

**BOROUGH OF FAIR HAVEN  
ORDINANCE NO. 2021-09**

**AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF FAIR HAVEN IN THE  
COUNTY OF MONMOUTH TO OPT-OUT OF THE NEW STATE CANNABIS LAW  
AND TO PROHIBIT ALL CONSUMPTION OF CANNABIS IN PUBLIC PLACES AND  
ALL UNDERAGE POSSESSION OF CANNABIS ITEMS AND TO DEEM ALL  
RECREATIONAL CANNABIS BUSINESSES AS PROHIBITED USES UNDER THE  
LAND USE AND DEVELOPMENT REGULATIONS OF THE BOROUGH**

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**WHEREAS**, by Ordinance No. 2018-07, the Borough of Fair Haven (the “Borough”) previously prohibited all recreational marijuana businesses under its land use ordinances; and

**WHEREAS**, by Resolution No. 2018-94, the Borough previously expressed its opposition to the legalization of recreational marijuana within the State of New Jersey; and

**WHEREAS**, notwithstanding the Borough’s position, in November 2020, New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to legalize 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 cannabis by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational cannabis operations, use and possession; and

**WHEREAS**, pursuant to Section 31(b) of the Act, “[o]nly an ordinance to prohibit one or more classes of cannabis establishment or cannabis distributors enacted pursuant to the specific authority to do so by this section shall be valid and enforceable”; and

**WHEREAS**, as set forth in its prior Resolution No. 2018-94 and Ordinance No. 2018-07, the Borough’s Mayor and Council are concerned about the health and safety problems posed by the legalization of cannabis products, the potential for abuse, and especially, any use by minors and/or operators of motor vehicles; and

**WHEREAS**, pursuant to the authority granted to the Borough under the Act, the Mayor and Council believe that opting out of the Act, and renewing and augmenting the Borough’s prior prohibition on recreational cannabis within the Borough will help address these concerns and be in the best interests of the Borough’s citizens; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Borough of Fair Haven, in the County of Monmouth, in the State of New Jersey as follows:

**SECTION 1.** The Revised General Ordinances of the Borough of Fair Haven are hereby supplemented with *new* Chapter 8 entitled “Cannabis” as follows:

**CHAPTER 8: CANNABIS**

**§ 8-1 Cannabis Businesses Prohibited.**

A. Pursuant to section 31(b) 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 Borough of Fair Haven, except for the delivery of cannabis items and related supplies by a delivery service.

B. Pursuant to Borough Code Section 30-5.3(B)(24), the operation of Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, and Cannabis Delivery Services are prohibited uses in all zones within the Borough of Fair Haven.

### **§ 8-2 Public Consumption of Cannabis Prohibited.**

A. It shall be unlawful for any person to consume a cannabis item available for lawful consumption pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act in any public place as defined in said Act, including any public highway, public street, public sidewalk, public parking lot or lot, playground, park or other property owned by, belonging to or over which the Borough has control, other than school property for which unlawful consumption is a disorderly persons offense, or when not prohibited by the owner or person responsible for the operation of that public place.

B. Any person violating this Section 8-2 shall be subject to a civil penalty of up to \$200.00, which shall be recovered in a civil action by a summary proceeding in the name of the Borough pursuant to the Penalty Enforcement Law of 1999. The Municipal Court and the Superior Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.

### **§ 8-3 Possession or Consumption by Underaged Persons on Private Property.**

A. It shall be unlawful for any person under the legal age who, without legal authority, knowingly possesses or knowingly consumes a cannabis item on private property.

B. Any person violating this Section 8-3, in the case of an adult under the legal age to purchase cannabis items, shall be punished as follows:

- (1) If the cannabis item possessed is an amount which may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a: for a first offense, a civil penalty of \$100.00; for a second offense, a civil penalty of \$200.00; and for a third or subsequent offense, a fine of \$350.00. The civil penalties provided for in this section shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to the Penalty Enforcement Law of 1999. The Municipal Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.
- (2) If the cannabis item possessed is an amount that exceeds what may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a, or if any cannabis item is consumed: for a first offense, a fine of \$250.00; and for a second or subsequent offense, a fine of \$350.00.

**SECTION 2.** Section 2.4 entitled “Definitions” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby supplemented with the following *new* definitions as follows:

**CANNABIS CULTIVATOR** - 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** - Any licensed person or entity providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries of the purchase 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.

**CANNABIS DISTRIBUTOR** - 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 MANUFACTURER** – 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** – 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.

**CANNABIS WHOLESALER** - 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.

**SECTION 3.** Subsection 30-5.3(b)(24) of Section 30-5.3 entitled “Permitted and Prohibited Uses” of Chapter 30 entitled “Land Use and Development Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

24. ~~Businesses selling recreational marijuana, its derivatives, accessories and/or the paraphernalia that facilitates the use of such~~ The operation of Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, Cannabis Delivery Services.

**SECTION 4.** Section 3-25.1 entitled “Smoking Prohibited” of Chapter 3 entitled Police Regulations” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

**§ 3-25.1 Smoking Prohibited.**

No person shall smoke or consume any products, which include but are not limited to, cigarettes, pipes, cigars, cannabis items, etc. in any municipality owned building, public park, sanctuary or recreation area.

**SECTION 5.** Section 9-1.35 entitled “No Smoking in Public Parks” of Chapter 9 entitled “Parks and Recreation Areas” of the Revised General Ordinances of the Borough of Fair Haven is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

**§ 9-1.35 No Smoking in Public Parks.**

No person shall smoke or consume any products, which include but are not limited to, cigarettes, pipes, cigars, cannabis items, etc. in any municipally owned building, public park, sanctuary or recreation area.

**SECTION 6.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**SECTION 7.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Fair Haven are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**SECTION 8.** After introduction, the Borough Clerk is directed to submit a copy of the within Ordinance to the Planning Board of the Borough for its review under 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 Mayor & Council, 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 9.** This Ordinance shall take effect upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final adopted Ordinance by the Clerk with the Monmouth County Planning Board pursuant to N.J.S.A. 40:55D-16.

Introduced: 6/28/2021

Adopted:

Attest:

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Allyson M. Cinquegrana, RMC/CMR  
Borough Clerk

Approve:

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Benjamin J. Lucarelli  
Mayor