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**March 2, 2021**

**Municipal Clerks: Please forward to Mayor, Governing Body and Attorney.**

TO: NJ Municipal Elected Officials

FROM: Mike Cerra, NJLM  
Executive Director

DATE: March 2, 2021

RE: Guidance on Cannabis Legalization  
[Full Opt Out Ordinance Template Language](#)

### **Background**

As you know, in November 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.

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. 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.

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.

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.

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). The failure to act within 180 days 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.

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.

### **For Your Consideration**

The League never took a position on legalization but actively sought to protect the interests of local governments, whether or not a particular community was interested and willing to host a cannabis business or if it preferred to opt out entirely. One of the most important home rule protections we sought and advocated was to assure that local elected officials had the final say on whether to host a business and that local protections and zoning would still govern. And again, your municipality has 180 days from when the bill was signed. Thus you should pass an ordinance by Sunday, August 22, 2021.

The League is now preparing some template documents to assist you as you evaluate

what is right for your community. These documents are not and should not be construed as legal advice, but rather a template and starting point for your evaluation. Based on the requests we have received, the League has prioritized the release of language related to a complete opt-out of the provisions of the Act. Working closely with our partners at the Institute of Local Government Attorneys, an affiliate organization of the League, we are now releasing the template opt out language.

Please keep in mind that is the first of a small series of documents that will be released in the upcoming days, that it may be necessary to revise and update the documents as we also navigate this new process and that this language is only a starting point and should be tailored to your community's particular needs. This language should also not be considered legal advice. Please consult your municipal counsel.

[Please click here for a copy of the template ordinance language.](#)

If you have any questions regarding general legalization policy, please contact me at either [mcerra@njlm.org](mailto:mcerra@njlm.org) or 609-695-3481 x120. Technical and legal questions on the template language can be directed to Frank Marshall, Esq., League Associate General Counsel at [fmarshall@njlm.org](mailto:fmarshall@njlm.org) or 609-695-3481 x137.



New Jersey State League of Municipalities

222 West State Street, Trenton, NJ 08608  
Phone: 609-695-3481 Web: [www.njlm.org](http://www.njlm.org)

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