

ORDINANCE NO. 22-2

ORDINANCE OF THE MUNICIPAL COUNCIL OF THE BOROUGH OF SOUTH TOMS RIVER, COUNTY OF OCEAN, NEW JERSEY PERMITTING THE OPERATION OF CANNABIS BUSINESSES AS PERMITTED USES AND AMENDING THE BOROUGH CODE TO CREATE A NEW CHAPTER 20

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, consisting of:

- 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 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 4 Cannabis Distributor 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 Service 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 3 of the Act defines a "cannabis establishment" as "a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer"; and

WHEREAS, Section 45 a of the Act authorizes municipalities to adopt by ordinance regulations governing the number of (1) cannabis establishments, (2) cannabis distributors and (3) cannabis delivery services, except for the delivery of cannabis items and related supplies by a cannabis delivery service based and initiated from outside of the municipality; and

WHEREAS, Section 45 b of the Act authorizes municipalities to prohibit by ordinance the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality, except for the delivery of cannabis items and related supplies by a delivery service based and initiated from outside of the municipality; and

WHEREAS, Section 45 b 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 21, 2021); and

WHEREAS, pursuant to Section 45 b 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, in 2026, 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 with appropriate approvals within the municipality; and

WHEREAS, the Mayor and Council of the Borough of South Toms River have decided not to adopt any Ordinance, prohibiting cannabis/marijuana-related businesses within the geographic boundaries of the Borough; and

WHEREAS, the Mayor and Council of the Borough, have determined that it is in the best interests of the Borough of residents and members of the public who visit, travel, or conduct business in the Borough, to permit all manner of cannabis-related businesses within the area of the Borough of South Toms River, subject to specific regulations governing said businesses, in order to address any potential detrimental impacts resulting from said businesses; and

WHEREAS, pursuant to Section 40 of the Act, a municipality may adopt an ordinance imposing a transfer tax and/or user tax on the sale of cannabis or cannabis items by cannabis establishments located in the municipality and which shall be in addition to any other tax imposed by law; and

WHEREAS, the Mayor and Council of the Borough of South Toms River have determined that, at this time, it is necessary to adopt a new Chapter 20, entitled "CANNABIS ESTABLISHMENTS, subject to the specific regulations set forth herein.

NOW THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of South Toms River in the County of Ocean and State of New Jersey, that a new Chapter 20, is adopted as follows:

SECTION 1.

Definitions.

For purposes of this Chapter, the following definitions shall apply:

"Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with P.L. 2016, c. 16 for use in cannabis products as set forth in this Act, but shall not include the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products. "Cannabis" does not include: medical cannabis dispensed to registered qualifying patients pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307(C.24:61-1 et al.) and P.L. 2015, c.158 (C.18A:40-12.22 et al.); marijuana as defined in N.J.S.2C:35-2 and applied to any offense set forth in chapters 35, 35A, and 36 of Title 2C of the New Jersey Statutes, or P.L.2001, c.114 (C.2C:35B-1 et seq.), or marihuana as defined in section 2 of P.L. 1970, c.226 (C.24:21-2) and applied to any offense set forth in the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c.226 (C24:21-1 et al.); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L. 2019, c.238 (C.4:28-6 et al.).

"Cannabis Cultivator" means 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.

"Cannabis delivery service" means any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer.

"Cannabis distributor" means any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

"Cannabis establishment" means a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer.

"Cannabis manufacturer" means 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.

"Cannabis retailer" means any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to consumers from a retail store, and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. A cannabis retailer shall also accept consumer purchases to be fulfilled from its retail store that are presented by a cannabis delivery service which will be delivered by the cannabis deliver service to that consumer.

"Cannabis wholesaler" means any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or

other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

SECTION 2. The lists of permitted uses for the Marine Recreational-Residential Zone, the Mixed-Use Zone, Special Economic Development Zone and the Neighborhood Commercial Zone shall be amended such that the following permitted uses shall be permitted in those zones.

1. Cannabis establishments, including cannabis cultivator (Class 1 license), cannabis manufacturer (Class 2 license), cannabis wholesaler (Class 3 license), cannabis retailers (Class 5 license) and cannabis delivery services (Class 6 License);

2. Cannabis distributors (Class 4).

SECTION 3. Licenses.

(a) License. In addition to any license issued by the State, cannabis establishments permitted pursuant to this ordinance and cannabis distributors within the Borough of South Toms River, shall be required to obtain from the Borough of South Toms River Building Department an annual license evidencing compliance with the requirements of this Ordinance. Under no circumstances shall a local license issued by the Building Department be effective until or unless the State has issued the requisite permits or licenses to operate such a facility. The local license shall be valid for a one-year period from the date of issuance and shall be renewable, subject to any restrictions or regulations adopted since the previous local license was issued or renewed. In the event of any violation of this Ordinance, the Building Department may, upon notice to and a hearing provided to the licensee, revoke the license. Transfer of ownership of any local license or change of location or modification of any local license shall be subject to the approval of the Building Department. There shall be a non-refundable application fee for such license in the amount of \$10,000.00 for all Class 1, 2, 3, 4 and 5 cannabis licenses. There shall be a non-refundable application fee of \$5,000 for Class 6 cannabis licenses. The annual license fee

shall be in an amount of \$5,000.00 for Class 1, 2, 3, 4 and 5 cannabis licenses. The annual license fee shall be in an amount of \$2,500.00 for all Classes 6 cannabis licenses.

(b) Number of licensed issued. The Borough of South Toms River shall limit the number of aggregate licenses of all Class licenses (1-6) issued in each of the Marine Recreational-Residential Zone, the Mixed-Use Zone, Special Economic Development Zone and the Neighborhood Commercial Zone to three licenses for each zone.

SECTION 4. Within thirty (30) days of the passage of this chapter, the Borough will issue a request for proposals (RFP) for applicants seeking licensing pre-approval to submit license applications to the State of New Jersey. The scoring shall be on a scale of zero to one hundred (100) as set forth in the criteria established by the Borough. The highest scoring applicants shall be pre-approved for licensure and may apply to the State of New Jersey for a license. Any applicant that receives scoring less than eighty (80) points out of one hundred (100) shall not be approved. After the above RFP process is complete should a license become inactive or available, any applicant may apply for pre-approval from the city as provided for herein. However, such application shall be considered based upon the date of submission. The fee for review of the above application shall be Five Hundred Dollars (\$500.00). Licensing shall be issued by the Borough clerk pursuant to the provisions of this chapter.

SECTION 5. Cannabis establishments and cannabis distributors shall be subject to the following specifications and standards, which shall constitute regulations applicable to a permitted use, and shall not be construed as conditions applicable to a conditional use:

- a) Licenses. Prior to the operation of any cannabis establishment, a permit or license must be obtained from the State of New Jersey and from the Borough of South Toms River for the applicable type(s) of cannabis establishment. No cannabis establishment shall be permitted to operate without State and municipal permits or licenses.

- b) Compliance with Licenses. Permitted uses shall, at all times, comply with the terms and conditions of the licensee's cannabis establishment permits and licenses issued by the State of New Jersey and the Borough of South Toms River.
- c) Hours of Operation. 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.
- d) Odor. Cannabis establishments shall have equipment to mitigate odor sufficient odor absorbing ventilation and exhaust systems such as equipment with carbon filters sufficient in type and capacity to mitigate cannabis odors emanating from the interior of the premises. Odor from Cannabis establishments shall be monitored on an annual basis at the discretion of the Township by a licensed, qualified contractor chosen by the Township at a cost that shall be paid for by the licensed business.
- e) Noise. Outside generators and other mechanical equipment used for any kind of power supply, cooling, or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.
- f) Security. All cannabis establishments shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock video surveillance system, 365 days per year; and shall have trained security personnel onsite at all times during operating hours. Footage must be maintained for the duration required under State law. All licensed facilities must provide the Borough's Police Department with access to security footage immediately upon request by the Department.
- g) Dimensional, density and other bulk restrictions; other provisions and requirements. Except as specifically modified herein, and to the extent applicable, the dimensional, density and other bulk restrictions and requirements of the Marine Recreational-Residential Zone, the Mixed-Use Zone, Special Economic Development Zone and the Neighborhood Commercial Zone shall apply.

- h) Outdoor cultivation or greenhouses shall be prohibited. The cultivation of cannabis shall only be permitted within a fully enclosed building.
- i) Drive-through facilities are prohibited.
- j) On-site consumption prohibited. No cannabis or cannabis product shall be smoked, eaten or otherwise consumed on the premises of any cannabis establishment, unless permitted pursuant to State statute or regulation.
- k) Age restriction. No person under the age of 21 years may be permitted within any cannabis establishment. Any person seeking entry into a cannabis establishment shall be required to present proof of age to a security guard before gaining entry.

SECTION 6. Cannabis establishments and cannabis distributors are not permitted uses anywhere within the Borough, except within the above noted zones, as specifically provided herein.

SECTION 7. Taxation.

(a) There is hereby established a local transfer tax imposed on sales that occur within the Borough of South Toms River between a cannabis business that holds a cultivator, manufacturer, retailer, or wholesaler license or any combination thereof, at a rate of two percent of the receipts from each sale by a cannabis cultivator; two percent of the receipts from each sale by a cannabis manufacturer; one percent of the receipts from each sale by a cannabis wholesaler; and an equivalent user tax on non-sale transactions between cannabis businesses operated by the same license holder payable to the Borough of South Toms River.

(b) Every cannabis establishment required to collect a transfer tax imposed by ordinance pursuant to this section shall be personally liable for such transfer tax or user tax imposed, collected, or required to be collected under this section. Any cannabis establishment shall have the same right with respect to collecting the transfer tax or user tax from another cannabis establishment as if the transfer tax was a part of the sale and payable at the same time, or with respect to non-payment of the transfer tax or user tax by the cannabis establishment or consumer, as if the transfer tax was a part of the purchase price of the cannabis or cannabis item,

or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the chief fiscal officer of the Borough shall be joined as a party in any action or proceeding brought to collect the cannabis sales or user tax.

(c) All revenues collected from a transfer tax imposed by ordinance pursuant to this section shall be remitted to the chief financial officer in the manner prescribed herein. The chief financial officer shall collect and administer any transfer tax imposed by ordinance pursuant to this chapter. The Borough may enforce the payment of any delinquent taxes imposed by ordinance pursuant to this section in the same manner as provided for municipal real property taxes. In the event that the transfer tax imposed by ordinance pursuant to this section is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and shall be on a parity with and deemed equal to the municipal lien on the parcel for unpaid property taxes due and owing in the same year. The Borough shall file in the office of its tax collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

(d) The chief financial officer is charged with the administration and enforcement of the local transfer tax provisions of this ordinance, and is empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this chapter, including provisions for the reexamination and corrections of declarations and returns, and of payments alleged or found to be incorrect, or as to which an overpayment is claimed or found to have occurred, and to prescribe forms necessary for the administration of this chapter. Should a cannabis establishment fail or refuse to provide adequate information to the chief financial officer to determine the amount of tax due, the chief

financial officer may use information provided to the chief financial officer from other sources (i.e., the Commission or Department of Treasury) to determine the amount of tax liability.

(e) Taxpayers liable for the transfer tax are required to keep such records as will enable the filing of true and accurate returns or the tax and such records shall be preserved for a period of not less than three (3) years from the filing date or due date, whichever is later, in order to enable the chief financial officer or any agent designated by him to verify the correctness of the declarations or returns filed. If records are not available in the Borough to support the returns which were filed or which should have been filed, the taxpayer will be required to make them available to the chief financial officer either by producing them at a location in the municipality or by paying for the expenses incurred by the chief financial officer or his agent in traveling to the place where the records are regularly kept.

(f) All cannabis establishments operating in the municipality are required to file a copy of their New Jersey transfer tax return with the chief financial officer to report their sales during each calendar quarter and the amount of tax in accordance with the provisions of this chapter. Returns shall be filed and payments of tax imposed for the preceding calendar quarter shall be made on or before the last day of April, July, October, and January, respectively. A taxpayer who has overpaid the transfer tax, or who believes it is not liable for the tax, may file a written request on an amended tax return with the chief financial officer for a refund or a credit of the tax. For amounts paid as a result of a notice asserting or informing a taxpayer of an underpayment, a written request for a refund shall be filed with the chief financial officer within two (2) years of the date of the payment.

(g) The chief financial officer may initiate an audit by means of an audit notice. If, as a result of an examination conducted by the chief financial officer, a return has not been filed by a taxpayer or a return is found to be incorrect and transfer taxes are owed, the chief financial officer is authorized to assess and collect any tax due. If no return has been filed and tax is found to be due, the tax actually due may be assessed and collected with or without the formality of obtaining a return from the taxpayer. Deficiency assessments (i.e., where a taxpayer has filed a return but is found to owe additional tax) shall include taxes for up to three (3) years to the date

when the deficiency is assessed. Where no return was filed, there shall be no limit to the period of assessment.

(h) Upon proposing an assessment, the chief financial officer shall send the taxpayer an interim notice by certified mail, return receipt requested, which advises the taxpayer of additional taxes that are due. Should the taxpayer wish to dispute the assessment administratively by requesting a hearing with the chief financial officer, it must do so within thirty (30) days of the date of such interim notice. If, after the chief financial officer sends an interim notice, a taxpayer fails to timely request a hearing with the chief financial officer or requests a hearing and after conducting a hearing, the chief financial officer determines that the taxes are due, the chief financial officer shall send the taxpayer by certified mail, return receipt requested, a final notice. Should the taxpayer wish to dispute the assessment set forth in the final notice, he or she must initiate an appeal in the New Jersey Tax Court within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder.

(i) Any person who receives an interim notice from the chief financial officer may within thirty (30) days after the date of an interim notice, request a hearing with the chief financial officer. Any person who fails to request a chief financial officer's hearing in a timely manner waives the right to administratively contest any element of the assessment. The chief financial officer shall accept payments of disputed tax amounts under protest pending appeals; however, any request for refund of such monies must be filed in accordance with this section.

(j) Any aggrieved taxpayer may, within ninety (90) days after the mailing of any final notice regarding a decision, order, finding, assessment, or action hereunder, or publication of any rule, regulation or policy of the chief financial officer, appeal to the Tax Court pursuant to the jurisdiction granted by N.J.S.A. 2B:13-2a(3) to review actions or regulations of municipal officials by filing a complaint in accordance with the New Jersey Court Rule 8:3-1. The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a final decision of the chief financial officer in respect to a determination of liability for the tax imposed by this chapter.

SECTION 8. Violations and penalties. 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. 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 \$2000.00 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.

In addition to the penalties set forth in Section 8 of this chapter, cannabis licensees shall further be subject to a ten-day license suspension. Each day that a violation occurs shall be a separate violation.

SECTION 9. Any article, chapter, section, paragraph, subsection, clause, or other provision of the Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

SECTION 10. In case, for any reason, any portion or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other portion or provision of this Ordinance, except so far as the portion or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

SECTION 11. This Ordinance shall take effect in accordance with the law.

FIRST READING:

SECOND READING & PUBLIC HEARING:

ADOPTED:

BOROUGH OF SOUTH TOMS RIVER

Joseph A. Kostecki

Gregory Handshy

BOROUGH CLERK

MAYOR