

ORDINANCE NO. 2021-17

ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AMENDING THE REVISED GENERAL ORDINANCES OF THE BOROUGH TO AMEND CHAPTER 490: "PLANNING AND DEVELOPMENT REGULATIONS" TO PERMIT AND REGULATE CANNABIS BUSINESSES, AND TO AMEND CHAPTER 478: "PARKS AND RECREATION" AND CHAPTER 574: "SMOKING" TO PROHIBIT POSSESSION OF CANNABIS IN BOROUGH PARKS AND CONSUMPTION OF CANNABIS ON BOROUGH PROPERTY, AND TO CREATE NEW CHAPTER 270: "CANNABIS" TO PROHIBIT CONSUMPTION OF CANNABIS IN PUBLIC PLACES AND PROHIBIT ALL UNDERAGE POSSESSION OF CANNABIS AND IMPOSE A LOCAL CANNABIS TRANSFER TAX AND LOCAL CANNABIS USER TAX WITHIN THE BOROUGH

WHEREAS, in November 2020, New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to legalize 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 cannabis by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational cannabis operations, use and possession; and

WHEREAS, the Act establishes six classes of licensed cannabis businesses, including:

- Class 1 – Cannabis Cultivator license, for facilities involved in growing 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 Distributor 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; and

WHEREAS, section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis businesses allowed to operate within their boundaries, as well as the location, manner, and times of operation of such businesses, 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 businesses, distributors, or delivery services anywhere in the municipality; and

WHEREAS, the Act stipulates, however, that any regulation or prohibition must be adopted within 180 days of the effective date of the Act, or by August 22, 2021; and

WHEREAS, in advance of the aforementioned deadline under the Act, the Mayor and Council of the Borough of Red Bank (the "Borough") find it necessary to establish land use regulations and local taxes for regulated cannabis businesses within the Borough in accordance with the Act and the New Jersey Municipal Land Use Law; and

WHEREAS, the Borough finds, given the Schedule I status of cannabis under the federal Controlled Substance Act, complexities with access to banking and the level of cash transactions in cannabis related businesses, and other concerns associated with cannabis-related businesses, that only qualified operators should be permitted to safely operate strictly regulated cannabis facilities within the Borough on a limited basis and subject to reasonable time, manner, and place restrictions, in order to balance the creation of jobs and economic opportunity within the Borough with public safety and the best interests of Borough residents;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank as follows:

SECTION 1. The Revised General Ordinances of the Borough of Red Bank are hereby supplemented with *new* Chapter 270 entitled "Cannabis" as follows:

CHAPTER 270: CANNABIS.

§ 270-1 Cannabis Businesses Permitted As Provided By Chapter 490.

The establishment and/or operation of Cannabis Cultivators, Cannabis Distributors, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, and Cannabis Delivery Services within the Borough of Red Bank is defined and governed by Chapter 490 of the Borough's Revised General Ordinances and the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.

§ 270-2 Public Consumption of Cannabis Prohibited.

- A. It shall be unlawful for any person to consume a cannabis item available for lawful consumption pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act in any public place as defined in said Act, including any public highway, public street, public sidewalk, public parking lot or lot, playground, park or other property owned by, belonging to or over which the Borough has control, other than school property for which unlawful consumption is a disorderly persons offense, or when not prohibited by the owner or person responsible for the operation of that public place.
- B. Any person violating this Section 270-2 shall be subject to a civil penalty of up to \$200.00, which shall be recovered in a civil action by a summary proceeding in the name of the Borough pursuant to the Penalty Enforcement Law of 1999. The Municipal Court and the Superior Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.

§ 270-3 Possession or Consumption by Underaged Persons on Private Property.

- A. It shall be unlawful for any person under the legal age who, without legal authority, knowingly possesses or knowingly consumes a cannabis item on private property.
- B. Any person violating this Section 270-3, in the case of an adult under the legal age to purchase cannabis items, shall be punished as follows:
 - (1) If the cannabis item possessed is an amount which may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a: for a first offense, a civil penalty of \$100.00; for a second offense, a civil penalty of \$200.00; and for a third or subsequent offense, a fine of \$350.00. The civil penalties provided for in this section shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to the Penalty Enforcement Law of 1999. The Municipal Court shall have jurisdiction of proceedings for the enforcement of the penalty provided by this section.
 - (2) If the cannabis item possessed is an amount that exceeds what may be lawfully possessed by a person of the legal age to purchase cannabis items pursuant to N.J.S.A. 2C:35-10a, or if any cannabis item is consumed: for a first offense, a fine of \$250.00; and for a second or subsequent offense, a fine of \$350.00.

§ 270-4 Local Cannabis Transfer Tax and User Tax.

A. Local Cannabis Transfer Tax.

- (1) The Borough of Red Bank hereby adopts and imposes a Local Cannabis Transfer Tax on the sale of any cannabis or cannabis items by any cannabis business within the Borough, which Local Cannabis Transfer Tax shall be imposed upon all:
 - (a) Receipts from the sale of cannabis by a cannabis cultivator to another cannabis cultivator;
 - (b) Receipts from the sale of cannabis items from one cannabis business to another cannabis business;
 - (c) Receipts from the retail sales of cannabis items by a cannabis retailer to retail consumers who are 21 years of age or older; and
 - (d) Any combination of any of the above-listed transfers.
- (2) The Local Cannabis Transfer Tax established pursuant to subsection (A)(1) hereinabove shall be charged at the following rates upon cannabis businesses within the Borough:
 - (a) Two-percent (2%) of the receipts from each sale by a Cannabis Cultivator;
 - (b) Two-percent (2%) of the receipts from each sale by a Cannabis Manufacturer;
 - (c) One-percent (1%) of the receipts from each sale by a Cannabis Wholesaler; and
 - (d) Two-percent (2%) of the receipts from each sale by a Cannabis Retailer.

B. Local Cannabis User Tax.

- (1) The Borough of Red Bank hereby adopts and imposes a Local Cannabis User Tax, at the same and equivalent rates as established for the Local Cannabis Transfer Tax rates set forth in subsection (A)(2) hereinabove.
- (2) The Local Cannabis User Tax shall be imposed upon any concurrent license holder operating more than one cannabis business, and shall be imposed on the value of each transfer or use of cannabis or cannabis items not otherwise subject to the Local Cannabis Transfer Tax imposed pursuant to subsection (A) hereinabove, from the license holder's business that is located in the Borough to any of the other license holder's businesses, whether located in the Borough or in another municipality.

C. Other Local Cannabis Tax Regulations.

- (1) The Local Cannabis Transfer Tax and User Tax imposed pursuant to this section shall be in addition to any other tax imposed by law.
- (2) The Local Cannabis Transfer Tax and User Tax shall be collected or paid, and remitted to the Borough by the cannabis business from the cannabis business purchasing or receiving the cannabis or cannabis item, or from the consumer at the point of sale, on behalf of the Borough by the cannabis retailer selling the cannabis item to that consumer.
- (3) The Local Cannabis Transfer Tax and User Tax shall be stated, charged, and shown separately on any sales slip, invoice, receipt, or other statement or memorandum of the price paid or payable, or equivalent value of the transfer, for the cannabis or cannabis item.

- (4) Every cannabis business required to collect the Local Cannabis Transfer Tax and User Tax imposed by this section shall be personally liable for the Local Cannabis Transfer Tax and User Tax imposed, collected, or required to be collected under this section. Any cannabis business shall have the same right with respect to collecting the Local Cannabis Transfer Tax and User Tax from another cannabis business or the consumer as if the Local Cannabis Transfer Tax or User Tax was a part of the sale and payable at the same time, or with respect to non-payment of the Local Cannabis Transfer Tax and User Tax by the cannabis business or consumer, as if the Local Cannabis Transfer Tax and User Tax was a part of the purchase price of the cannabis or cannabis item, or equivalent value of the transfer of the cannabis or cannabis item, and payable at the same time; provided, however, that the Chief Financial Officer of the Borough shall be joined as a party in any action or proceeding brought to collect a Local Cannabis Transfer Tax and User Tax.
- (5) No cannabis business required to collect the Local Cannabis Transfer Tax and User Tax pursuant to this section shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the Local Cannabis Transfer Tax and User Tax will not be separately charged and stated to another cannabis business or the consumer, or that the Local Cannabis Transfer Tax and User Tax will be refunded to the cannabis business or the consumer.
- (6) All revenues collected from the Local Cannabis Transfer Tax and User Tax pursuant to this section shall be remitted to the Chief Financial Officer of the Borough. The Chief Financial Officer shall collect and administer the Local Cannabis Transfer Tax and User Tax imposed by this section. The Borough shall enforce the payment of delinquent Local Cannabis Transfer Tax and User Tax in the same manner as provided for municipal real property taxes.
- (7) In the event that the Local Cannabis Transfer Tax and User Tax imposed by this section is not paid as and when due by a cannabis business, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis business 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 on the parcel for unpaid property taxes due and owing in the same year. In the event of a delinquency, the Chief Financial Officer shall file with the Tax Collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis business. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

SECTION 2. Section 490-6 entitled "Definitions" of Chapter 490 entitled "Planning and Development Regulations" of the Revised General Ordinances of the Borough of Red Bank is hereby supplemented with the following *new* definitions as follows:

CANNABIS CULTIVATOR - Any licensed person or entity that grows, cultivates, or produces cannabis in this State, and sells, and may transport, this cannabis to other cannabis cultivators, or usable cannabis to cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

CANNABIS DELIVERY SERVICE - Any licensed person or entity 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.

CANNABIS DISTRIBUTOR - Any licensed person or entity that transports cannabis in bulk intrastate from one licensed cannabis cultivator to another licensed cannabis cultivator, or transports cannabis items in bulk intrastate from

any one class of licensed cannabis establishment to another class of licensed cannabis establishment, and may engage in the temporary storage of cannabis or cannabis items as necessary to carry out transportation activities.

CANNABIS MANUFACTURER – Any licensed person or entity that processes cannabis items in this State by purchasing or otherwise obtaining usable cannabis, manufacturing, preparing, and packaging cannabis items, and selling, and optionally transporting, these items to other cannabis manufacturers, cannabis wholesalers, or cannabis retailers, but not to consumers.

CANNABIS RETAILER – Any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers, and sells these to consumers from a retail store, and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers.

CANNABIS WHOLESALER - Any licensed person or entity that purchases or otherwise obtains, stores, sells or otherwise transfers, and may transport, cannabis items for the purpose of resale or other transfer to either another cannabis wholesaler or to a cannabis retailer, but not to consumers.

SECTION 3. Article V entitled “General Regulations” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby supplemented with the following *new* Section 490-56.2 as follows:

§ 490-56.2 Cannabis Businesses.

Cannabis businesses shall be permitted, pursuant to this Chapter, 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 Section 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 business, a permit or license must be obtained from the State of New Jersey and from the Borough of Red Bank for the applicable type(s) of cannabis business. No cannabis business shall be permitted to operate without State and Borough permits or licenses.
- C. Permitted uses shall, at all times, comply with the terms and conditions of the licensee’s cannabis business license for permits or licenses issued by the State of New Jersey and the Borough.
- D. No cannabis business shall be allowed as a Home Profession as defined in Borough Code Section 490-6.
- E. No cannabis business shall be housed in a vehicle or any movable or mobile structure.
- F. Cannabis businesses shall have equipment to mitigate odor. The cannabis business 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.
- G. Outside generators and other mechanical equipment used for any kind of power supply, cooling, or ventilation shall be enclosed and have appropriate baffles, mufflers, and/or other noise reduction systems to mitigate noise pollution.
- H. All cannabis businesses shall be secured in accordance with State of New Jersey statutes and regulations; shall have a round-the-clock video surveillance system, 365 days a year; and shall have trained security personnel onsite at all times during operating hours.
- I. All cannabis businesses must provide the Red Bank Police Department with access to security footage immediately upon request by the Borough.

- J. Cannabis business signage shall not contain text and/or image intended to promote excessive consumption of legal cannabis products. The signage shall not have the words “Weed” or “Marijuana”, or depict marijuana or cannabis plants, or contain graphics indicating such images or wording.
- K. The applicant shall submit a written report setting forth the full particulars of the proposed use, including hours of operation, anticipated customer volume, parking facilities necessary to service such customer volume and measures to be taken to avoid nuisance effects upon adjacent and nearby residential areas.
- L. Cannabis businesses shall be prohibited in any area in which, under State or Federal law, any cannabis business would be prohibited from operating based upon its proximity to a school, park, housing authority property, public or private youth center, or swimming pool.

SECTION 4. Article IX entitled “Conditional Uses” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby supplemented with the following *new* Section 490-122 (previously Reserved) as follows:

§ 490-122 Cannabis Retailer.

- A. Cannabis Retailers shall not sell alcohol or tobacco within the facility.
- B. Cannabis Retailers may not be located within any other businesses, and may only be located in buildings with other uses only if the cannabis business is separated by full walls and with a separate entrance. No more than one cannabis business shall be located on a single parcel.
- C. Cannabis plants, products, and paraphernalia shall not be visible from outside the building in which the Cannabis Retailer is located.
- D. No Cannabis Retailer may open to customers for business before 8:00 am or remain open to customers for business after 10:00 pm.
- E. Cannabis Retailers must provide a detailed security plan and receive approval of such plan from the Red Bank Police Department.
- F. Otherwise compliant signage shall be permitted as specified for the zone in which the Cannabis Retailer is proposed or operating.

SECTION 5. Section 490-143 entitled “HB Highway Business Zone District,” of Article X entitled “Zoning” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

- A. Permitted Uses.
 - * * *
 - (20) Cannabis Delivery Services
- D. Conditional Uses.
 - * * *
 - (7) Cannabis Retailers

SECTION 6. Section 490-144 entitled “CCD-1 Central Commercial District-1,” of Article X entitled “Zoning” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

A. Permitted Uses.

* * *

(12) Cannabis Delivery Services

D. Conditional Uses.

* * *

(4) Cannabis Retailers

SECTION 7. Section 490-145 entitled “CCD-2 Central Commercial District-2,” of Article X entitled “Zoning” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

A. Permitted Uses.

* * *

(14) Cannabis Delivery Services

D. Conditional Uses.

* * *

(4) Cannabis Retailers

SECTION 8. Section 490-146 entitled “BR-1 Business/Residential-1,” of Article X entitled “Zoning” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

A. Permitted Uses.

* * *

(20) Cannabis Delivery Services

D. Conditional Uses.

* * *

(7) Cannabis Retailers

SECTION 9. Section 490-148 entitled “WD Waterfront Development District,” of Article X entitled “Zoning” of Chapter 490 entitled “Planning and Development Regulations” of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

A. Permitted Uses.

* * *

(10) Cannabis Delivery Services

D. Conditional Uses.

* * *

(4) Cannabis Retailers

SECTION 10. Section 490-150 entitled "I Industrial Zone; LI Light Industrial Zone," of Article X entitled "Zoning" of Chapter 490 entitled "Planning and Development Regulations" of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

A. Permitted Uses.

* * *

(2) In either the Industrial (I) or Light Industrial (LI) Zone:

* * *

- (m) Cannabis Cultivator.
- (n) Cannabis Manufacturer.
- (o) Cannabis Wholesaler.
- (p) Cannabis Distributor.
- (q) Cannabis Delivery Service.

SECTION 11. Section 478-34 entitled "Alcoholic Beverages and Illegal Drugs," of Article IX entitled "Park Rules" of Chapter 478 entitled "Parks and Recreation" of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

§ 478-34 Alcoholic Beverages, Cannabis, and Illegal Drugs.

No one shall possess or consume an alcoholic beverage, cannabis, cannabis item(s), or illegal or hallucinogenic drug.

SECTION 12. Section 574-2 entitled "Smoking in Borough-owned or -controlled Public Places Prohibited" of Chapter 574 entitled "Smoking" of the Revised General Ordinances of the Borough of Red Bank is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

§ 574-2 Smoking in Borough-owned or -controlled Public Places Prohibited.

A. Smoking shall be prohibited inside of all municipal buildings and within a fifty-foot radius of all municipal buildings, which radius shall extend from the outer wall of the municipal building, but shall not extend beyond the boundary of the property upon which the municipal building is located. No-smoking signs of the international no-

smoking signal (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through its cross section) shall be conspicuously posted at each municipal building entrance. The signs shall be clearly visible to the public and indicate that smoking is prohibited inside said municipal building and within a fifty-foot radius thereof on the public property.

- B. Smoking shall be prohibited in all parks and public recreational facilities. No-smoking signs of the international no-smoking signal (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through its cross section) shall be posted in at least one conspicuous location upon the grounds of all parks and public recreational facilities. The signs shall be clearly visible to the public and indicate that smoking is prohibited at the park or public recreational facility.
- C. Prohibited "Smoking" shall include the smoking, vaping, or aerosolizing of cannabis and/or cannabis items.

SECTION 13. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

SECTION 14. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Red Bank are ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 15. After introduction, the Borough Clerk is directed to submit a copy of the within Ordinance to the Planning Board of the Borough for its review under N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Mayor & Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

SECTION 16. This Ordinance shall take effect upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final adopted Ordinance by the Clerk with the Monmouth County Planning Board pursuant to N.J.S.A. 40:55D-16.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin					
Councilwoman Triggiano					
Councilman Ballard					
Councilman Yngstrom					
Councilman Zipprich					
Councilwoman Horgan					

Introduced: July 21, 2021
 Public Hearing/Adoption: August 18, 2021