

**TOWNSHIP OF ANDOVER
COUNTY OF SUSSEX, STATE OF NEW JERSEY**

ORDINANCE #2023-13

**AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER,
COUNTY OF SUSSEX, AND STATE OF NEW JERSEY TO AMEND CHAPTER 41 OF THE
TOWNSHIP MUNICIPAL CODE, "CANNABIS," CREATING SECTION 41-15,
"UNAUTHORIZED RETAIL SALE AND GAINFUL TRANSFER OF USABLE CANNABIS," TO
PROHIBIT THE ILLEGAL RETAIL SALE OF CANNABIS AND THE COMMERCIAL
PRACTICE OF GIFTING CANNABIS CONTINGENT UPON A SEPARATE RECIPROCAL
TRANSACTION FOR GOODS OR SERVICES, AND TO ESTABLISH CIVIL FINES AND
PENALTIES IN ACCORDANCE WITH SAME**

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, 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 "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; and 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, authorizes municipalities to establish certain civil penalties for violations of any ordinance or regulations governing cannabis establishments, distributors or delivery services that may operate in a municipality; and

WHEREAS, pursuant to N.J.A.C. 17:30-2.1, a consumer may transfer up to one ounce of usable cannabis, or up to the equivalent of one ounce of usable cannabis, as defined by N.J.S.A. 24:6I-33 ('Usable Cannabis'), as a cannabis product in solid, liquid, or concentrate form, where the Usable Cannabis is obtained directly from a licensed cannabis retailer and so long as the transfer is without remuneration for non-promotional, nonbusiness purposes; and

WHEREAS, the Township Committee wishes to prohibit the transfer of Usable Cannabis in any instance where the Usable Cannabis is not obtained directly from a licensed cannabis retailer and/or is transferred with remuneration or for promotional and/or business purposes ('Gainful Transfer'); and

WHEREAS, the Township Committee wishes to establish certain civil penalties for the Unauthorized Retail Sale of cannabis by any business located in the Township and for the Gainful Transfer of Usable Cannabis.

NOW THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Andover in the County of Sussex and State of New Jersey, as follows:

SECTION 1.

§ 41-15 Unauthorized Retail Sale and Gainful Transfer of Usable Cannabis.

A. Prohibition on Retail Sale of Cannabis

Pursuant to N.J.S.A. 24:6I-45b, the operation of any Cannabis Retail Establishment and/or the retail sale of cannabis, cannabis items and related supplies by any person or business directly to consumers for recreational consumption, except by those persons or businesses holding a New Jersey Class 5 Cannabis Retailer license and the related local license issued by the Township, is hereby prohibited within the geographic boundaries of the Township of Andover.

B. Prohibition on Certain Transfers of Usable Cannabis

Pursuant to N.J.A.C. 17:30-2.1, the transfer of usable cannabis in any instance where the usable cannabis is not obtained directly from a licensed cannabis retailer, and/or is transferred with remuneration or for promotional and/or business purposes, is hereby prohibited within the geographic boundaries of the Township of Andover.

C. Civil Fines and Penalties

1. Any person(s), firm(s), business(es), corporation(s) and/or other organizations, including any licensed medical and/or cannabis establishment, found to be engaged in the retail sale of cannabis in violation of § 41-15(B) shall, upon conviction, be subject to a civil fine and penalty not exceeding \$2,000. Any such person shall, upon conviction, be subject also to imprisonment for a term not exceeding 90 days or to a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law.

2. Any person(s), firm(s), business(es), corporation(s) and/or other organizations, including any licensed medical and/or cannabis establishment, found to be engaged in the transfer of usable cannabis in violation of § 41-15(C) shall, upon conviction, be subject to a civil fine and penalty not exceeding \$2,000. Any such person shall, upon conviction, be subject also to imprisonment for a term not exceeding 90 days or to a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law.

3. Each and every day any person(s), firm(s), business(es), corporation(s) and/or other organizations, including any licensed medical and/or cannabis establishment remains in violation of the provisions of this Code after the deadline for compliance set forth in any notice of violation issued by the enforcing officer(s) of the Township shall, in the discretion of the Court, be considered a continuing violation punishable as a separate and distinct offense and subject to a separate civil fine and penalty for each and every day the violation continues.

4. The Municipal Court or Superior Court shall have jurisdiction to hear and decide any action(s) brought to enforce the provisions of this code, the hearing for which shall be conducted in a summary manner pursuant to N.J.S.A. 2B12-16a, and any final order imposing fines and penalties for a violation of this code shall be enforceable in the Municipal Court or Superior Court and collectible as a lien against the property of the violator in accordance with the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12

SECTION 2. Severability. If any article, 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 and they shall remain in full force and effect.

SECTION 3. Repealer. All existing ordinances or parts of existing ordinances which are inconsistent with the terms of this ordinance are to the extent of such inconsistency repealed.

SECTION 4. Effect. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

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Summary of Ordinance #2023-13

This Ordinance amends Chapter 41 of the Township Municipal Code, establishing that, under no circumstance shall any individual, business, or other entity engage in 1) the illegal retail sale of cannabis, or 2) the practice of commercially 'gifting' cannabis.

Although the above two practices already are not permitted in the Township, approval of this Ordinance is necessary in order to enable the Township to effectively enforce the prohibition on these practices. Pursuant to the Ordinance, engagement in these prohibited practices by an individual or entity will result in a civil fine and penalty of up to \$2,000 for every day until the individual or entity comes into compliance with the Ordinance.

NOTICE OF PENDING ORDINANCE

PUBLIC NOTICE is hereby given that the foregoing Ordinance was introduced and passed at first reading at a Regular Meeting of the Township Committee of the Township of Andover held on November 2, 2023. A public hearing regarding same will be held at a hybrid meeting scheduled for December 7, 2023, beginning at 7:00PM, to be held both in person and virtually via Zoom, which details for accessing the meeting are as follows:

Join Zoom Meeting

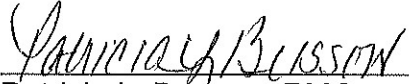
<https://us02web.zoom.us/j/85385763939?pwd=Y0xXTzRKSGorZmVpWVpYbmttSVJ6QT09>

Webinar ID: 853 8576 3939

Passcode: 814400

Phone: +1 929 205 6099

All persons interested both for and against said ordinance shall be given an opportunity to be heard concerning same.



Patricia L. Bussow, RMC
Administrator/Municipal Clerk

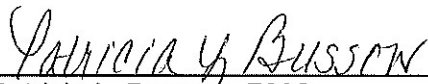
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NOTICE OF FINAL ADOPTION

PUBLIC NOTICE is hereby given that the foregoing Ordinance was adopted at a public hearing held at a Hybrid Meeting of the Township Committee of the Township of Andover on December 7, 2023. Said Hybrid Meeting was held virtually via Zoom and in person at the Municipal Building, 134 Newton Sparta Road, Newton, NJ 07860, at which time all persons were given the opportunity to be heard concerning same. This Ordinance shall take effect immediately upon publication, as required by law.



Patricia L. Bussow, RMC
Administrator/Municipal Clerk