

Egg Harbor Township

Ordinance No. 30

2021

An ordinance to amend the Code of the Township of Egg Harbor, by establishing Chapter 87, entitled “Cannabis” to permit and regulate marketplace classes of licensed Recreational Cannabis Businesses

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”) (P.L. 2021, c.16), 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 to cultivate, manufacture, wholesale, distribute, sell and deliver cannabis and cannabis related products; and

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 of 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 (or 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 Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) delegates to municipalities the power to zone and regulate development and that statute is amended from time to time by the State legislature; and

WHEREAS, the Township Committee of the Township of Egg Harbor has determined that the cultivation, manufacture, wholesale, and distribution of cannabis as well as its retail sale and delivery present special concerns and should be permitted in appropriate locations and regulated to protect the health safety and welfare of its citizens;

NOW THEREFORE BE IT RESOLVED that the Administrative Code of the Township of Egg Harbor shall be amended so as to establish a new chapter entitled Article 87, entitled “Cannabis” as follows:

BE IT ORDAINED, by the Township Committee of the Township of Egg Harbor, in the County of Atlantic, New Jersey as follows:

SECTION 1. Establishment of a new chapter entitled Article 87, entitled “Cannabis”.

§87-1. Declaration. Whereas, the public has voted to approve an amendment to the New Jersey Constitution to allow for the legalization of the recreation use of cannabis for adults at least 21 years of age which has been signed into law, it is the policy and the intent of the Township of Egg Harbor to permit and regulate marketplace classes of licensed cannabis businesses.

§87-2. Definitions. Unless specifically defined below or otherwise in N.J.S.A. 24:6I-31 et. seq. New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act and its applicable regulations, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application:

CANNABIS CULTIVATOR: Any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 1 Cannabis Cultivator license.

CANNABIS MANUFACTURER: Any licensed person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing and packaging cannabis items, and selling, and optionally transporting, these

items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers. This person or entity shall hold a Class 2 Cannabis Manufacturer license.

CANNABIS WHOLESALER: Any licensed person or entity that obtains and sells cannabis items for later resale by other licensees. This person or entity shall hold a Class 3 Cannabis Wholesaler license.

CANNABIS DISTRIBUTOR: Any licensed person or entity that transports 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. This person or entity shall hold a Class 4 Cannabis Distributor license.

CANNABIS RETAILER: Any licensed person or entity that sells cannabis items and related supplies to consumers. This person or entity shall hold a Class 5 Cannabis Retailer license.

CANNABIS DELIVERY: Any licensed person or entity that provides 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. This person or entity shall hold a Class 6 Cannabis Delivery license.

§87-3. License.

- A. Laws applicable. All application for licenses, all licenses issued and all proceedings under this Chapter shall be in accordance with the Act, rules, regulations, and all other applicable laws of the state of New Jersey.
- B. Issuing authority. All licenses required by this chapter shall be issued by the Township committee, which shall also administer the provisions of this chapter.
- C. License required. It shall be unlawful for any person, firm, or corporation to own or operate within this municipality any recreational cannabis businesses for the cultivation, manufacture, wholesale, and distribution of cannabis as well as its retail sale and delivery without first having obtained a properly issued license that is issued in accordance with the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c.16) and the provisions of this chapter.
- D. License fees. The annual license fees, type and maximum number of licenses for the cultivation, manufacture, wholesale, distribution retail sale and delivery of cannabis shall be as follows:
 - i. The application fee for Class 1-5 Licenses shall be \$10,000 and \$10,000 per annum thereafter.

- ii. The application fee for Class 6 License shall be \$2,500 and \$2,500 per annum thereafter.
 - iii. There shall be a maximum of four (4) Class 5 Licenses issued, exclusive of any vertically integrated medical marijuana facility.
 - iv. There shall be a maximum of four (4) Class 6 Licenses issued, exclusive of any vertically integrated medical marijuana facility.
- E. Hours. The hours of public operation for all Class 1 (Cannabis Cultivator), 2 (Cannabis Manufacturer), 3 (Cannabis Wholesaler), and 4 (Cannabis Distributor) Licensed cannabis businesses shall be limited to 7:00 AM through 10:00 PM daily. The hours of public operation for all Class 5 Licenses (Cannabis Retailer) shall be limited to 8:00 AM through 10:00 PM daily.

§87-4. On-site restrictions.

On-site consumption of cannabis in any form or its transfer from its original packaging by patrons, employees or other persons in the building, premises, or in any automobile or other vehicle located on the premises is prohibited.

§87-5. Persons under legal age.

- A. Presence. No person under the legal age of 21 shall be allowed in any building where cannabis is sold.
- B. Purchase of cannabis by a person under legal age. No person under the legal age of 21 shall purchase, attempt to purchase or have another purchase for that person any cannabis on any premises license for the sale of cannabis.
- C. Purchase of cannabis for a person under the legal age. No person shall purchase, attempt to purchase, or transfer cannabis to a person under the legal age of 21. It shall be unlawful for any person to induce or attempt to induce any licensee or any employee of a licensing to sell, serve or deliver cannabis to a person under the legal age of 21.

§87-6. Taxation.

Cannabis products will be subject to the State sales tax and, as authorized by the Legislature, a local cannabis tax of 2% for cannabis cultivator, manufacturer, and/or retailer; and 1% for wholesalers. The tax percentage is based on the receipts for each sale and will be paid directly to the municipality in the manner prescribed by the municipality. Any delinquencies are treated the same as delinquent property taxes. The local tax does not apply to delivery services to consumers or transfers for the purpose of bulk transportation.

§87-7. Revocation of license.

- A. Any license issued under this chapter may be suspended or revoked for a violation of any of the provisions of this chapter, the provisions of chapter 142, Mercantile license, Section

- 1, or any provision of the applicable statute or any of the rules or regulations of the State of New Jersey.
- B. Proceedings for the suspension or revocation shall be in accordance with the provisions of Chapter 142, Mercantile License, Section 1, or any provision of the applicable statute or any of the rules or regulations of the State of New Jersey by a service of the notice of charges preferred against the licensee and affording a reasonable opportunity for a hearing. Any suspension or revocation shall carry the penalties and prohibitions provided in the ordinances and statutes are referred to herein.
 - C. Suspension or revocation of a license shall be in addition to any other penalty which may be imposed for a violation of this Chapter.

§87-8. Violations and penalties.

- A. Any licensee who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, have his, her or its license subject to a fine of \$2,500 for the first offense and \$3,500 for any subsequent offense as well as such penalties as may otherwise be provided by law.
- B. Any person who shall violate or fail to comply with the provisions of this chapter shall, upon conviction, be subject to a minimum fine of \$250,00 or a maximum of \$2000 or by imprisonment for a term not exceeding 90 days or by a period of community service not exceeding 90 days as well as such penalties as may otherwise be provided by law.

SECTION 2. All ordinances and 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 invalid or unconstitutional by a Court of 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 upon final passage, adoption and publication in the manner prescribed by law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR, IN THE COUNTY OF ATLANTIC AND STATE OF NEW JERSEY, HELD JUNE 23, 2021, AND WILL BE FURTHER CONSIDERED FOR FINAL PASSAGE AFTER A PUBLIC HEARING THEREON AT A REGULAR MEETING OF SAID TOWNSHIP COMMITTEE IN THE TOWNSHIP HALL, IN SAID TOWNSHIP ON JULY 21, 2021, AT 5:30 P.M.

Dated: June 23, 2021

Eileen M. Tedesco, RMC
Township Clerk