

ORDINANCE 2021-1410

AN ORDINANCE OF THE TOWNSHIP OF BRANCBURG, COUNTY OF SOMERSET, STATE OF NEW JERSEY, AMENDING THE LAND DEVELOPMENT ORDINANCE, ARTICLE III "ZONING", SECTION LDO 3-3.3 "PROHIBITED USES" OF THE CODE OF THE TOWNSHIP OF BRANCBURG TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESS WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE TOWNSHIP OF BRANCBURG

WHEREAS, in 2020 New Jersey voters approved Public Question Number 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 the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act", N.J.S.A. 24:6I-31 et. seq. ("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 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 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, N.J.S.A. 24:6I-45a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in N.J.S.A. 24:6I-31 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 of operation of such establishments, distributors or delivery services and establishing civil penalties for the violation of any such regulations; and

WHEREAS, N.J.S.A. 24:6I-45b 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, N.J.S.A. 24:6I-45b 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 N.J.S.A. 24:6I-45b 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 within the municipality; 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 Township of Branchburg 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 Township of Branchburg in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Township residents and members of the public who visit, travel or conduct business in the Township, to amend the Township of Branchburg zoning regulations to prohibit all manner of marijuana related land use and development within the geographic boundaries of the Township of Branchburg; and

WHEREAS, officials from two prominent non-profit organizations established for the purpose of advising New Jersey municipalities on legal matters (New Jersey State League of Municipalities and 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.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Branchburg, County of Somerset, State of New Jersey, as follows:

Section 1. Pursuant to N.J.S.A. 24:6I-45b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited uses within the Township of Branchburg and prohibited from operating anywhere within the Township. Licensed cannabis delivery services situated outside the geographic boundaries of the Township may deliver cannabis items and related supplies within the Township as permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31, et. seq.

Section 2. The Land Development Ordinance, Article III "Zoning", Section LDO 3-3.3 "Prohibited Uses" Of The Code Of The Township Of Branchburg is hereby amended by adding to the list of prohibited uses under §LDO 3-3.3 the following:

E. All classes of cannabis establishments, cannabis distributors or cannabis delivery services as said terms are defined in N.J.S.A. 24:6I-33. Licensed cannabis delivery services situated outside the geographic boundaries of the Township may deliver cannabis items and related supplies within the Township as permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31, et. seq.

Section 3. This Ordinance shall be construed so as not to conflict with any provision of New Jersey or Federal law. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning, and land use regulations. The provisions of this Ordinance shall take precedence and apply in the event of any inconsistencies or conflicts with other previously adopted Ordinances of the Township to the extent of any such inconsistency or conflict.

Section 4. If any provisions of this Ordinance shall be adjudged invalid, such adjudication shall not affect the validity of the remaining provisions which shall be deemed severable therefrom.

Section 5. After introduction, the Township Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board 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 Township Committee within 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 6. After introduction, the Township Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least 10 days prior to the scheduled hearing, a copy of this Ordinance and a Notice of Hearing in accordance with N.J.S.A. 40:55D-15 to: (1) the clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected properties; and (2) the Somerset County Planning Board.

Section 7. After adoption, the Township Clerk is hereby directed to file a copy of this Ordinance with the Somerset County Planning Board in accordance with N.J.S.A. 40:55D-16.

Section 8. This Ordinance shall take effect immediately upon its adoption, passage and publication according to law and filing with the Somerset County Planning Board.

INTRODUCED/PASSED ON FIRST READING: *April 26, 2021*

ROLL CALL VOTE				
COMMITTEE MEMBER	YES	NO	ABSTAIN	ABSENT
YOUNG				✓
COLUMBUS	✓			
OWENS	✓			
SCHWORN	✓			
BEATRICE	✓			


PUBLISHED: *April 29, 2021*

ADOPTED: *May 24, 2021*

ROLL CALL VOTE				
COMMITTEE MEMBER	YES	NO	ABSTAIN	ABSENT
YOUNG	✓			
COLUMBUS	✓			
OWENS	✓			
SCHWORN	✓			
BEATRICE	✓			

ATTEST:


 Marguerite Schmitt, RMC
 Township Clerk


 Brendon Beatrice
 Mayor