

SENATE, No. 3622

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 23, 2023

Sponsored by:

Senator MICHAEL L. TESTA, JR.

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Allows municipality to establish alcohol-free and cannabis-free areas and to impose civil penalties for violations.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** authorizing municipalities to establish alcohol-free and
2 cannabis-free areas and to impose civil penalties for violations
3 thereof, supplementing P.L.2005, c.383 (C.26:3D-55 et seq.) and
4 Title 33 of the Revised Statutes and amending R.S.40:48-1.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. (New section) a. As used in this section, "cannabis-free area"
10 means a portion of a municipality, or an area encompassing the entire
11 municipality, within which persons are prohibited from smoking,
12 vaping, or aerosolizing cannabis publicly outdoors.

13 b. Notwithstanding any other provision of law to the contrary, a
14 municipality, by ordinance, may:

15 (1) establish one or more "cannabis-free areas," permanently or
16 temporarily, within which a person shall not smoke, vape, or
17 aerosolize cannabis publicly outdoors; and

18 (2) impose civil penalties, in addition to any other penalties
19 required or permitted under law, rule, or regulation, upon a person
20 who smokes, vapes, or aerosolizes cannabis publicly outdoors within
21 a cannabis-free area.

22 A determination to adopt an ordinance pursuant to this subsection
23 shall be made only after the municipal governing body holds a public
24 hearing on the merits of establishing a cannabis-free area.

25
26 2. (New section) a. As used in this section, "alcohol-free area"
27 means a portion of a municipality, or an area encompassing the entire
28 municipality, within which persons are prohibited from carrying
29 open containers of, or consuming alcoholic beverages publicly
30 outdoors.

31 b. Notwithstanding any other provision of law to the contrary, a
32 municipality, by ordinance, may:

33 (1) establish one or more "alcohol-free areas," permanently or
34 temporarily, within which a person shall not carry an open container
35 of, or consume an alcoholic beverage publicly outdoors; and

36 (2) impose civil penalties, in addition to any other penalties
37 required or permitted under law, rule, or regulation, upon a person
38 who carries an open container of, or consumes an alcoholic beverage
39 publicly outdoors.

40 A determination to adopt an ordinance pursuant to this subsection
41 shall be made only after the municipal governing body holds a public
42 hearing on the merits of establishing an alcohol-free area.

43 c. The sale of alcoholic beverages for consumption shall be
44 subject to the provisions of Title 33 of the Revised Statutes, rules and
45 regulations promulgated by the director, and municipal ordinances.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. R.S.40:48-1 is amended to read as follows:

2 40:48-1. Ordinances; general purpose. The governing body of
3 every municipality may make, amend, repeal and enforce ordinances
4 to:

5 Finances and property. 1. Manage, regulate and control the
6 finances and property, real and personal, of the municipality;

7 Contracts and contractor's bonds. 2. Prescribe the form and
8 manner of execution and approval of all contracts to be executed by
9 the municipality and of all bonds to be given to it;

10 Officers and employees; duties, terms and salaries. 3. Prescribe
11 and define, except as otherwise provided by law, the duties and terms
12 of office or employment, of all officers and employees; and to
13 provide for the employment and compensation of such officials and
14 employees, in addition to those provided for by statute, as may be
15 deemed necessary for the efficient conduct of the affairs of the
16 municipality;

17 Fees. 4. Fix the fees of any officer or employee of the
18 municipality for any service rendered in connection with his office
19 or position, for which no specific fee or compensation is provided.
20 In the case of salaried officers or employees, such fee shall be paid
21 into the municipal treasury;

22 Salaries instead of fees; disposition of fees. 5. Provide that any
23 officer or employee receiving compensation for his services, in whole
24 or in part by fees, whether paid by the municipality or otherwise,
25 shall be paid a salary to be fixed in the ordinance, and thereafter all
26 fees received by such officer or employee shall be paid into the
27 municipal treasury;

28 Maintain order. 6. Prevent vice, drunkenness and immorality; to
29 preserve the public peace and order; to prevent and quell riots,
30 disturbances and disorderly assemblages;

31 Punish beggars; prevention of loitering. 7. Restrain and punish
32 drunkards, vagrants, mendicants and street beggars; to prevent
33 loitering, lounging or sleeping in the streets, parks or public places;

34 Auctions and noises. 8. Regulate the ringing of bells and the
35 crying of goods and other commodities for sale at auction or
36 otherwise, and to prevent disturbing noises;

37 Swimming; bathing costume; prohibition of public nudity. 9.
38 Regulate or prohibit swimming or bathing in the waters of, in, or
39 bounding the municipality, and to regulate or prohibit persons from
40 appearing upon the public streets, parks and places clad in bathing
41 costumes or robes, or costumes of a similar character; regulate or
42 prohibit persons from appearing in a state of nudity upon all lands
43 within its borders which are under the jurisdiction of the State
44 including, without limitation, all lands owned by, controlled by,
45 managed by or leased by the State;

46 Prohibit annoyance of persons or animals. 10. Regulate or
47 prohibit any practice tending to frighten animals, or to annoy or
48 injure persons in the public streets;

1 Animals; pounds; establishment and regulation. 11. Establish and
2 regulate one or more pounds, and to prohibit or regulate the running
3 at large of horses, cattle, dogs, swine, goats and other animals, and
4 to authorize their impounding and sale for the penalty incurred, and
5 the costs of impounding, keeping and sale; to regulate or prohibit the
6 keeping of cattle, goats or swine in any part of the municipality; to
7 authorize the destruction of dogs running at large therein;

8 Hucksters. 12. Prescribe and regulate the place of vending or
9 exposing for sale articles of merchandise from vehicles;

10 Building regulations; wooden structures. 13. Regulate and
11 control the construction, erection, alteration and repair of buildings
12 and structures of every kind within the municipality; and to prohibit,
13 within certain limits, the construction, erection or alteration of
14 buildings or structures of wood or other combustible material;

15 Inflammable materials; inspect docks and buildings. 14. Regulate
16 the use, storage, sale and disposal of inflammable or combustible
17 materials, and to provide for the protection of life and property from
18 fire, explosions and other dangers; to provide for inspections of
19 buildings, docks, wharves, warehouses and other places, and of goods
20 and materials contained therein, to secure the proper enforcement of
21 such ordinance;

22 Dangerous structures; removal or destruction; procedure. 15.
23 Provide for the removal or destruction of any building, wall or
24 structure which is or may become dangerous to life or health, or
25 might tend to extend a conflagration; and to assess the cost thereof as
26 a municipal lien against the premises;

27 Chimneys and boilers. 16. Regulate the construction and setting
28 up of chimneys, furnaces, stoves, boilers, ovens and other
29 contrivances in which fire is used;

30 Explosives. 17. Regulate, in conformity with the statutes of this
31 State, the manufacture, storage, sale, keeping or conveying of
32 gunpowder, nitroglycerine, dynamite and other explosives;

33 Firearms and fireworks. 18. Regulate and prohibit the sale and
34 use of guns, pistols, firearms, and fireworks of all descriptions;

35 Soft coal. 19. Regulate the use of soft coal in locomotives,
36 factories, power houses and other places;

37 Theaters, schools, churches and public places. 20. Regulate the
38 use of theaters, cinema houses, public halls, schools, churches, and
39 other places where numbers of people assemble, and the exits
40 therefrom, so that escape therefrom may be easily and safely made in
41 case of fire or panic; and to regulate any machinery, scenery, lights,
42 wires and other apparatus, equipment or appliances used in all places
43 of public amusement;

44 Excavations. 21. Regulate excavations below the established
45 grade or curb line of any street, not greater than eight feet, which the
46 owner of any land may make, in the erection of any building upon his
47 own property; and to provide for the giving of notice, in writing, of
48 such intended excavation to any adjoining owner or owners, and that
49 they will be required to protect and care for their several foundation

1 walls that may be endangered by such excavation; and to provide that
2 in case of the neglect or refusal, for 10 days, of such adjoining owner
3 or owners to take proper action to secure and protect the foundations
4 of any adjacent building or other structure, that the party or parties
5 giving such notice, or their agents, contractors or employees, may
6 enter into and upon such adjoining property and do all necessary
7 work to make such foundations secure, and may recover the cost of
8 such work and labor in so protecting such adjacent property; and to
9 make such further and other provisions in relation to the proper
10 conduct and performance of said work as the governing body or
11 board of the municipality may deem necessary and proper;

12 Sample medicines. 22. Regulate and prohibit the distribution,
13 depositing or leaving on the public streets or highways, public places
14 or private property, or at any private place or places within any such
15 municipality, any medicine, medicinal preparation or preparations
16 represented to cure ailments or diseases of the body or mind, or any
17 samples thereof, or any advertisements or circulars relating thereto,
18 but no ordinance shall prohibit a delivery of any such article to any
19 person above the age of 12 years willing to receive the same;

20 Boating. 23. Regulate the use of motor and other boats upon
21 waters within or bounding the municipality;

22 Fire escapes. 24. Provide for the erection of fire escapes on
23 buildings in the municipality, and to provide rules and regulations
24 concerning the construction and maintenance of the same, and for the
25 prevention of any obstruction thereof or thereon;

26 Care of injured employees. 25. Provide for the payment of
27 compensation and for medical attendance to any officer or employee
28 of the municipality injured in the performance of his duty;

29 Bulkheads and other structures. 26. Fix and determine the lines
30 of bulkheads or other works or structures to be erected, constructed
31 or maintained by the owners of lands facing upon any navigable
32 water in front of their lands, and in front of or along any highway or
33 public lands of said municipality, and to designate the materials to be
34 used, and the type, height and dimensions thereof;

35 Lifeguard. 27. Establish, maintain, regulate and control a
36 lifeguard upon any beach within or bordering on the municipality;

37 Appropriation for life-saving apparatus. 28. Appropriate moneys
38 to safeguard people from drowning within its borders, by location of
39 apparatus or conduct of educational work in harmony with the plans
40 of the United States volunteer life-saving corps in this State;

41 Fences. 29. Regulate the size, height and dimensions of any
42 fences between the lands of adjoining owners, whether built or
43 erected as division or partition fences between such lands, and
44 whether the same exist or be erected entirely or only partly upon the
45 lands of any such adjoining owners, or along or immediately adjacent
46 to any division or partition line of such lands. To provide, in such
47 ordinance, the manner of securing, fastening or shoring such fences,
48 and for surveying the land when required by statute, and to prohibit
49 in any such ordinance the use at a height of under 10 feet from the

1 ground, of any device, such as wire or cable, that would be dangerous
2 to pedestrians, equestrians, bicyclists, or drivers of off-the-road
3 vehicles, unless that device is clearly visible to pedestrians,
4 equestrians, bicyclists or drivers of off-the-road vehicles. In the case
5 of fences thereafter erected contrary to the provisions thereof, the
6 governing body may provide for a penalty for the violation of such
7 ordinance, and in the case of such fence or fences erected or existing
8 at the time of the passage of any such ordinance, may provide therein
9 for the removal, change or alteration thereof, so as to make such fence
10 or fences comply with the provisions of any such ordinance;

11 Advertise municipality. 30. Appropriate funds for advertising the
12 advantages of the municipality;

13 Government Energy Aggregation Programs. 31. Establish
14 programs and procedures pursuant to which the municipality may act
15 as a government aggregator pursuant to sections 40 through 43 of
16 P.L.1999, c.23 (C.48:3-89 through C.48:3-92), section 45 of
17 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003, c.24
18 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the provisions
19 of any other law, rule or regulation to the contrary, a municipality
20 acting as a government aggregator pursuant to P.L.1999, c.23
21 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant
22 to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating
23 any form of public utility service pursuant to R.S.40:62-1 et seq., to
24 the extent such municipality is solely engaged in the provision of
25 such aggregation service and not otherwise owning or operating any
26 plant or facility for the production or distribution of gas, electricity,
27 steam or other product as provided in R.S.40:62-12;

28 Joint municipal action on consent for the provision of cable
29 television service. 32. Establish programs and procedures pursuant
30 to which a municipality may act together with one or more
31 municipalities in granting municipal consent for the provision of
32 cable television service pursuant to the provisions of the "Cable
33 Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and
34 supplemented. Notwithstanding the provisions of any other law, rule
35 or regulation to the contrary, two or more municipalities acting
36 jointly pursuant to the provisions of P.L.1972, c.186 (C.48:5A-1 et
37 seq.) shall not be deemed a public utility pursuant to R.S.48:1-1 et
38 seq., to the extent those municipalities are solely engaged in granting
39 municipal consent jointly and are not otherwise owning or operating
40 any facility for the provision of cable television service as provided
41 in P.L.1972, c.186 (C.48:5A-1 et seq.);

42 Private cable television service aggregation programs. 33.
43 Establish programs and procedures pursuant to which a municipality
44 may employ the services of a private aggregator for the purpose of
45 facilitating the joint action of two or more municipalities in granting
46 municipal consent for the provision of cable television service
47 provided that any such municipality shall adhere to the provisions of
48 the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as
49 amended and supplemented, and to the provisions of the "Local

1 Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as
2 amended and supplemented. Notwithstanding the provisions of any
3 other law, rule or regulation to the contrary, a municipality that
4 employs the services of a private aggregator pursuant to the
5 provisions of P.L.1972, c.186 (C.48:5A-1 et seq.) shall not be
6 deemed a public utility pursuant to R.S.48:1-1 et seq., to the extent
7 that the municipality is solely engaged in employing the services of
8 a private aggregator for the purpose of facilitating the joint action of
9 two or more municipalities in granting municipal consent and is not
10 otherwise owning or operating any facility for the provision of cable
11 television service as provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

12 Protective Custody. 34. Provide protective custody to persons
13 arrested for operating a motor vehicle under the influence of
14 alcoholic beverages, cannabis items as defined in section 3 of
15 P.L.2021, c.16 (C.24:6I-33), any chemical substance, or any
16 controlled dangerous substance in violation of R.S.39:4-50 as
17 provided in section 1 of P.L.2003, c.164 (C.40:48-1.3);

18 Private Outdoor Video Surveillance Camera Registry. 35.
19 Establish a private outdoor video surveillance camera registry and
20 allow voluntary registration of private outdoor video surveillance
21 cameras as provided in P.L.2015, c.142 (C.40:48-1.6 et al.).

22 Consumption of Alcoholic Beverages Outdoors. 36. Designate
23 an open container area upon which people are permitted to carry and
24 consume open containers of alcoholic beverages outdoors pursuant
25 to section 1 of P.L.2021, c.395 (C. 33:1-24.4).

26 Prohibition of Public Consumption of Alcoholic Beverages. 37.
27 Designate one or more public areas, which may include places of
28 public accommodation, within which a person shall not carry an open
29 container of or consume an alcoholic beverage pursuant to section 2
30 of P.L. , c. (C.) (pending before the Legislature as this bill),
31 and establish civil penalties to be imposed on violators .

32 Prohibition of Public Consumption of Cannabis. 38. Designate
33 one or more public areas, which may include places of public
34 accommodation, within which a person shall not smoke, vape, or
35 aerosolize cannabis pursuant to section 1 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), and establish civil
37 penalties to be imposed on violators.

38 (cf: P.L.2021, c.395, s.2)

39

40 4. This act shall take effect immediately.

41

42

43 STATEMENT

44

45 This bill authorizes municipalities to adopt ordinances to
46 designate alcohol-free and cannabis-free areas, and to establish civil
47 penalties to impose upon those found to have violated an ordinance.
48 The bill provides that an alcohol-free or cannabis-free area may
49 include places of public accommodation. The bill allows

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- 1 municipalities to establish these types of areas permanently or
- 2 temporarily.