

ORDINANCE NO. 2021-07

AN ORDINANCE BY THE TOWNSHIP OF BASS RIVER IN THE COUNTY OF BURLINGTON, NEW JERSEY ALLOWING THE OPERATION OF CERTAIN CLASSES OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING TITLE 5 BUSINESS LICENSES AND REGULATIONS OF THE TOWNSHIP CODE TO CREATE CHAPTER 5.10 GOVERNING CANNABIS USES

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 Board of Commissioners of the Township of Bass River conducted a Special Meeting held on Monday, April 12, 2021 via zoom, for all interested or concerned Township residents. The overwhelming majority of the participants were in favor of allowing some type of cannabis business within the Township; and

WHEREAS, the Board of Commissioners of the Township of Bass River has determined that, due to present uncertainties regarding the potential future impacts that allowing Class 5 Cannabis Retailer licenses might have on Bass River Township, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Bass River’s residents and members of the public who visit, travel, or conduct business in the Township of Bass River, to amend Bass River’s zoning regulations to prohibit Class 5 Cannabis Retailer licenses within the geographic boundaries of Bass River Township; and

WHEREAS, the Township of Bass River wishes to create licensing requirements for Class 1, Class 2, Class 3 and Class 4 licensed businesses that protect the health, safety and general welfare the community.

NOW THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the Township of Bass River, in the County of Burlington, 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 Class 5 cannabis retail establishments are hereby prohibited from operating anywhere in the Township of Bass River.

2. Cannabis establishments (Class 1, Class 2, Class 3 and Class 4 licensed businesses) shall be permitted, in the Township of Bass River, pursuant to Title 5, Chapter 5.10, only if the following requirements are complied with:
 - a. The regulations of this Section are subject to the enabling authority of the State of New Jersey and are subject to compliance with all statutes and/or regulations adopted by the State of New Jersey or its instrumentalities. If any provision of this Chapter is inconsistent with the statutes and/or regulations of the State of New Jersey, the State statutes and/or regulations shall prevail.
 - b. Prior to the operation of any cannabis establishment, a permit or license must be obtained from the State of New Jersey and the Township of Bass River for the applicable type(s) of cannabis establishment. No cannabis establishment shall be permitted to operate without State and municipal permits or licenses.
 - c. Permitted uses shall, at all times comply with the terms and conditions of the licensee's cannabis establishment license for permits or licenses issued by the State of New Jersey and the Township of Bass River.
 - d. No cannabis establishment shall be allowed as a Home Professional Occupation as defined in Chapter 17.04.030.
 - e. No cannabis establishment shall be housed in a vehicle or any movable or mobile structure.
 - f. Hours of Operation. Hours of operation for Classes 1-4 shall be 24 hours per day, except that truck traffic to and from the site shall be restricted to the hours of 7 am to 7 pm.
 - g. Odor. Cannabis establishments shall have equipment to mitigate odor. The building shall be equipped with a ventilation system with carbon filters sufficient in type and capacity to mitigate cannabis odors emanating from the interior of the premises.
 - h. Noise Control. For any Class 1 through 4 facility, the facility shall provide for noise mitigation features designed to minimize disturbance from machinery, processing and/or packaging operations, loading and other noise generating equipment or machinery. All licensed facilities must operate within applicable State decibel limitations
 - i. Security. All cannabis establishments shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock surveillance system. Security footage must be maintained for the duration required under State law, or thirty days, whichever is greater. All licensed facilities must provide the Township and/or State Police with access to security footage immediately upon request.
 - j. Lighting. For all licensed cultivation operation, the facility must mitigate lighting spillover into any residential neighborhoods, and must comply with all applicable State lighting limitations. Lighting shall have a zero footcandle at all property lines.
 - k. Signage. Signage may contain the name of the entity only and no signage reflecting a cannabis leaf or other symbols will be permitted. The word "cannabis" may be used, but not "marijuana", or "pot" or any other common terms for cannabis. No advertising signs shall be permitted. No display of pricing shall be permitted.

3. Title 5. Chapter 5.10 Cannabis Licensing and Registration is hereby created:

5.10.010 Definition

For purposes of this Chapter, the words and terms used herein shall be deemed to have the meaning accorded to them by N.J.S.A. 24: 61-33 and the rules and regulations promulgated by New Jersey Cannabis Regulatory Commission.

5.10.020 Licensing

a. Local licensing authority

1. The Township Clerk is hereby designated to act as the local licensing authority for the Township for all cannabis establishments. Under all circumstances in which State law requires communication to the Township by the Cannabis Regulatory Commission, or any other State agency, with regard to the licensing of cannabis establishments by the State, or in which State law requires any review or approval by the Township of any action taken by the State licensing authority, the exclusive authority for receiving such communications and granting such approval shall be exercised by the Township Clerk.
2. Under no circumstances shall a local license for a cannabis establishment issued by the Clerk be effective until or unless the State has issued the requisite permits or licenses to operate such a facility. It is the intent of this Chapter that no cannabis establishment may lawfully operate in the Township of Bass River without the issuance of a State permit or license and full regulatory oversight of the cannabis establishment by the Cannabis Regulatory Commission or other State licensing authority as well as oversight and issuance of a license by the Township.

b. Applications

1. The applicant shall submit proof that the applicant has or will have lawful possession of the premises proposed for the cannabis establishment, which proof may consist of: a deed, lease, real estate contract contingent upon successful licensing, or a binding letter of intent by the owner of the premises indicating an intent to lease the premises contingent upon successful licensing.
2. The applicant shall submit an affidavit and documentary proof of compliance with all state and local laws regarding affirmative action, anti-discrimination and fair employment practices.
3. The location proposed for licensing by the applicant shall comply with all applicable municipal zoning laws.

4. The applicant shall submit all required nonrefundable fees for the application and conditional license in accordance with the following schedule:

Cannabis cultivator: \$10,000.00

Cannabis cultivator Microbusiness: \$5,000.00

Cannabis manufacturer: \$10,000.00

Cannabis manufacturer Microbusiness: \$5,000.00

5. The applicant shall submit all annual registration fees required in accordance with the following fee schedule, which shall be refunded in the event the applicant does not receive a license:

Cannabis cultivator: \$10,000.00

Cannabis cultivator Microbusiness: \$5,000.00

Cannabis manufacturer: \$10,000.00

Cannabis manufacturer Microbusiness: \$5,000.00

6. In addition to complying with any State requirement related to good character and criminal background, any person proposed to have an ownership interest in the license shall not have had any cannabis license or permit revoked for a violation affecting public safety in the State of New Jersey or a subdivision thereof within the preceding five (5) years.
 7. The applicant and the application shall otherwise comply with any and all qualification standards set forth in the State and Township Code.
 8. A notification of award and conditional municipal license shall entitle the recipient applicant to pursue a State permit or license in the appropriate classification for up to 12 months, which may be extended by the Township for an additional 6 months for good cause. No license to operate shall issue until the applicant has received a State permit and satisfied the prerequisites of municipal licensure. If the recipient of a conditional license has not received a State permit or license within 12 months from issuance, unless extended for good cause, the Township may void the application.
- c. Term of license and license renewals.
1. Any local license issued pursuant to this Chapter shall be valid for a period of one (1) year from the date of issuance and shall be renewed in accordance with the provisions of this Chapter.
 2. The Township may adjust the renewal date of the local license to correlate with the applicant's State licensing and renewal schedule.
 3. Renewal of any license shall be governed by any code amendments, additional restrictions or changes in regulations adopted since the previous license was issued or renewed.
 4. Except where the Township Clerk has received a complete renewal application along with the requisite fees, and has issued a license renewal, it shall be unlawful for any person to manufacture, sell, distribute, transfer,

transport or otherwise remove cannabis or cannabis products from the premises of any license after the expiration date recorded on the face of the license.

5.10.030 Cannabis Transfer Tax and User Tax

a. A municipal transfer tax is hereby imposed on the receipts of each sale by a licensed cannabis business operating in the Township of Bass River at the rate of two (2%) percent of the receipts from each sale by a cannabis cultivator, two (2%) percent of the receipts from each sale by a cannabis manufacturer and one (1%) percent of the receipt from each sale by a cannabis wholesaler.

b. A municipal user tax is hereby imposed, at the equivalent transfer tax rates, on any concurrent license holder operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the transfer tax imposed pursuant to this section, from the license holder's establishment that is located in the municipality to any of the other license holder's establishments, whether located in the municipality or in another municipality.

5.10.040 Payment of Taxes

All revenues collected pursuant to this section shall be remitted to the Chief Financial Officer of the Township of Bass River in the manner provided by this ordinance. The taxes imposed by this section shall be computed and paid for each calendar month. Said taxes are due and payable to the Chief Financial Officer on or before the twentieth (20th) day of the succeeding month.

5.10.050 Administration

- A. The Chief Financial Officer is hereby authorized and empowered to administer, regulate and collect payment of all taxes imposed by this ordinance.
- B. The Chief Financial Officer may order an audit of any taxpayer under this Chapter for the purpose of ascertaining the correctness or completeness of any return or payment.

5.10.060 Penalties

- A. Any license holder who violates any section of this Chapter shall pay a penalty of up to \$250 per violation per day for a first offense and up to \$500 per violation per day for a second offense, except for the non-payment of taxes imposed by Section 5.10.030.
- B. The payment of delinquent taxes or transfer fees imposed by Section 5.10.030 shall be enforced in the same manner as provided for delinquent real property taxes.
 - 1. In the event that the transfer tax or user tax imposed by this ordinance 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 of the parcel for unpaid property taxes due and owing in the same year.


2. In the event that a lien is imposed on a delinquent taxpayer pursuant to this section, the Township shall file in the office of the tax collector a statement showing the amount and due date of the unpaid balance and identify 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.


4.. Any article, section, paragraph, subsection, clause, or other provision of the Township of Bass River municipal code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

5. 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.

6. This ordinance shall take effect upon its passage and publication as provided for by law.

ATTEST:


ELIZABETH GODFREY, Acting Clerk


DEBORAH BUZBY COPE, Mayor

I, Elizabeth Godfrey, Acting Clerk of the Township of Bass River, do hereby certify that the foregoing is a true copy of an ordinance duly adopted by the Board of Commissioners of the Township of Bass River on July 12, 2021.


ELIZABETH GODFREY, Acting Clerk