

ORDINANCE NO. 2276-21

AN ORDINANCE BY THE BOROUGH OF HAWTHORNE IN THE COUNTY OF PASSAIC AND STATE OF NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND CREATING CHAPTER 160 OF THE CODE OF THE BOROUGH OF HAWTHORNE, CANNABIS BUSINESSES

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 Act provides for the creation of a Cannabis Regulatory Commission which was given 180 days from the date of the legislation to publish regulations for the licensure of the businesses authorized by the Act; and

WHEREAS, the said Commission has conducted several public meetings but has yet to publish any regulations or guidelines for use by municipalities in determining a course of action regarding Cannabis operations; and

WHEREAS, the Municipal Council of the Borough of Hawthorne has determined that, due to present uncertainties resulting from the failure to create regulations at a State level and the potential future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on the Borough of Hawthorne in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Hawthorne's residents and members of the public who visit, travel, or conduct business in Hawthorne, to amend the Code of the Borough of Hawthorne to prohibit all manner of marijuana-related business and development within the geographic boundaries of the Borough of Hawthorne; 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 licensing, business operation and 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 operations 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 Municipal Council of the Borough of Hawthorne, in the County of Passaic and State of New Jersey, as follows:

Section 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 the Borough of Hawthorne, except for the delivery of cannabis items and related supplies by a delivery service.

Section 2. There is hereby created Chapter 160 of the Code of the Borough of Hawthorne, Cannabis Businesses, with the said Chapter to read as follows:

Chapter 160
Cannabis Businesses

§160-1 Preamble

§160-2 Prohibition of Cannabis Businesses

§160-3 Enforcement and Penalties

§160-1 Preamble. 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, at 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. The Municipal Council of the Borough of Hawthorne, based upon uncertainty in the development of regulations and implementation of the terms of said law has determined it advisable, at this time, to prohibit operation of any class of cannabis business in the Borough of Hawthorne as provided for in the Act.

§160-2 Prohibition of Cannabis Businesses. 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, is hereby prohibited anywhere within the borders of the Borough of Hawthorne. No agency operating within the borders of the Borough of Hawthorne shall have the right to operate any such business and no board or body of the Borough of Hawthorne shall have the authority to grant permission to any such business to operate a cannabis business in the Borough of Hawthorne.

§160-3. Enforcement and Penalties. The provisions of this Chapter shall be enforceable by any law enforcement officer in the Borough of Hawthorne as well as the Land Use Officer or Zoning Official to the extent any use of property is made in furtherance of any prohibited business operation. Any person violating any provision of this Chapter shall, upon conviction, in addition to any other penalty or remedy authorized, be subject to payment of a fine not to exceed \$2,000 for each offense, which may be deemed a recurring offense, or imprisonment of a term not to exceed 90 days or the requirement to perform community service for not more than 90 days or any combination thereof.

Section 3. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Hawthorne inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

Section 4. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

Section 5. This ordinance shall take effect upon its passage and publication as provided for by law.

Frank E. Matthews
Council President

ATTEST:
Lori Fernandez, RMC, CMC
Borough Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on June 16, 2021. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough on July 7, 2021, at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available on the borough website, www.hawthornenj.org, and at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

Lori Fernandez, RMC, CMC
Borough Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING ON JULY 7, 2021.