

**TOWNSHIP OF MAHWAH
ORDINANCE NO. 1939**

**ORDINANCE OF THE TOWNSHIP OF MAHWAH, COUNTY OF BERGEN, STATE
OF NEW JERSEY, AMENDING CHAPTER 24, ZONING, OF THE TOWNSHIP CODE
TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESS
WITHIN THE TOWNSHIP OF MAHWAH**

WHEREAS, in 2020 New Jersey and Mahwah Township voters overwhelmingly 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 cannabis 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 the following six marketplace classes of business licenses to be issued by the State of New Jersey Cannabis Regulatory Commission for the legal operation of cannabis establishments and other types of cannabis marketplace activity in the State:

- 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 Distributor 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 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, section 31a of the Act, N.J.S.A. 24:6I-45a, authorizes municipalities to adopt ordinances and regulations prohibiting outright and/or limiting the number of any class of license for "cannabis establishments" (defined in section 33 of the Act, N.J.S.A. 24:6I-33, as "a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer"), cannabis distributors and cannabis delivery services allowed to operate within its municipal boundaries; the location, manner and times of operation of such cannabis establishments, cannabis distributors, and cannabis delivery services, except that the time of operations for cannabis delivery services, shall only be subject to the regulation by the Cannabis Regulatory Commission (the "Commission"); and

WHEREAS, section 31a of the Act, N.J.S.A. 24:6I-45a, also authorizes municipalities to establish certain civil penalties for violations of any ordinance or regulation governing the number of cannabis establishments, distributors or delivery services that may operate in a municipality, as well as to their location, manner and times of operation; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, authorizes municipalities to prohibit, by ordinance, the operation of any one or more classes of cannabis establishments, cannabis distributors, and/or the principal premises of a cannabis delivery service for anywhere in the municipality, but not the actual delivery of cannabis items and related supplies by a licensed cannabis delivery service operating outside the boundaries of the municipality; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, also stipulates that any municipal ordinance, regulation or prohibition must be adopted within 180 days of the effective date of the Act (*i.e.*, by August 21, 2021); and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, provides that a municipality's failure to adopt such ordinances within 180 days, shall result in any cannabis cultivator, manufacturer, wholesaler, distributor or delivery service to be deemed a permitted use in all industrial zones of the municipality for an initial period of five years, first beginning on August 21, 2021; and

WHEREAS, section 31b of the Act, N.J.S.A. 24:6I-45b, also provides that a municipality's failure to adopt such ordinances within 180 days shall result in a cannabis retailer being authorized to operate in all commercial/retail zones in a municipality as a conditional use subject to meeting certain conditions of the Township, or receiving a variance from one or more of those conditions in accordance with the "Municipal Land Use Law," P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 *et seq.*) for a period of five years, first beginning on August 21, 2021;

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a municipality's failure to enact local ordinances, 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 be inapplicable to any cannabis establishments, cannabis distributors and cannabis delivery services already operating within the municipality; and

WHEREAS, the Municipal Land Use Law (N.J.S.A. 40:55D-1, *et seq.*) delegates to municipalities the power to zone and regulate development, as amended from time to time by the State legislature; and

WHEREAS, section 33 of the Act, (PL. 2021, c. 16 §33, N.J.S.A. 24:6I-46) and section 34 of the Act, (P.L. 2021, c.16 §34, amending N.J.S.A. 24:6I-7) deems certain pre-existing State licensed alternative treatment centers to concurrently hold certain class(es) of the above-referenced cannabis establishment license(s), which enables such pre-existing alternative treatment centers to simultaneously operate a licensed cannabis establishment so long as a municipality first approves same by municipal endorsement or through a local licensing procedure; and

WHEREAS, the Township Council held a duly noticed in-person Special Meeting on June 9, 2021 to gather additional input and solicit comments from Township residents; and

WHEREAS, the Township Council of the Township of Mahwah has determined that the cultivation of cannabis under the Act presents special local concerns such that the Township hereby opts out and prohibits the operation of Class 1 Cannabis Cultivation businesses within the geographic boundaries of the Township; and

WHEREAS, the Township Council wishes to consider the operation of Class 2, Cannabis Manufacturing, Class 3, Cannabis Wholesale, Class 4, Cannabis Distribution, Class 5, Cannabis Retail, and/or Class 6, Cannabis Delivery Service, businesses in the Township, but requires additional time to comprehensively review and assess location and zoning issues; and

WHEREAS, to preserve and protect the Township's rights and legal options under the Act to control such zoning decisions in light of the August 21, 2021 deadline, the Township Council finds it appropriate and necessary to opt out and prohibit the operation of Class 2, 3, 4, 5 and 6 cannabis businesses at this time with the understanding that pursuant to the Act, the Township may, at its sole discretion, opt back in at any time.

NOW THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Mahwah, County of Bergen, State of New Jersey, as follows:

SECTION 1. Chapter 24, Zoning, Section 24-1.5, Definitions and Word Usage, paragraph b, Definitions, is hereby amended and supplemented to include the following language:

“Alternative treatment center” and “Pre-existing Alternative treatment center”

Shall mean an organization issued a permit, conditional permit, and/or a vertically integrated permit pursuant to the “Jake Honing Compassionate Use Medical Cannabis Act,” P.L. 2009, C. 307 (C. 24:6I-1 et al.) to operate as a medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary or clinical registrant prior to February 22, 2021; and includes any alternative treatment center deemed pursuant to section 7 of the “Jake Honing Compassionate Use Medical Cannabis Act” (C. 24:26I-7) to concurrently hold a medical cannabis cultivator permit, a medical cannabis manufacturer permit, and a medical cannabis dispensary permit and/or any alternative treatment center deemed to concurrently hold any one or more class(es) of Cannabis Licensed Marketplace license(s) pursuant to PL. 2021, c. 16 §33, N.J.S.A. 24:6I-46, and P.L. 2021, c.16 §34, amending N.J.S.A. 24:6I-7.

Designated Caregiver

Shall mean and refer to a "Designated Caregiver" as defined under the "Jake Honig Compassionate Use Medical Cannabis Act," P.L. 2009, C. 307 (C. 24:6I-1 et al.).

Cannabis

Shall mean all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L. 2016, c. 16 for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L. 2009, c. 307 (C. 24:6I-1 et al.) and P.L. 2015, c. 158 (C. 18A:40-12.22 et al.); marijuana as defined in N.J.S. 2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L. 2001, c. 114 (C. 2C:35B-1 et seq.), or marijuana as defined in section 2 of P.L. 1970, c. 226 (C. 24:21-2) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L. 2019, c. 238 (C. 4:28-6 et al.).

Cannabis Consumption Area

Shall mean and refer to a "Cannabis Consumption Area" as defined under P.L. 2021, c. 16 §3, N.J.S.A. 24:6I-33, of the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act".

Cannabis Cultivator

Any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

Cannabis Delivery Service

Any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer.

Cannabis Distributor

Any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

Cannabis Establishment

A cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, a cannabis retailer or a cannabis distributor.

Cannabis Manufacturer

Any licensed person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items; and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

Cannabis Item

Any item available for lawful consumption pursuant to the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

Cannabis Manufacturer

Any licensed person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

Cannabis Retailer

Any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to consumers from a retail store, and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. A cannabis retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a cannabis delivery service which will be delivered by the cannabis delivery service to that consumer.

Cannabis Wholesaler

Any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

Cannabis Licensed Marketplace

A license issued under relevant State law including a license that is designated as either a:

- (1) Class 1 Cannabis Cultivator license
- (2) Class 2 Cannabis Manufacturer license
- (3) Class 3 Cannabis Wholesaler license
- (4) Class 4 Cannabis Distributor license
- (5) Class 5 Cannabis Retailer license
- (6) Class 6 Cannabis Delivery license

The term shall also include a conditional license for a designated class, except when the context of the provisions of relevant State law otherwise intend to only apply for a license and not a conditional license.

The term shall also include any activity related to cannabis cultivation, cannabis manufacturing, cannabis wholesale, cannabis distribution cannabis retail and/or cannabis delivery service by a pre-existing alternative treatment center deemed to concurrently hold any one or more class(es) of the above-listed cannabis license(s) pursuant to P.L. 2021, c. 16 §33, N.J.S.A. 24:6I-46, and P.L. 2021, c.16 §34 of the Act, amending N.J.S.A. 24:6I-7; but shall not include the pre-existing alternative treatment's activities related to medical cannabis cultivation, medical cannabis manufacturing, medical cannabis processing and/or medical cannabis dispensing by a pre-existing medical cannabis alternative treatment center pursuant to a license or conditional licensed issued by the State of New Jersey pursuant to the "Jake Honing 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.).

"Institutional Caregiver"

Shall mean and refer to an "Institutional Caregiver" as defined under the "Jake Honing Compassionate Use Medical Cannabis Act," P.L. 2009, c. 307 (N.J.S.A.24:6I-1 et seq.).

Licensee

Shall mean a person or entity that holds a license issued under P.L. 2021, c. 16 (C.24:6I-31 et al.) including a license that is designated as either a Class 1 Cannabis Cultivator license, a Class 2 Cannabis Manufacturer license, a Class 3 Cannabis Wholesaler license, a Class 4 Cannabis Distributor License, a Class 5 Cannabis Retailer License, a Class 6 Cannabis Delivery license, and also includes: a person or entity that holds a conditional license for a designated class; a person or entity holding a pre-existing Medical Cannabis Cultivator License, pre-existing alternative treatment center permit first issued by the State of New Jersey, Department of Health, Division of Medicinal Marijuana in accordance with the provisions of the "Jake Honing 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.) prior to February 22, 2021, and approved by the Township to hold a concurrent municipal license to operate as a Class 1 Cannabis Cultivator, Class 2 Cannabis Manufacturer, Class 3 Cannabis Wholesaler and/or Class 4 Cannabis Distributor in accordance with the provisions hereinafter and P.L. 2021, c. 16 §33, N.J.S.A. 24:6I-46, and P.L. 2021, c.16 §34, (amending N.J.S.A. 24:6I-7) of the Act; and/or any other person or entity holding a local annual cannabis license issued by the Township pursuant to this Code.

Manufacture

The drying, processing, compounding, or conversion of usable cannabis into cannabis products or cannabis resins. "Manufacture" does not include packaging or labeling.

Medical Cannabis

Means cannabis dispensed to registered qualifying patients or their designated or institutional care giver(s) pursuant to the "Jake Honing 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.), "Medical cannabis" does not include any cannabis or cannabis item that is cultivated, manufactured, produced, processed, distributed, delivered, sold and/or resold for the ultimate purpose of recreational consumption by persons that are not registered qualifying patients.

"Personal Use" and/or "Recreational Use"

Means the purchase, sale, possession, and/or consumption of cannabis items by person(s) who are not a Registered Qualifying Patient under the "Jake Honing 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.).

"Premises" or "licensed premises"

Means the following areas of a location licensed under P.L.2021, c.16 (C.24:6I-31 et al.): all public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms; all areas outside a building that the Cannabis Regulatory Commission has specifically licensed for the production, manufacturing, wholesaling, distributing, retail sale, or delivery of cannabis items; and, for a location that the commission has specifically licensed for the production of cannabis outside a building, the entire lot or parcel that the licensee owns, leases, or has a right to occupy.

Registered Qualifying Patient, Qualifying Patient, Patient

Shall mean and refer to a Qualifying Patient or Patient registered under the "Jake Honing Compassionate Use Medical Cannabis Act."

Wholesale Trade

Shall mean establishments or places of business primarily engaged in selling merchandise to other businesses, including retailers, industrial, commercial, institutional, or professional business users, other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

SECTION 2. Chapter 24, Zoning, Section 24-3.8, Supplemental Use Regulations, Paragraph b, Marijuana establishments, of the Township Code is hereby repealed and replaced with the following language:

b. Cannabis establishment, distributors and delivery services prohibited.

Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16) (N.J.S.A. 24:6I-45b) all cannabis establishments, cannabis distributors, or cannabis delivery services based in the Township, are hereby prohibited from operating anywhere in the Township, except for the delivery of cannabis items and related supplies directly to a consumer for personal use by a New Jersey licensed cannabis delivery service having its license premises based at a location outside the geographic boundaries of the Township, and which the delivery of such cannabis items and related supplies is initiated from such licensed location.

SECTION 3. All ordinances of the Township of Mahwah that are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

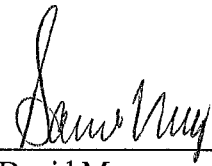
SECTION 5. This ordinance shall take effect twenty (20) days following final passage, approval, and publication as required by law.

Ordinance No. 1939

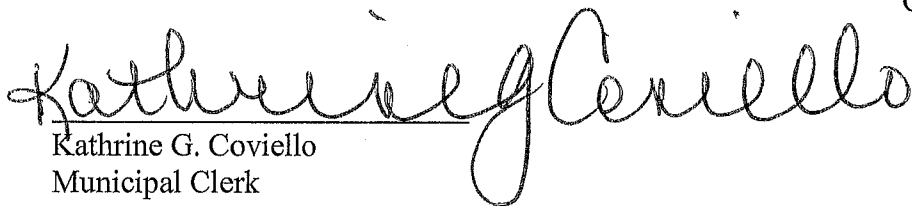
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Dated: 10/18/21

Attest



David May
Council President


Kathrine G. Coviello
Municipal Clerk

I, Kathrine G. Coviello, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 8th day of July, 2021.


Kathrine G. Coviello, RMC/CMC/MMC
Municipal Clerk