordinance, after public hearing, the Borough Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Morris County Planning Board, as required by N.J.S.A. 40:55D-16.

## **SECTION 6**

This Ordinance shall take effect immediately upon adoption and publication and filing with the Morris County Planning Board, and as otherwise provided for by law.

Introduced: June 17, 2021

Adopted: August 19, 2021

/s/ Jason Karr