

# ORDINANCE

O-17-2021

BOROUGH OF NORTH CALDWELL, ESSEX COUNTY, NEW JERSEY

## AN ORDINANCE BY THE BOROUGH OF NORTH CALDWELL IN ESSEX COUNTY, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION 107-19(N) OF THE BOROUGH 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, 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 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 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 Mayor and Council of the Borough of North Caldwell 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 on the Borough of North Caldwell in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough of North Caldwell's residents and members of the public who visit, travel, or conduct business in the Borough of North Caldwell, to amend the Borough of North Caldwell's zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough of North Caldwell; and

**NOW THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of North Caldwell, in the County of Essex, 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 North Caldwell, except for the delivery of cannabis items and related supplies by a delivery service.

Section 2. Part II: General Legislation, Chapter 107 (Zoning and Land Use), Section 19(N) of Borough of North Caldwell Municipal Code is hereby amended as follows:

~~N. The sale of marijuana and paraphernalia associated with marijuana use. [Ord. No. 1-2018]~~

N. All classes of cannabis establishments or cannabis distributors or cannabis delivery services are prohibited 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. 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.) and this provision shall not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, physician, registered dispensary or other person acting in accordance with the New Jersey Compassionate Use Medical Cannabis Act.

Section 3. Any article, section, paragraph, subsection, clause, or other provision of the Borough of North Caldwell Municipal Code 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 and filing with the Borough of North Caldwell Planning Board, and as otherwise provided for by law.

INTRODUCED: June 22, 2021

PUBLIC HEARING: July 20, 2021

APPROVED:

Moved By: Councilman Atlas

Seconded By: Council President Astorino

COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT	COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
ASTORINO	X				KESSLER	X			
ATLAS	X				REES	X			
FLORIA-CALLORI	X				TILTON	X			

ATTEST:

APPROVED:

  
TAMI MICHELOTTI, BOROUGH CLERK

  
JOSEPH A. ALESSI, MAYOR