



BOROUGH OF FLORHAM PARK
COUNTY OF MORRIS, STATE OF NEW JERSEY

ORDINANCE # 21-13

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF FLORHAM PARK TO INCLUDE CANNABIS BUSINESSES AS A PROHIBITED USE IN ALL ZONES

WHEREAS, in the 2020 General Election, voters approved a ballot measure to amend the State Constitution to provide for the legalization of “cannabis”, a legal form of the same substance more commonly known as marijuana, for adults twenty-one (21) years or older; 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”), legalizing the recreational use of marijuana by adults twenty-one (21) years of age or older, and establishing a regulatory and licensing scheme for commercial recreational cannabis operations, use and possession; and

WHEREAS, a state-wide administrative body known as the Cannabis Regulatory Commission is tasked with overseeing the licensing process for cannabis businesses and adopting rules and regulations concerning cannabis use and by which cannabis businesses are permitted to operate; and

WHEREAS, the Cannabis Regulatory Commission is presently constituted, but implementing regulations for cannabis related activities and licensing have yet to be adopted or even formally proposed; and

WHEREAS, the Act establishes six (6) different classes of licensed businesses:

- 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 a 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 purchase 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 businesses permitted to operate within its boundaries as well as the “location, manner, and times of operation” of such businesses and to establish civil penalties for violations of any such regulations; and

WHEREAS, the Act also authorizes municipalities by ordinance to prohibit the operation of “any one or more classes” of cannabis businesses anywhere in the municipality, except that this prohibition cannot be extended to the delivery of cannabis items and related supplies by a delivery service, the regulation of which is outside the scope of municipal authority; and

WHEREAS, pursuant to the Act any such municipal ordinance must be adopted within one hundred and eighty (180) days of the effective date of the Act; and

WHEREAS, the failure to enact such an ordinance within one hundred and eighty (180) days of the effective date of the Act shall result in any class of cannabis business being deemed a permitted use in all industrial zones, and the retail sale of cannabis items to consumers by a cannabis retailer being deemed a conditional use in all commercial and retail zones for a period of five (5) years; and

WHEREAS, upon conclusion of the initial or any subsequent five (5) year period following a failure to enact any such ordinance regulating or prohibiting cannabis businesses, municipalities have another one-hundred eighty (180) day period to prohibit or regulate the operation of cannabis businesses, but any such ordinance would be prospective only and would not apply to any cannabis business existing in the municipality at the time of the enactment of any subsequent enactment; and

WHEREAS, the Mayor and Council of the Borough of Florham Park have determined that, due to present uncertainties regarding the potential future impacts that allowing one (1) or more classes of cannabis business might have on New Jersey municipalities in general, and on Borough of Florham Park 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 Borough, to amend the Borough of Florham

Park's zoning regulations to prohibit all manner of cannabis related land use and development within the geographic boundaries of the Borough of Florham Park; and

WHEREAS, several prominent organizations, including the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys, established for the specific purpose of advising and assisting municipalities within New Jersey on legal matters, such as have been presented by the Act 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 universally for all municipalities, whether or not generally in favor of cannabis legalization, businesses and land use, would be to prohibit all such uses within the Act's one hundred and eighty (180) day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts;

WHEREAS, the Borough of Florham Park believes it is in the best interest of the health, safety and welfare of its residents to amend the Borough Code with respect to certain elements of Chapter 250, Zoning, to prohibit cannabis businesses as a permitted use in all zones;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Florham Park, in the County of Morris, State of New Jersey that as follows:

Section 1. Chapter 250, "Zoning", Article I, "General Provisions", § 250-27, "Prohibited uses generally" of the Revised General Ordinances of the Borough of Florham Park is hereby amended and supplemented to add a new subsection T, "Cannabis Businesses" as follows:

T. All Cannabis Businesses as defined in Chapter 151, § 151-1, of the Revised General Ordinances of the Borough of Florham Park, including, but not limited to, all classes of Cannabis Distributors, Cannabis Delivery Services, Cannabis Establishments, Cannabis Cultivators, Cannabis Manufacturers, Cannabis Wholesalers, and Cannabis Retailers as said terms are defined in the aforementioned Section of this Code and in section 3 of P.L. 2021, c. 16, as amended and supplemented and any and all uses related to the same, but not the delivery of cannabis items and related supplies by a delivery service.

Section 2. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Morris County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15, including to the Clerk of adjoining municipalities.

Section 3. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Florham Park 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 Borough Council, within thirty-five (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.

Section 4. Repealer. All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 5. Severability. Each section, subsection, paragraph, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, preempted, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

Section 6. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

Section 7. Prior actions. All actions of the Borough of Florham Park taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

Section 8. Codification. This Ordinance may be renumbered for codification purposes.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on April 15, 2021 and will be further considered for adoption after Public Hearing held on May 30, 2021 via a remote meeting held via Zoom.

INTRODUCED: April 15, 2021

ADOPTED: May 20, 2021

Mark Taylor, Mayor

ATTEST:

Sheila A. Williams, R.M.C., Municipal Clerk

Certified to be a true and correct copy of an Ordinance adopted by the Governing Body of the Borough of Florham Park adopted on May 20, 2021

Sheila A. Williams, R.M.C.