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To: George Dick
Subject: Cannabis ord
Attachments: 603-21 - Permitting the Operation of Certain Cannabis Businesses Within Its Geographic Boundaries and Amending the Zoning Ordinance Accordingly.docx; 603-21 - Permitting the Operation of Certain Cannabis Businesses Within Its Geographic Boundaries and Amending the Zoning Ordinance Accordingly.pdf

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**BOROUGH OF WEST CAPE MAY
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE NO. 603-21

**AN ORDINANCE OF THE BOROUGH OF WEST CAPE MAY PERMITTING THE
OPERATION OF CERTAIN CANNABIS BUSINESSES WITHIN ITS GEOGRAPHIC
BOUNDARIES AND AMENDING THE ZONING ORDINANCE ACCORDINGLY**

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 Distributor 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 type and 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 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, the Borough Commission of the Borough of West Cape May has determined that certain types of cannabis business should be permitted to operate in the Borough, subject to the provisions of the Act, the regulations promulgated thereunder, and the relevant ordinances of the Borough of West Cape May, including this Ordinance,

NOW THEREFORE, BE IT ORDAINED, by the Borough Commission of the Borough of West Cape May, County of Cape May, State of New Jersey, as follows:

SECTION 1. Pursuant to section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), properly licensed cannabis cultivation, manufacturing, wholesaling, and distributing operations shall be permitted in the Borough's R-2, R-4, and R-5 zoning districts, provided that all such operations have a minimum lot size of five (5) acres.

SECTION 2. Properly licensed cannabis cultivation shall be a permitted use. Properly licensed cannabis manufacturing, wholesaling, or distributing operations shall be conditional uses, subject to the conditions and standards set forth below.

SECTION 3. Properly licensed combined cultivation, manufacturing, wholesaling, and/or distribution operations on a single five-acre parcel shall be a conditional use, subject to the conditions and standards set forth below.

SECTION 4. Properly licensed cannabis cultivation operations shall conform to all area and bulk standards for farm uses, including accessory uses, in the zone in which they are located.

SECTION 5. Properly licensed cannabis retail operations shall be a permitted use in the borough's C-2 and C-3 zones.

SECTION 6. Depending on where they are located, properly licensed cannabis retail operations shall conform to all area and bulk standards of the C-2 or C-3 zones, and shall further comply with all borough regulations regarding parking, signage, flags and lighting.

SECTION 7. Properly licensed cannabis retail operations shall operate only between the hours of 8 a.m. and 10 p.m.

SECTION 8. No cannabis retail operation shall be located within 1,000 feet of a school, school playground, or church.

SECTION 9. As required by the Act, the delivery of cannabis items and related supplies by the holder of a Class 6 cannabis delivery license shall be permitted throughout the borough.

SECTION 10. The following Sections of the West Cape May Zoning Code are hereby amended as follows:

1. Section 27-29, governing conditional uses, is amended to add the following:

(c). Properly licensed cannabis manufacturing, wholesaling and/or distributing operations, subject to the following conditions:

a. The facility shall meet all of the requirements for licensure by the New Jersey Cannabis Regulatory Commission and/or the New Jersey Department of Health.

b. Enclosed building: All cultivation, manufacturing, storage and distribution activities shall take place within enclosed building or greenhouse structures. The facility shall be the sole occupant of its building.

c. Fencing: All structures utilized for any manufacturing, wholesaling, storage or distribution of cannabis shall be enclosed by a fence at least seven feet high.

d. Security: All structures shall be designed, using safety and security barriers, to prevent the unlawful and unauthorized entry into the structures as prescribed by State law.

1. There shall be controlled access to the site, with 24/7 on-site video monitoring of the exterior and interior of the facility, which video shall be retained and stored for the period prescribed by State law, but in no case shall such video be retained and stored for less than 30 days.

2. Plans and reports depicting or describing access and security details information concerning the facility shall be deemed and protected as confidential security documents, exempt from disclosure as public records.

e. There shall be no direct sales to the public from the property. Nothing herein shall permit the retail sale of cannabis or marijuana products, the dispensing of cannabis or marijuana product, or the direct point sale or distribution of marijuana products except to other cannabis businesses licensed by the State.

f. Noise: Cannabis cultivation and manufacturing facilities shall operate in compliance with state and local noise laws and regulations, except in emergency situations requiring the use of a backup generator.

g. Odor: Cannabis cultivation and manufacturing operations shall utilize available technology to filter and recirculate air, so that odors are not discernable by a reasonable person beyond the property line.

h. Location: One thousand (1,000) linear feet measured from the lot line of any residence, school, church, or park to the nearest portion of the building containing a cannabis use. The subsequent approval of a school or any other facility in proximity to the cannabis use shall not render any existing cannabis business a nonconforming use.

i. Emergency power: Cannabis cultivation and manufacturing operations shall have a backup generator, capable of maintaining, at a minimum, all electronic security systems in the event of a power failure.

j. Signs: Cannabis cultivation and manufacturing facilities shall only be permitted to have one sign, in compliance with sign requirements for the zone.

k. Lighting: No light generated by any cannabis cultivation and manufacturing activities shall result in measurable light changes at the nearest property boundary to each structure.

l. Consumption: No cannabis or cannabis product shall be smoked, eaten or otherwise consumed on the premises of any cannabis cultivation or manufacturing facility.

(d). If a cannabis cultivation facility is combined with a cannabis manufacturing, wholesaling or distributing operation, it shall be located on a parcel of no less than five acres and shall comply with all conditions set forth in subsection (c), above.

2. Section 27-16.1, governing permitted uses in the C-2 district, is amended to add the following:

(n). Properly licensed cannabis retail establishments. In addition, such establishments will meet the following standards:

i. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.

ii. On-premises cannabis consumption areas are prohibited.

iii. Compliance with all area and bulk standards in the zone.

iv. Compliance with all state statutory and regulatory requirements.

3. Section 27-17.1, governing permitted uses in the C-3 district, is amended to add the following:

(k). Properly licensed cannabis retail establishments. In addition, such establishments will meet the following standards:

- i. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
- ii. On-premises cannabis consumption areas are prohibited.
- iii. Compliance with all area and bulk standards in the zone.
- iv. Compliance with all state statutory and regulatory requirements.

4. Section 27-11.1, governing permitted uses in the R-2 district, is amended to add the following:

(g). Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-2 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:

- i. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
- ii. On-premises cannabis consumption areas are prohibited.
- iii. Compliance with all area and bulk standards in the zone.
- iv. Compliance with all state statutory and regulatory requirements.

5. Section 27-13.1, governing permitted uses in the R-4 district, is amended to add the following:

(c). Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-4 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:

- i. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.

- ii. On-premises cannabis consumption areas are prohibited.
- iii. Compliance with all area and bulk standards in the zone.
- iv. Compliance with all state statutory and regulatory requirements.

6. Section 27-14.1, governing permitted uses in the R-5 district, is amended to add the following:

(d). Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-5 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:

- i. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
- ii. On-premises cannabis consumption areas are prohibited.
- iii. Compliance with all area and bulk standards in the zone.
- iv. Compliance with all state statutory and regulatory requirements.

SECTION 11. The Borough of West Cape May hereby establishes the following local cannabis tax:

- A. On cannabis cultivation, a tax of 2% of the amount of each sale.
- B. On cannabis manufacture, a tax of 2% on the amount of each sale
- C. On cannabis wholesaling, a tax of 1% on the amount of each sale.
- D. On cannabis retailing, a tax of 1% on the amount of each sale.

Said tax shall be payable directly to the Chief Financial Officer of the Borough on a quarterly basis. Failure to make such payments shall subject the cannabis operation to the same penalties as would accompany a failure to make timely payment of property taxes.

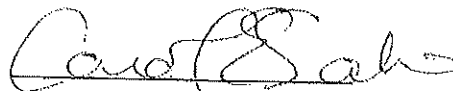
SECTION 12. All cannabis operations in the Borough of West Cape May shall comply fully with the licensing requirements of the West Cape May Code.

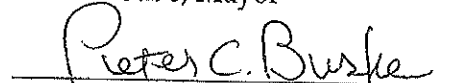
SECTION 13. Any article, section, paragraph, subsection, clause, or other provision of the West Cape May Municipal Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

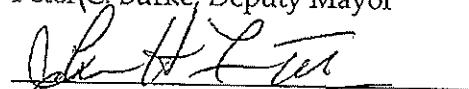
SECTION 14. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

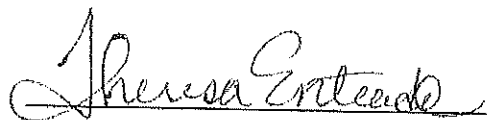
SECTION 15. To the extent this Ordinance modifies the West Cape May land use ordinances, it shall be referred to the West Cape May Consolidated Land Use Board for a Master Plan consistency review pursuant to N.J.S.A. 40:55D-26(a) and -64.

SECTION 16. This ordinance shall take effect 20 days after passage and publication, according to law


Carol E. Sabo, Mayor


Peter C. Burke, Deputy Mayor


John H. Francis, III, Commissioner


Theresa Enteadó
Acting Municipal Clerk

Introduced: June 23, 2021

First Publication: June 30, 2021

Second Reading and Adoption: July 14, 2021

Final Publication: July 21, 2021

Effective Date: August 3, 2021

I hereby certify that the foregoing is a true copy of an Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on July 14, 2021.

Theresa Enteadó
Acting Municipal Clerk

