

BOROUGH OF ROCKAWAY

ORDINANCE #22-21

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ROCKAWAY IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF ROCKAWAY TO INCLUDE CANNABIS RETAILER AS A PERMITTED USE IN CERTAIN ZONES WITHIN THE BOROUGH OF ROCKAWAY

WHEREAS, in the 2020 General Election, voters approved a ballot measure to amend the State Constitution to provide for the legalization of “cannabis”, a legal form of the same substance more commonly known as marijuana, for adults twenty-one (21) years or older; and

WHEREAS, in the Borough of Rockaway voters approved the ballot measure to legalize cannabis by a margin of 2,190 (66%) in favor and 1,128 (34%) opposed; 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 within its borders by adopting or amending zoning ordinances relating to the nature and extent of the uses of land and structures thereon; 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”), legalizing the recreational use of marijuana by adults twenty-one (21) years of age or older, and establishing a regulatory and licensing scheme for commercial recreational cannabis operations, use and possession; and

WHEREAS, a state-wide administrative body known as the Cannabis Regulatory Commission is tasked with overseeing the licensing process for cannabis businesses and adopting rules and regulations concerning cannabis use and by which cannabis businesses are permitted to operate; and

WHEREAS, the Cannabis Regulatory Commission is presently constituted, but implementing regulations for cannabis related activities and licensing have yet to be adopted or even formally proposed; and

WHEREAS, the Act establishes six (6) different classes of licensed businesses:

- 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 a 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 purchase 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, the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis businesses permitted to operate within its boundaries as well as the “location, manner, and times of operation” of such businesses and to establish civil penalties for violations of any such regulations; and

WHEREAS, the Act also authorizes municipalities by ordinance to prohibit the operation of “any one or more classes” of cannabis businesses anywhere in the municipality, except that this prohibition cannot be extended to the delivery of cannabis items and related supplies by a delivery service, the regulation of which is outside the scope of municipal authority; and

WHEREAS, pursuant to the Act any such municipal ordinance must be adopted within one hundred and eighty (180) days of the effective date of the Act; and

WHEREAS, the failure to enact such an ordinance within one hundred and eighty (180) days of the effective date of the Act shall result in any class of cannabis business being deemed a permitted use in all industrial zones, and the retail sale of cannabis items to consumers by a cannabis retailer being deemed a conditional use in all commercial and retail zones for a period of five (5) years; and

WHEREAS, the Governing Body of the Borough of Rockaway desired that the Borough Code be amended to as to provide for regulation of the expansion of the legalization of recreational cannabis in accordance with State law; and

WHEREAS, the Governing Body of the Borough of Rockaway has determined that the operation of Cannabis Retailers within the Borough of Rockaway presents special and unique concerns and should be regulated specifically to permit the uses where appropriate in the Borough of Rockaway; and

WHEREAS, the Borough has determined that such facilities should be permitted in certain zones and in appropriate locations as delineated herein; and

WHEREAS, the Mayor and Council have determined that the limited and measured allowance of only one (1) specific class of cannabis business within the Borough of Rockaway is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Borough residents and members of the public who visit, travel, or conduct business in Rockaway Borough to amend the Borough of Rockaway’s Code and ordinances to authorize such cannabis related businesses, to wit Cannabis Retailers, and to expressly prohibit all other forms of Cannabis related businesses and activities within the geographic boundaries of the Borough of Rockaway;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Rockaway, in the County of Morris, State of New Jersey that as follows:

Section 1. Chapter 169, “Land Use Administration Procedures”, Article I, “General Provisions”, § 169-4, “Definitions” of the Code of the Borough of Rockaway is hereby amended and supplemented as follows:

CANNABIS RETAILER

Cannabis Retailer shall mean any person or entity expressly authorized pursuant to a Class 5 Cannabis Retailer License issued by the State of New Jersey and a municipal license issued by the Borough of Rockaway in accordance with Chapter 111 to engage in the retail sale of legal forms of cannabis, including usable cannabis, cannabis items and other related lawful goods and products, to consumers from a retail store, purchases or otherwise obtains such forms of cannabis from cannabis cultivators and cannabis manufacturers or cannabis wholesalers and that 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 delivery service to that consumer.

Section 2. Chapter 172, “Zoning”, Article VIII, “G-B General Business District”, § 172-66, “Permitted principal uses”, of the Code of the Borough of Rockaway is hereby amended and supplemented to add the following as a permitted use under Subsection B:

(4) Cannabis Retailer sited on lots within the zone district with direct frontage on U.S. Route 46 and licensed by the State and the Borough of Rockaway.

Section 3. The Borough Clerk is directed to give notice at least ten (10) days prior to the hearing on the adoption of this Ordinance to the Morris County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15.

Section 4. After introduction, the Borough Clerk is hereby directed to refer this Ordinance to the Land Use Board of the Borough of Rockaway for review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Land Use Board is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate. Upon the adoption of this Ordinance, after public hearing, the Borough Clerk is further directed to publish notice of the passage and to file a copy of this Ordinance, as finally adopted, with the Morris County Planning Board, as required by N.J.S.A. 40:55D-16.

Section 5. Repealer. All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 6. Severability. Each section, subsection, paragraph, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, preempted, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

Section 7. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

Section 8. Prior actions. All actions of the Borough of Rockaway taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

Section 9. Codification. This Ordinance may be renumbered for codification purposes.

DATE: August 19, 2021

BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

CERTIFICATION

I, Kimberly Cuspilich, Acting Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at a meeting held on August 19, 2021.

Kimberly Cuspilich
Borough Clerk