

UPPER DEERFIELD TOWNSHIP

ORDINANCE 828

AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES AND AMENDING SECTION 405-12 OF THE ZONING AND DEVELOPMENT 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, 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 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 22, 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 Township Committee of the Upper Deerfield Township 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 Upper Deerfield Township in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Upper Deerfield Township’s residents and members of the public who visit, travel, or conduct business in Upper Deerfield Township, to amend Upper Deerfield Township’s zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of Upper Deerfield Township; 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 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;

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

2. Section 405-12B of the Upper Deerfield Zoning and Development Code is hereby amended by adding to the list of prohibited uses as follows:

§ 405-12 Use regulations and prohibited uses.

[Amended 4-5-2018 by Ord. No. 774]

A. No use or occupancy of any building, structure or land shall hereafter be changed to a different use or occupancy and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located, except as hereinafter provided.

B. Any use not expressly permitted by this chapter is hereby prohibited throughout the Township of Upper Deerfield and the following or similar uses and activities are specifically prohibited in any zoning district throughout the Township of Upper Deerfield:

(1) Unlicensed butcher shops and slaughterhouses (except USFDA-licensed facilities).

(2) Junk yards and automobile salvage.

(3) Resource extraction.

(4) Incinerators.

(5) Billboards and any signboards, advertising signs or devices not expressly related to the business being conducted on the premises or otherwise specifically permitted by this chapter.

(6) Concrete plants.

(7) Motocross parks.

(8) 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.

BE IT FURTHER ORDAINED by the Township Committee of the Township of Upper Deerfield that in all other respects the provisions of Chapter 405 of the Code of the Township of Upper Deerfield shall remain as heretofore and unaltered by the provisions hereof.

BE IT FURTHER ORDAINED by the Township Committee of the Township of Upper Deerfield that all ordinances or portions thereof inconsistent with this Ordinance are repealed to the extent of such inconsistency.

If any portion of this Ordinance is declared to be invalid by a Court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

This Ordinance shall take effect in the time and manner prescribed by law.

James Crilley, Chairman

Finally Attested: July 15, 2021

Roy J. Spoltore, Township Clerk

First Reading: June 17, 2021

Publication: June 23, 2021

Publication of Final Adoption: July 21, 2021