

ORDINANCE NO. 2021- 9

AN ORDINANCE OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 55 OF THE TOWNSHIP CODE ENTITLED “LAND USE” AND SPECIFICALLY SECTION 55-5 ENTITLED “GENERAL PROVISIONS” AND SPECIFICALLY SECTION F THEREOF ENTITLED “MARIJUANA, CANNABIS AND/OR PARAPHERNALIA” TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE TOWNSHIP OF BARNEGAT

WHEREAS, in 2020 the voters of New Jersey 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 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;

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- Class 4 Cannabis Distributer 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 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 (by August 22, 2021); and

WHEREAS, 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,

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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 Township Committee of the Township of Barnegat 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 Township of Barnegat in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Township of Barnegat's residents and members of the public who visit, travel, or conduct business in the Township of Barnegat to amend the Township of Barnegat's zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Township of Barnegat; 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

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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 Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 55 of the Land Use Code entitled "Land Use" and specifically subsection 55-5 thereof entitled "General Provisions", and subsection F thereof entitled "Marijuana and/or Paraphernalia" is hereby amended to read as follows:

§55-5 General Provisions.

F. Marijuana, Cannabis and/or Paraphernalia.

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 Township of Barnegat, except for the delivery of cannabis items and related supplies by a delivery service.

The following uses or activities are hereby prohibited anywhere within the Township of Barnegat:

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 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of

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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 hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Barnegat on the 6th day of April, **2021**, at **10:00** A.M. and will be considered for second and final passage at a meeting of the Township Committee to be held on the 4th day of May, **2021**, at 6:30 PM. at the Municipal Building located at 900 West Bay Avenue, Barnegat, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

DONNA M. MANNO, Township Clerk
Township of Barnegat

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CERTIFICATION

I, Donna M. Manno, Municipal Clerk of the Township of Barnegat, County of Ocean, State of New Jersey do hereby certify by my hand and seal that the foregoing Ordinance namely **Ordinance 2021-09** Amending and Supplementing Chapter 55 of the Township Code entitled “Land Use” and specifically section 55-5 entitled “General Provisions” and specifically Section F thereof entitled “Marijuana Cannabis and/or Paraphernalia” to Prohibit the Operation of any class of Cannabis Businesses within the Township of Barnegat was introduced and passed at a meeting of the Township Committee on the **6th day of April, 2021** and finally adopted after Public Hearing at a meeting held in the Municipal Complex, 900 West Bay Avenue, Barnegat, NJ on the **4th day of May, 2021**

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