

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE No. 781-2018

SUBJECT: AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 27 ENTITLED ZONING OF THE AVALON BOROUGH CODE TO CLARIFY AND REAFFIRM THAT THE SALE OF MARIJUANA IS A PROHIBITED USE WITHIN ALL ZONING DISTRICTS IN THE BOROUGH OF AVALON

WHEREAS, the Avalon Zoning Ordinance, Chapter 27 of the Avalon Borough Code, lists each allowed use permitted in each zoning district within the Borough and expressly provides that any use which is not specifically or expressly designated as a permitted use or an allowed use is thereby prohibited; and

WHEREAS, Borough Council is of the opinion that the Municipal Zoning Ordinance should be amended in order to clarify and reaffirm that the manufacture, sale, or distribution of medicinal and recreational marijuana and/or the paraphernalia that facilitates the use of such marijuana is prohibited within the Borough and that such prohibition shall be continued in the future;

WHEREAS, Borough Council intends that Chapter 27 of the Code of the Borough of Avalon be amended as hereinafter provided;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL of the Borough of Avalon, in the County of Cape May and State of New Jersey as follows:

SECTION 1. FACTUAL DETERMINATIONS AND STATEMENT OF POLICY

Borough Council finds and determines that:

- A. The Borough of Avalon ("Borough") has a comprehensive Master Plan and Development Ordinances implementing that Master Plan.
- B. The Borough Council has determined that businesses and enterprises manufacturing, selling, or distributing medicinal and recreational marijuana, or the growing or cultivation thereof, are not currently a permitted use in any zoning district within the Borough and, since such businesses and enterprises require special concern for security and location and because of such special concerns for security, the Borough desires to ensure that any such facilities are not allowed and continue to be prohibited in each of the several zoning districts within the Borough.
- C. Other states that have legalized the use of medicinal or recreational use of marijuana have experienced very negative results which are detrimental to the public health safety and welfare. Recent studies published in October 2018 show that both police-reported car crashes and accident-related insurance claims jumped in Colorado, Nevada, Oregon and Washington following enactment of legislation legalizing marijuana sales and use compared with their neighboring states of Idaho, Montana, Utah, and Wyoming which still prohibit marijuana. These studies were done by the Insurance Institute of Highway Safety (IIHS) and the Highway Loss Data Institute (HLDI) and found that police-reported car crashes rose 5.2 percent and insurance claims for car accidents rose 6 percent in those four states where the sale and use of marijuana has been legalized.

The clear implication based on the IIHS and HLDI studies indicate that legalizing marijuana for all uses is having a negative impact on the safety of our roads. This is particularly so in light of the fact that there is no currently established legal limit for driving under the influence of marijuana, and there is also no widely accepted roadside test to determine marijuana usage.

- D. After due consideration, Borough Council is of the opinion that there is no area within the Borough which can safely house a business or enterprise or other activity engaged in manufacturing, selling, or distributing medicinal or recreational marijuana and/or the paraphernalia that facilitates the use of such marijuana.
- E. Borough Council is of the further conclusion that the terms “Home Occupations and Professions”, “Retail stores and shops”, “Personal service shops” and “Convenience Stores and supermarkets” do not include, and shall not be construed or interpreted in such manner as to be deemed to permit the medicinal or recreational sale of marijuana or its manufacture or distribution.

SECTION 2. Chapter 27 (Zoning) Section 27-6.1 (Zoning District Regulations) of the Code of the Borough of Avalon is hereby amended and supplemented by the addition of a new section to be designed as 27-6.1 (f) (7) (Prohibited Uses in all Zone Districts) which shall read as follows:

27-6 District Regulations.

27-6.1 Zoning District Regulations.

- a) Zoning district regulations for principal uses are set forth in subsection 27-6.2.
- b) Zoning district regulations for conditional uses are set forth in subsections 27-6.2 and 27-7.1.
- c) Zoning district regulations for accessory uses are set forth in subsections 27-6.2 and 27-7.2.
- d) Supplemental regulations are set forth in subsection 27-7.3.
- e) Site plan review and approval pursuant to Chapter 26, Subdivision and Site Plan Review, shall be required for any proposed use requiring a building permit other than a single- or two-family dwelling on a single and separate lot.
- f) The following uses are expressly prohibited in any and all zone districts in the Borough:
 - 1) Animal kennels.
 - 2) Bulk storage of products, which create an unusual danger of explosion or fire hazard, such as fireworks or explosives or gases, such as ammonia, chlorine, acetylene gas and others of like characteristics.
 - 3) Junkyards and automobile wrecking.
 - 4) The commercial manufacture, fabrication, processing, packaging or treatment of materials or goods.
 - 5) Any commercial use, which is a prima facie nuisance in the vicinity of residential or other business uses, by reason of smoke, odor, noise, fumes, vibration or intensive light.
 - 6) Wind Turbines, except in the P-U (Public Use) District.

ADD NEW SECTION AS FOLLOWS:

7) Any business or enterprise of any nature whatever that is engaged in the manufacture, sale or distribution of medicinal or recreational marijuana, cannabis, or any product containing Tetrahydrocannabinol (THC) or their derivatives including the growing or cultivation, thereof, and/or the paraphernalia that facilitates the use of such marijuana.

EXCEPTION: This ordinance is not intended to prohibit or otherwise restrict the dispensing of any pharmaceutical medication or other legal substance by a pharmacy or drug store under the supervision of a licensed pharmacist, which medication or substance is lawful to dispense under the laws of this State or the United States when the medication or substance being dispensed has been prescribed by a licensed physician or other duly licensed and authorized medical provider or health care practitioner; and further provided that such pharmacy or drug store is a permitted use in that zone.

- g) *Principal Use.* Only one (1) principal use is permitted on each lot or site. The exceptions are in the B-1, B-2, M-B, and R-M (Hotel-Motel) Districts, where multiple uses are permitted on a single lot as permitted in the zoning district as a conditional use.
- h) In accordance with the rules and regulations of the Americans with Disabilities Act, all handicapped accessibility structures are exempt from setback and lot coverage requirements in all zones. Commercial residential uses, specifically including resort houses, are prohibited in all zones except the R-M (Hotel-Motel) Zone.

(Ord. No. 607-2009 § 27-6.1; Ord. No. 626-2010 § 2; Ord. No. 635-2010 § 2; Ord. No. 695-2014 §§ 3, 4)

SECTION 3. In the event that the State of New Jersey should hereafter legalize the manufacture, sale, or distribution of marijuana, cannabis, or any product containing Tetrahydrocannabinol (THC) or their derivatives for medicinal or recreational purposes, and such legislation grants municipalities the right to deny such sales within municipal boundaries either by “opting-in” or “opting-out” as the case may be, depending on the final version of such legislation should it be approved, it is the intent of the Borough of Avalon, as expressed in this Ordinance, to prohibit all such manufacture, cultivation, growing, sale or distribution of marijuana, cannabis, or any product containing Tetrahydrocannabinol (THC) or their derivatives for medicinal or recreational purposes within the Borough of Avalon or within any zoning district thereof subject to the exception for licensed pharmacies set forth in section 2 hereof.

SECTION 4. This Ordinance shall be subject to review and recommendation by the Avalon Planning and Zoning Board in accordance with N.J.S.A. 40:55D-26. The Cape May County Planning Board and adjoining municipalities shall be provided notice of this proposed ordinance in accordance with N.J.S.A. 40: 27-6.10 and N.J.S.A. 40:55D-15a.

SECTION 5. Except as herein modified in Section 2 hereof, all of the terms and provisions of Chapter 27 (Zoning) of the Code of the Borough of Avalon remain unchanged and shall continue in full force and effect.

SECTION 6. REPEALER. All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 6. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 7: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on November 20, 2018. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 13th day of February, 2019 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk’s Office in said Municipal Building to the members of the general public who shall request the same.

MARIE J. HOOD, Borough Clerk