

City of Estell Manor
Ordinance # 03-2021

AN ORDINANCE OF THE CITY OF ESTELL MANOR IN ATLANTIC COUNTY, NEW JERSEY AMENDING AND SUPPLEMENTING THE GENERAL ORDINANCES OF THE CITY, CHAPTER 380, ZONING REGULATIONS AS SET FORTH HEREIN AND PROHIBITING 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 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 Mayor and City Council of the City of Estell Manor 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 City of Estell Manor in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of the City of Estell Manor’s residents and members of the public who visit, travel, or conduct business in the City of Estell Manor, to amend Estell Manor’s zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the City of Estell Manor; 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 Mayor and Council of the City of Estell Manor, in the County of Atlantic, State of New Jersey, as follows:

SECTION 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 City of Estell Manor, except for the delivery of cannabis items and related supplies by a delivery service.

SECTION 2. Section 380-12 of the City Code of the City of Estell Manor entitled “Prohibited Uses” is hereby amended by adding to the list of prohibited uses: “D. 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.”

SECTION 3.

A. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

B. Any Ordinance inconsistent with the terms of this Ordinance is hereby repealed to the extent of such inconsistency

SECTION 4. This Ordinance shall take effect upon its final passage and publication as provided by law.

SECTION 5. This Ordinance shall be a part of the General Ordinances of the City of Estell Manor and though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated within the official copies of the City Code. The City Clerk and the City Solicitor are authorized and directed to change any Chapter, Article and/or Section number of the General Ordinances of the City of Estell Manor in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repeal of existing provisions not intended to be repealed.

Mayor Joseph Venezia

This is to certify that the foregoing Ordinance was given its First Reading by Title at a Regular Meeting of the Governing Body of the City of Estell Manor held June 2, 2021. This ordinance will be advertised by title with a public hearing to be conducted on **July 7, 2021 7:00pm** at a regularly scheduled Council meeting. Ordinance 03-2021 will be considered for final passage and adoption by City Council at this meeting. The meeting will be conducted virtually and public notice of same will be given of same in accordance with the Open Public Meetings Act.

Judson Moore, Acting City Clerk

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