

O-12-21

AN ORDINANCE BY THE BOROUGH OF WHARTON, COUNTY OF MORRIS, NEW JERSEY, TO AMEND CHAPTER 165, "LAND USE AND DEVELOPMENT," SECTION 165-90, "GENERAL PROVISIONS," SUBSECTION 165-90A, "PROHIBITED USES" OF THE BOROUGH MUNICIPAL CODE, TO PROHIBIT THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN THE BOROUGH'S 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 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 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 of operation of such establishments, distributors or delivery services and establish 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 Council of the Borough of Wharton 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 the Borough of Wharton in particular, it is at this time necessary and appropriate and in the best interests of the health, safety and welfare of the Borough of Wharton’s residents and members of the public who visit, travel or conduct business in the Borough of Wharton, to amend the Borough of Wharton’s zoning regulations to prohibit all manner of cannabis-related and marijuana-related land use and development within the geographic boundaries of the Borough of Wharton; and

WHEREAS, due to the complexity and novelty of the Act, the many areas of municipal law that 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 Borough Council of the Borough of Wharton, in the County of Morris, 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 Borough of Wharton, except for the delivery of cannabis items and related supplies by a delivery service.

2. Subsection 165-90A of the Borough of Wharton municipal code is hereby amended, by adding to the list of prohibited uses, the following: “All classes of cannabis establishments, cannabis distributors and cannabis delivery services, as said terms are defined in section 3 of P.L. 2021, c. 16, including, but not limited to, cannabis retailers, cultivators, manufacturers, wholesalers, testing facilities, medical cannabis dispensaries and alternative cannabis treatment centers, including such operators holding a medical cannabis dispensary permit pursuant to P.L. 2009, c. 307 (C. 24:61-7), but not the delivery of cannabis items and related supplies by a delivery service.”

3. Any article, section, paragraph, subsection, clause or other provision of the Borough of Wharton municipal code 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. After introduction of this ordinance, the Borough Clerk shall send a copy of this ordinance to the Borough of Wharton Planning Board for its review and comment. The Borough Clerk shall also send a copy of this ordinance, upon introduction and adoption, to the Morris County Planning Board, pursuant to N.J.S.A. 40:55D-16.

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

First Reading: May 24, 2021

Second Reading: June 28, 2021

ATTEST:

BOROUGH OF WHARTON

**Gabrielle Evangelista
Borough Clerk**

**WILLIAM J. CHEGWIDDEN
MAYOR**