

BOROUGH OF BERLIN
COUNTY OF CAMDEN

ORDINANCE 2021-09

**ORDINANCE OF THE BOROUGH OF BERLIN, COUNTY OF CAMDEN AND STATE
OF NEW JERSEY AMENDING THE CODE OF THE BOROUGH OF BERLIN,
CHAPTER 335 AND CHAPTER 345 TO PROHIBIT THE OPERATION OF ANY
CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES**

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 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 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 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 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, 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 Berlin has never adopted an enabling ordinance to allow for cannabis production, cultivation, processing, distribution, and/or retail in any form, whether for medical or recreational use within the Borough of Berlin; and

WHEREAS, the Borough of Berlin has never adopted any zoning ordinance and/or zoning amendment to allow for cannabis production, cultivation, processing, distribution, and/or retail in any form, whether for medical or recreational use within the Borough of Berlin; and

WHEREAS, the Mayor and Borough Council of the Borough of Berlin has determined the following: 1. At present there are uncertainties regarding the future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on the Borough of Berlin in particular; 2. There is a lack of clarity and direction in the Act; 3. There are potential negative impacts upon children in the Borough; 4. There are potential detrimental impacts on residents in a small community such as the Borough of Berlin; 5. The Borough of Berlin is almost completely built-out and developed and there does not appear to be any isolated areas for one or more classes of cannabis businesses; and 6. The Mayor and Council need more time to study and review the Act and its impact on the Borough of Berlin and its residents.

WHEREAS, based upon the foregoing, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Borough of Berlin's residents and members of the public who visit, travel, or conduct business in the Borough of Berlin to amend the Borough of Berlin's Code and zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough of Berlin; and

WHEREAS, many areas of municipal law are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration

in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts.

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

SECTION 1. New Chapter 345 of the Code of the Borough of Berlin is hereby established as follows: "Cannabis and Cannabis Products" "Pursuant to Section 31b of the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all medical and recreational cannabis establishments, cannabis distributors or cannabis delivery services are hereby prohibited from operating anywhere in the Borough of Berlin, except for the delivery of cannabis items and related supplies by a delivery service."

SECTION 2. Chapter 335 of the Code of the Borough of Berlin is hereby amended and supplemented by adding to the list of prohibited uses with Section 335-77 W as follows: W. "All classes of medical and recreational cannabis establishments or cannabis distributors or cannabis delivery services as said terms are defined in Section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service."

SECTION 3. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Berlin inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

SECTION 4. 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 5. This ordinance shall take effect upon its passage and publication and filing with the Camden County Planning Board, Pinelands Commission and as otherwise provided for by law.

Introduction:

Moved by: Councilmember Cummings; **Seconded by:** Councilmember Simone

Vote: Motion carried by roll call vote (summary: Yes = 5 No= 0 Absent=1).

Yes: Councilmembers: Cummings, Simone, Hohing, Miller, Pearce

No: None

Abstain: None

Absent: Badolato


Having been properly introduced, this Ordinance will have a second reading, public hearing and possible adoption will be on June 10, 2021.

I, Dwayne M. Harris, RMC, Municipal Clerk of the Borough of Berlin, hereby certifies the foregoing to be the true and correct actions by the Governing Body at its meeting on Thursday, May 13, 2021.


Adoption:

	Pearce	Badolato	Simone	Hohing	Cummings	Miller
AYE	X	X	X	X	X	X
NAY						
ABSTAIN						

BOROUGH OF BERLIN

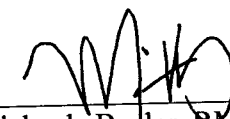

Rick Miller, Mayor

ATTEST:



Michaela Bosler, RMC
Deputy Borough Clerk

I, Michaela Bosler, RMC, Deputy Borough Clerk of the Borough of Berlin, hereby certifies the foregoing to be a true and correct copy of an Ordinance adopted by the Mayor and Borough Council at their meeting of June 10, 2021, in the Municipal Building, 59 South White Horse Pike, Berlin, New Jersey.



Michaela Bosler, RMC
Deputy Borough Clerk