

BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY

ORDINANCE 2021-12

AN ORDINANCE ADDING CHAPTER 112: "CANNABIS" AND AMENDING CHAPTER 123: "BEACHFRONT AREAS AND ADJACENT WATERS" AND CHAPTER 339: "PARKS AND RECREATION AREAS" AND CHAPTER 393: "SPECIAL EVENTS" AND CHAPTER 394: "BLOCK PARTIES" OF THE BOROUGH'S REVISED GENERAL ORDINANCES TO OPT-OUT OF THE NEW CANNABIS LAW AND TO PROHIBIT ALL CONSUMPTION OF CANNABIS IN PUBLIC PLACES AND ALL UNDERAGE POSSESSION OF CANNABIS ITEMS IN THE BOROUGH

Mayor Fox offered the following Ordinance and moved its introduction:

WHEREAS, in November 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 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 stipulates, however, that any regulation or prohibition must be adopted within 180 days of the effective date of the Act; 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 of Bradley Beach, County of Monmouth, and State of New Jersey (the “Borough”) has determined that, due to present uncertainties regarding the potential future impacts on New Jersey municipalities in general, and on the Borough in particular, it is at this time necessary, and in the best interest of the health, safety and welfare of the Borough’s residents and those who visit, travel, or conduct business in the Borough, to prohibit all manner of marijuana-related businesses and all public consumption and underage possession of cannabis items within the Borough; and

WHEREAS, pursuant to the authority granted to the Borough under the Act, the Mayor and Council believe that opting out of the Act, and prohibiting all public consumption and underage possession of cannabis within the Borough will help address these concerns and be in the best interest of the citizens of the Borough;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:

SECTION 1. The Revised General Ordinances of the Borough of Bradley Beach are hereby supplemented with *new* Chapter 112 entitled “Cannabis” as follows:

CHAPTER 112

CANNABIS

§ 112-1 Cannabis Businesses Prohibited.

- A. Pursuant to section 31(b) 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 Borough of Bradley Beach, except for the delivery of cannabis items and related supplies by a delivery service.
- B. Pursuant to Borough Code Section 450-10(A)(39), the operation of Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, Medical Cannabis Alternative Treatment Centers, Medical Cannabis Cultivators, Medical Cannabis Dispensaries, and Medical Cannabis Manufacturers are prohibited uses in all zones within the Borough of Bradley Beach.

§ 112-2 Public Consumption of Cannabis Prohibited.

- A. It shall be unlawful for any person to consume a cannabis item available for lawful consumption pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act in any public place as defined in said Act, including any public street, highway, avenue, alley or road of the Borough, or upon any public grounds, parks, sidewalks, beaches, beachfronts, or boardwalks within the Borough, other than school property for which unlawful consumption is a disorderly persons offense, or when not prohibited by the owner or person responsible for the operation of that public place.
- B. Any person violating this Section 112-2 shall be subject to a civil penalty of up to \$200.00, which shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to the Penalty Enforcement Law of 1999. The Municipal Court and the Superior Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.

§ 112-3 Possession or Consumption by Underaged Persons on Private Property.

- A. It shall be unlawful for any person under the legal age who, without legal authority, knowingly possesses or knowingly consumes a cannabis item on private property.
- B. Any person violating this Section 112-3, in the case of an adult under the legal age to purchase cannabis items, shall be punished as follows:
 - (1) If the cannabis item possessed is an amount which may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a: for a first offense, a civil penalty of \$100.00; for a second offense, a civil penalty of \$200.00; and for a third or subsequent offense, a fine of \$350.00. The civil penalties provided for in this section shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to the Penalty Enforcement Law of 1999. The Municipal Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.
 - (2) If the cannabis item possessed is an amount that exceeds what may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a, or if any cannabis item is consumed: for a first offense, a fine of \$250.00; and for a second or subsequent offense, a fine of \$350.00.

SECTION 2. Section 123-8 entitled “Rules and Regulations” of Chapter 123 entitled “Beachfront Areas and Adjacent Waters” of the Revised General Ordinances of the Borough of Bradley Beach is hereby supplemented with *new* subsection 123-8(BB) as follows:

- BB. *Cannabis Prohibited.* No person shall bring or consume any cannabis items on the beachfront, in the waters, or on the boardwalk or promenade of the Borough.

SECTION 3. Section 339-1 entitled “Unlawful Acts; Conduct” of Chapter 339 entitled “Parks and Recreation Areas” of the Revised General Ordinances of the Borough of Bradley Beach is hereby supplemented with *new* subsection 339-1(A)(12) as follows:

- (12) Consume any cannabis items in any public park, including but not limited to Oceanfront Park areas, the Main Street Recreation Center, Public Golf Course and the Lake Terrace Park area.

SECTION 4. Section 393-2 entitled "Application for Permit" of Chapter 393 entitled "Special Events" of the Revised General Ordinances of the Borough of Bradley Beach is hereby supplemented with *new* subsection 393-2(A)(11) as follows:

- (11) The consumption of cannabis items is prohibited and shall not be permitted at any special events within the Borough.

SECTION 5. Section 394-2 entitled "Issuance of Permit; Information Required" of Chapter 394 entitled "Block Parties" of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~ text deleted; underlined text added):

The Borough of Bradley Beach Police Department is authorized to issue a permit for the temporary blocking of a street for the purpose of holding a block party. An application for such permit should be filed with the Chief of Police or the designee at least 30 days before the commencement of such party. Such application shall contain at least the following information: name and address of the applicant, name of the street of the event and a description of the specific party to be held. Local law prohibits alcohol use or the consumption of cannabis items of any type.

SECTION 6. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 7. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 8. This Ordinance shall take effect upon adoption and publication in accordance with the laws of the State of New Jersey.

SO ORDAINED as aforesaid.


ERICA KOSTYZ
Municipal Clerk


LARRY FOX
Mayor

Introduced: April 27, 2021

Date of Hearing and Adoption: May 11, 2021