

Ordinance 2021-06

*BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY*

AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF HIGHTSTOWN IN MERCER COUNTY, NEW JERSEY, AND AMENDING AND SUPPLEMENTING CHAPTER 28, ENTITLED “ZONING,” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH, IN ORDER TO ESTABLISH A NEW SECTION THEREOF TO BE KNOWN AS SECTION 28-12, ENTITLED “CANNABIS.”

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 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.

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 Borough Council of the Borough of Hightstown (the “Borough”), in the County of Mercer, and State of New Jersey, 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 in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough’s residents and members of the public who visit, travel, or conduct business in the Borough, to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough, and to amend the Borough’s zoning regulations accordingly; 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 Borough Council of the Borough of Hightstown, in the County of Mercer, and State of New Jersey, as follows:

Section 1. That, pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16) (the “Act”), all cannabis establishments, cannabis distributors and/or cannabis delivery services, as those terms are defined in the Act, are hereby prohibited from locating and/or operating anywhere within the geographical boundaries of the Borough, except that the delivery of cannabis items and related supplies by a delivery service within the Borough shall be permitted.

Section 2. That Chapter 28, entitled “Zoning,” of the Revised General Ordinances of the Borough of Hightstown (the “Borough Code”) is hereby amended and supplemented in order to establish a new Section thereof, to be known as Section 28-12, entitled “Cannabis,” as follows:

Section 28-12

CANNABIS

Subsections:

28-12-1 Scope and Purpose; Authority.

28-12-2 Cannabis Operations Prohibited.

Subsection 28-12-1 Scope and Purpose; Authority.

The purpose of this ordinance is to prohibit, within the geographical boundaries of the Borough, the location and/or operation of all classes of cannabis establishments or cannabis distributors or cannabis delivery services, as said terms are defined in section 3 of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16) (the “Act”), but not the delivery of cannabis items and related supplies by a delivery service.

This ordinance is adopted pursuant to the authority set forth in section 31b of the Act.

Subsection 28-12-2 Cannabis Operations Prohibited.

The location and/or operation of all classes of cannabis establishments or cannabis distributors or cannabis delivery services, as said terms are defined in section 3 of the Act, but not the delivery of cannabis items and related supplies by a delivery service, is hereby prohibited within the geographical boundaries of the Borough.

Section 3. That this Ordinance shall become effective immediately upon final passage and publication in accordance with the law.

Section 4. That all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 5. That, in the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

Introduction: May 3, 2021

Adoption: May 17, 2021

ATTEST:

DEBRA L. SOPRONYI
MUNICIPAL CLERK

LAWRENCE D. QUATTRONE
MAYOR