



Municipal Excess Liability Joint Insurance Fund

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BULLETIN

TO: All Members

**FROM: Fred Semrau, Fund Attorney
Dave Grubb, Executive Director
Joseph Hrubash, Executive Director**

DATED: March 24, 2021

RE: New Jersey Cannabis Legislation – Legal Update

Some of our members have inquired about the recently enacted New Jersey legislation pertaining to recreational cannabis, as it relates to local licensing and zoning. Municipalities have until August 21, 2021 to make critical zoning decisions as to the six different cannabis licenses that have been established by our Legislature. While recreational cannabis use is now legal throughout the State, certain aspects regarding its cultivation, manufacturing, wholesaling, distribution, retail sales and delivery involve decisions that may be made on the local level.

Unless a community formally opts out of some or all of the above types of recreational cannabis businesses by adopting an “opt out” ordinance by the August 21, 2021 deadline, it will be deemed to have opted in for same and in locked in for a period of five years. During the five-year period, the community cannot reverse its opt-in status and if a recreational cannabis business opens, it cannot be legislated out after the five years. On the other hand, communities that opt-out of certain cannabis business activity may reverse that decision at any time by adopting a revised ordinance.

If your community wishes to consider opting-out of certain business type before August 21, 2021, we encourage you to share this draft ordinance with your Municipal Attorney and Planner as a starting point. It is critical that your Governing Body discusses these important policy considerations and acts prior to August 21, 2021 on cannabis licenses and local zoning.

As to employment concerns, the MEL recommends an update on employment practices policy considerations regarding cannabis. With respect to commercial driver’s license (CDL) and non-CDL driver policies, we encourage you to visit the MEL website at <https://njmel.org/mel-safety-institute/model-policies/driver-policies/> for additional suggested policy information.

The MEL will continue to monitor recreational cannabis legislation and provide information as to its impact on our members.

ORDINANCE NO. __-2021

AN ORDINANCE OF THE [GOVERNING BODY] OF [MUNICIPALITY] PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING CHAPTER [NUMBER] OF THE [MUNICIPALITY] 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, consisting of:

- 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 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”); and

WHEREAS, Section 31a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and

WHEREAS, Section 31a of the Act also authorizes municipalities to adopt by ordinance regulations governing the local licensing endorsement, location, manner and times of operation of cannabis establishments and cannabis distributors, and the location and manner of cannabis delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, Section 31b of the Act authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality, except for the delivery of cannabis items and related supplies by a delivery service based and initiated from outside of 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 21, 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, in 2026, 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 with appropriate approvals within the municipality; and

WHEREAS, the [GOVERNING BODY] of [MUNICIPALITY] has determined that, due to the detrimental impacts that permitting one or more classes of cannabis business might have on New Jersey municipalities in general, and on our community in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the [MUNICIPALITY]’s residents and members of the public who visit, travel, or conduct business in the [MUNICIPALITY], to amend the [MUNICIPALITY]’s

regulations to prohibit all manner of cannabis/marijuana-related within the geographic boundaries of the [MUNICIPALITY].

NOW THEREFORE, BE IT ORDAINED, by the [GOVERNING BODY] of the [MUNICIPALITY] in the County of Morris and State of New Jersey, as follows:

SECTION 1. Article _____ of Chapter _____, of the [MUNICIPALITY] Code is hereby amended to read as follows:

§ _____ Definitions.

For purposes of this Chapter, the following definitions shall apply:

“Cannabis” means 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 marihuana 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 cultivator” means 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” means 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” means 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” means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

“Cannabis manufacturer” means 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” means 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” means 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 establishments, 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), all cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the [MUNICIPALITY], except for the delivery of cannabis items and related supplies by a licensed cannabis delivery service based and initiated from a cannabis delivery service licensed location outside of the [MUNICIPALITY].

SECTION 2. Any article, chapter, section, paragraph, subsection, clause, or other provision of the Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

SECTION 3. In case, for any reason, any portion or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other portion or provision of this Ordinance, except so far as the portion or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

SECTION 4. This Ordinance shall take effect in accordance with the law.

ATTEST:

APPROVED:

CLERK, Clerk

[MUNICIPALITY], [TITLE]

I hereby certify the foregoing to be a true copy of an ordinance adopted by the [GOVERNING BODY] of the [MUNICIPALITY] at its meeting held on _____, 2021.

_____, Clerk