

(1)

ORDINANCE NO. ____

AN ORDINANCE BY THE TOWNSHIP OF BERKELEY HEIGHTS IN UNION COUNTY, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING SECTION 6.4.1 OF THE MUNICIPAL LAND USE PROCEDURES ORDINANCE OF THE MUNICIPAL CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS

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 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 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 Township Council of the Township of Berkeley Heights has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis business might have on New Jersey municipalities in general, and on Berkeley Heights in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the Township of Berkeley Height’s residents and members of the public who visit, travel, or conduct business in Berkeley Heights, to amend Berkeley Height’s zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Township of Berkeley Heights;

NOW THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Berkeley Heights, in Union County, State of New Jersey, as follows:

1. Pursuant to section 31b 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 the Township of Berkeley Heights, except for the

delivery of cannabis items and related supplies by a delivery service located outside of the Township.

2. Section 6.4.1 of the Municipal Land Use Procedures Ordinance is hereby amended by adding to the list of prohibited uses, the following: "All classes of 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 located outside of the Township."

3. Any article, section, paragraph, subsection, clause, or other provision of the Township of Berkeley Heights inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

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.

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

INTRODUCED the _____ day of _____, 2021.

ADOPTED the _____ day of _____, 2021.

By: _____
Angie Devanney, Mayor

ATTEST:

Ana Minkoff, Township Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2021

**AN ORDINANCE BY THE TOWNSHIP OF BERKELEY HEIGHTS IN UNION
COUNTY, NEW JERSEY PROHIBITING THE OPERATION OF ANY CLASS OF
CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND
AMENDING SECTION 6.4.1 OF THE MUNICIPAL LAND USE PROCEDURES
ORDINANCE OF THE MUNICIPAL CODE OF THE TOWNSHIP OF BERKELEY
HEIGHTS**

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on May 18, 2021 and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on June 15, 2021 at 7:00 p.m. or as soon thereafter, as practical, via Zoom: <http://zoom.us/j/3575747364>, if you need to enter a meeting ID it is: 357-574-7364. At which time and place all persons interested therein or affected thereby, will be given an opportunity to be heard concerning the same. Alternatively, you may submit written comments in advance of the meeting either via electronic mail (to: aminkoff@bhtwp.com) or by written letter (to: Township Clerk, 29 Park Avenue, Berkeley Heights, NJ 07922), including commenter's full name and address, which must be received by the Township Clerk by 4:00 P.M. on the date of the Zoom meeting. During the week prior to, and up to the time of Public Hearing, copies of said Ordinance will be available by contacting the Municipal Clerk via email, aminkoff@bhtwp.com, or by calling 908-464-2700, and at the website www.berkeleyheights.gov, for the members of the general public who shall request the same.

**Ana Minkoff
Township Clerk**