

TOWNSHIP OF WEST CALDWELL, NEW JERSEY

ORDINANCE NO. 1849

By: Councilman Wolsky

AN ORDINANCE OF THE TOWNSHIP OF WEST CALDWELL, COUNTY OF ESSEX, STATE OF NEW JERSEY, AMENDING CHAPTER 20, ZONING, OF THE TOWNSHIP CODE TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE TOWNSHIP OF WEST CALDWELL'S GEOGRAPHICAL BOUNDARIES.

**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 Manufacturing license, for facilities involved in the manufacturing, preparation, and packing of cannabis items;
- Class 3 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 business 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 31(a) of the Act authorizes municipalities to adopt by ordinance 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", as in addition to "cannabis distributors", and "cannabis delivery services"; and

**WHEREAS**, Section 31(a) of the Act further 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 to establish civil penalties for violations of any such regulations; and

**WHEREAS**, Section 31(b) 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 directly to a consumer by a licensed cannabis delivery service having its licensed premises based outside the geographic boundaries of the municipality, and delivery initiated from that licensed premises; and

**WHEREAS**, Section 31(b) of the Act further stipulates that any municipal regulation or prohibition must be adopted within one-hundred eighty (180) days of the effective date of the Act (*i.e.*, by August 21, 2021); and

**WHEREAS**, pursuant to Section 31(b) 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 used 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 one hundred eight (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 Mayor and the Township Council of the Township of West Caldwell have determined that, due to the 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 the Township of West Caldwell in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety, and welfare of the Township of West Caldwell's residents and members of the public who visit, travel, or conduct business in the Township of West Caldwell, to amend the Township of West Caldwell's zoning regulations to prohibit all manner of cannabis and/or marijuana-related land use, development, and businesses within the geographic boundaries of the Township of West Caldwell; and

**WHEREAS**, any business that, as part of its operations engages in the practice of gifting, sharing, or otherwise giving away cannabis, cannabis items, and/or related supplies is also prohibited. For purposes of this paragraph, "gifting, sharing, or otherwise giving away" shall refer to instances in which (i) cannabis, cannabis items, and/or related supplies are given away contemporaneously with another reciprocal transaction between the same parties; (ii) a gift of cannabis, cannabis items, and/or related supplies is offered or advertised in conjunction with an offer for the sale of goods or services; or (iii) a gift of cannabis, cannabis items, and/or related supplies is contingent upon a separate reciprocal transaction for goods or services; and

**NOW THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of West Caldwell, in the County of Essex, and the State of New Jersey, as follows:

1. Pursuant to Section 31(b) of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16); (N.J.S.A. 24:6I-45b), all cannabis establishments, cannabis distributors, or cannabis delivery services are hereby prohibited from operating anywhere in the Township of West Caldwell, except for the delivery of cannabis items and related supplies directly to a consumer for personal use by a New Jersey licensed cannabis delivery service having its license premises based at a location outside the geographic boundaries of the Township of West Caldwell, and which the delivery of such cannabis items and related supplies is initiated from such licensed location.
2. Section 20-6.4(a) of the Township of West Caldwell Municipal Code is hereby amended by adding to the list of prohibited uses, the following: "All 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 New Jersey licensed cannabis delivery service having its license premises based at a location outside the geographic boundaries of the Township of West Caldwell, and which the delivery of such cannabis items and related supplies is initiated from such licensed location.
3. The establishment or operation of a cannabis establishment, cannabis distributor, or cannabis delivery service in the Township of West Caldwell constitutes a violation of this Chapter, subject to the fine and penalties subject herein. Violations of this Chapter shall be punishable in accordance with Section 1-5 of the Township of West Caldwell Municipal Code.
4. 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.
5. 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.
6. The Township Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Essex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63, if required.

7. After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of West Caldwell for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64, if required.

8. The Township Clerk is hereby directed to publish notice of the within Ordinance pursuant to N.J.S.A. 40:49-2.1.

9. This Ordinance shall take effect following final passage, approval, and publication in the manner prescribed by law.