

**BOROUGH OF OAKLAND
BERGEN COUNTY, NEW JERSEY
ORDINANCE #21-CODE-828**

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH
OF OAKLAND WITH A NEW CHAPTER ENTITLED “CHAPTER 8, CANNABIS,
PROHIBITION OF ALL CLASSES OF BUSINESSES” SO AS TO PROHIBIT THE
OPERATION OF ANY CLASS OF CANNABIS BUSINESS WITHIN THE
GEOGRAPHICAL BOUNDARIES OF THE BOROUGH OF OAKLAND AND
FURTHER TO SUPPLEMENT CHAPTER 59 ENTITLED “LAND USE AND ZONING”,
ARTICLE VII “ZONING”, SECTION 59-45 ENTITLED “REGULATIONS
APPLICABLE TO ALL ZONES” SO AS TO PROHIBIT THE USE BY ANY CLASS OF
LICENSED CANNABIS BUSINESSES UPON ANY PREMISES IN ANY ZONE OF THE
BOROUGH OF OAKLAND**

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, know 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 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 licenses;
- 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 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 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 Mayor and Council of the Borough of Oakland 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 this 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 Oakland, to supplement the Zoning Chapter of the Borough Code in order to prohibit certain marijuana-related land uses and developments within the geographic boundaries of the Borough of Oakland; 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 IR ORDAINED, by the Mayor and Council of the Borough of Oakland, in the County of Bergen, State of New Jersey, as follows:

I. The Code of the Borough of Oakland, be and is hereby supplemented by a new Chapter which shall provide as follows:

CHAPTER 8 CANNABIS, PROHIBITION OF ALL CLASSES OF BUSINESS

Section 1. Chapter 8 Cannabis, Prohibition of all Classes of Business

§8-1. 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 Oakland, except for the delivery of lawful cannabis items and related supplies by a delivery service to residents of the Borough of Oakland only.

Section 2.

Chapter 59 "Land Use and Zoning", Article VII "Zoning", Section 59-45 "Regulations Applicable to All Zones", be and is hereby amended and supplemented with a new subsection J, which shall provide as follows:

J. No land or building in any zoning district within the Borough of Oakland shall be used or shall be allowed to be used as any 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.

Section 3.

All part of Ordinances inconsistent with this Ordinance are hereby repealed as to such inconsistent part and this Ordinance shall take effect after publication and passage in the manner

provided by law.

Section 4.

If any section, subsection, paragraph, sentence, clause or word of this Ordinance shall be adjudged invalid by a Court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Ordinance, it being intended that all such portions be severable in such event.

Section 5.

The Borough Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this ordinance to the Bergen County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:55D-15. Upon adoption of this ordinance, after public hearing thereon, the Borough Clerk is further directed to publish notice of the passage thereof and to file a copy of this ordinance as finally adopted with the Bergen County Planning Board, as required by N.J.S.A. 40:55D-16 and with the Borough Tax Assessor.

Section 6.

This ordinance shall take effect immediately upon publication and final passage according to law.

Linda H. Schwager, Mayor

ATTEST:

Lisa M. Duncan, Borough Clerk