

ORDINANCE 2021-06

AN ORDINANCE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, ESTABLISHING NEW CHAPTER 9.03 OF TITLE 9 OF THE BOROUGH CODE ENTITLED “CANNABIS, ESTABLISHMENTS, DISTRIBUTION AND DELIVERY SERVICE PROHIBITED” SO AS TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF SHIP BOTTOM AND AMENDING AND SUPPLEMENTING TITLE 16 OF THE BOROUGH CODE ENTITLED “LAND DEVELOPMENT CODE” SO AS TO PROHIBIT ALL CLASSES OF CANNABIS ESTABLISHMENTS OR CANNABIS DISTRIBUTION OR CANNABIS DELIVERY SERVICES AS THOSE TERMS ARE DEFINED IN THE “NEW JERSEY CANNABIS REGULATORY, ENFORCEMENT ASSISTANCE, AND MARKETPLACE MODERNIZATION ACT” P.L. 2021, c.16

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 Philip 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 (6) 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 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 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 3 of the Act defines a “cannabis establishment” as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”; and

WHEREAS, Section 31a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and

WHEREAS, Section 31a of the Act also 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 establishing civil penalties for the violation of any such regulations; and

WHEREAS, Section 31b 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 by a delivery service based and initiated from outside of 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 (5) 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 (5) year period following a failure to enact local regulations or prohibitions, the municipality shall again, in 2026, 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 with appropriate approvals within the municipality;
and

WHEREAS, the governing body of the Borough of Ship Bottom has determined that, due to the detrimental impacts that permitting one or more classes of cannabis business might have on New Jersey municipalities in general, and on our community 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 Ship Bottom's residents and members of the public who visit, travel, or conduct business in the Borough of Ship Bottom, to amend the Borough of Ship Bottom's regulations to prohibit all manner of cannabis/marijuana-related within the geographic boundaries of Borough of Ship Bottom; and

WHEREAS, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (those organizations being the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts;

NOW, THEREFORE, BE IT ORDAINED, by the governing body of the Borough of Ship Bottom, County of Ocean, State of New Jersey, as follows:

SECTION 1. The Borough Code of the Borough of Ship Bottom is hereby amended and supplemented to establish new Chapter 9.03 entitled "Cannabis, Establishments, Distribution and Delivery Service Prohibited" which shall read as follows:

Chapter 9.03

CANNABIS, ESTABLISHMENTS, DISTRIBUTION AND DELIVERY SERVICE PROHIBITED

9.03.010 Definitions.

For purposes of this Chapter, the following definitions shall apply:

CANNABIS means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L. 2016, c. 16 for use in cannabis products as set forth in this act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. "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.24:61-1 et al.) and P.L. 2015, c. 158 (C.18A:40-12.22 et al); marijuana as defined in N.J.S.2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of title 2C of the New Jersey Statutes, or P.L. 2001, c.114 (C.2C:35B-1 et seq.), or marijuana as defined in section 2 of P.L. 1970, c.226 (C.24:21-2) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c.226 (C.24:21-1 et al); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L. 2019, c.238 (C.4:28-6 et al).

CANNABIS CULTIVATOR means 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 means any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer.

CANNABIS DISTRIBUTOR means 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 ESTABLISHMENT means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

CANNABIS MANUFACTURER means 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 means 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. A cannabis retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a cannabis delivery service which will be delivered by the cannabis delivery service to that consumer.

CANNABIS WHOLESALER means 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.

9.03.020 Cannabis establishments, distributors and delivery services prohibited.

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 Ship Bottom, except for the delivery of cannabis items and related supplies by a licensed cannabis delivery service based and initiated from a cannabis delivery service licensed location outside of the Borough of Ship Bottom.

9.03.030 Enforcement; violations and penalties.

- A. The Police Department, Code Enforcement, and the Zoning Officer, as applicable, are charged with enforcing this section.

SECTION 2. Title 16 of the Borough Code of the Borough of Ship Bottom entitled “Land Development Code” is hereby amended and supplemented to add new Chapter 16.73 which shall read as follows:

CHAPTER 16.73

16.73.010 Cannabis prohibited.

- A. The following uses shall be prohibited in all zoning districts in the Borough of Ship Bottom:
- (1) All classes of 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 delivery service.

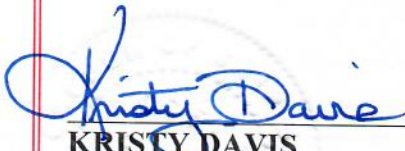
SECTION 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

SECTION 6. This ordinance shall take effect after public reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed by the Borough Council of Ship Bottom Borough on first reading at a meeting held on the 27th day of April, 2021. The Ordinance will be considered for second and final reading at a meeting of the Borough Council which is scheduled for the 25th day of May, 2021 at 6:30 p.m., or as soon thereafter as the matter may be reached, via Zoom #965 0252 3123 Passcode #566967, at which time the public is invited to ask questions, raise objections, or provide public comment with regard to the proposed adoption of this Ordinance.



KRISTY DAVIS

Municipal Clerk
Borough of Ship Bottom