

**BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY**

ORDINANCE No. 781-2018 (AS AMENDED)

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, legislation that would legalize the manufacture, sale, or distribution of marijuana and the paraphernalia that facilitates the use of such marijuana for recreational purposes by adults is presently pending before the New Jersey Legislature with passage deemed imminent; and

WHEREAS, the “medical use of marijuana” which includes the acquisition, possession, transport, or use of marijuana or paraphernalia by a registered qualifying patient is regulated and controlled by the “New Jersey Compassionate Use Medical Marijuana Act” (hereafter “Medical Marijuana Act”) which was passed by the Legislature and approved by the Governor of New Jersey on January 8, 2010 as P.L. 2009 c. 307 and codified at N.J.S.A. 24:6i-1 *et seq.* [N.J.S.A. 24:6i-3]; and

WHEREAS, the medical use of marijuana is regulated and controlled by the Medical Marijuana Act which requires that the use of medical marijuana shall be restricted to certain designated conditions and authorized by a physician which the Medical Marijuana Act defines as a “person licensed to practice medicine and surgery pursuant to Title 45 of the Revised Statutes with whom the patient has a bona fide physician-patient relationship and who is the primary care physician, hospice physician, or physician responsible for the ongoing treatment of a patient’s debilitating medical condition, provided, however, that such ongoing treatment shall not be limited to the provision of authorization for a patient to use medical marijuana or consultation solely for that purpose” [N.J.S.A. 24:6i-3 “Physician”]; and

WHEREAS, the manufacture, distribution and sale of medical use marijuana takes place through a “medical marijuana alternative treatment center” or “alternative treatment center” or “**ATCs**” which are licensed and approved by the New Jersey State Department of Health pursuant to the Medical Marijuana Act; and

WHEREAS, the Medical Marijuana Act requires the Department of Health to ensure the availability of a sufficient number of alternative treatment centers throughout the State of New Jersey, pursuant to need, including at least two each in the northern, central, and southern regions of the State; and currently, as of December 2018, there are six ATCs in the State of New Jersey located in Egg Harbor Township, Montclair, Woodbridge, Cranbury, Secaucus, and Bellmawr, New Jersey all of which are currently operational and the Department of Health is not currently accepting applications to open any additional ATCs; and

WHEREAS, the Medical Marijuana Act further requires that every ATC provide to the Department of Health, as a condition of becoming licensed in the State of New Jersey, written verification of the consent of the local municipal governing body in the municipality where the ATC is proposed to be located and the Department emphasizes that it is the responsibility of the ATC to work with the local governing body in the municipality and the ATC must provide evidence to the State that the ATC complies, or will comply, with all local codes and ordinances; [*Reference: N.J.A.C. 8:64-7.1 (b) 2 x*]; and

WHEREAS, the Medical Marijuana Act further provides that there shall be six (6) such facilities located throughout New Jersey with two (2) each in the northern part of the State, in central New Jersey and in South Jersey. Presently, there are six such facilities operational in the State with two such facilities located in South Jersey one in Egg Harbor Township and the other in Bellmawr, New Jersey. Currently, the State Department of Health is not accepting any further applications for any such facilities in the State. However, on December 17, 2018 the Department announced that of the 146 pending applications “that six businesses have been selected to apply for permits to open new medical marijuana dispensaries. Two applicants were chosen for the north, central and southern parts of the state, *ensuring patients have better access to pain-relieving medicine*” (*Emphasis added.*) The same announcement by the Department indicated that the selection process was “an objective, data-driven selection process [and] the committee scored the applications and then DOH (Department of Health) chose the top scorers in each region. The Department only allowed an applicant to be chosen for one region”. The applicants selected, subject to further investigation, were:

North

1. NETA NJ, LLC – Phillipsburg
2. GTI New Jersey, LLC – Paterson

Central

1. Verano NJ LLC – Elizabeth (Dispensary), Rahway (Cultivation Site)
2. Justice Grown – Ewing

South

1. MPX New Jersey – Atlantic City (Dispensary), Galloway (Cultivation)
2. Columbia Care New Jersey – Vineland

WHEREAS, Borough Council is of the opinion that an adequate number of ATCs in appropriate locations will be selected by the State Department of Health in accordance with the the Medical Marijuana Act (N.J.S.A. 24: 6 I -1 *et seq.* and that the Borough of Avalon is neither a desired nor appropriate location for either a dispensary or cultivation site; and

WHEREAS, of the 51 applications for either a Dispensary or Cultivation Site for the southern region of the state, none sought to establish a location in the Borough;

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 recreational marijuana and/or the paraphernalia that facilitates the use of such **recreational** marijuana is prohibited within all zoning districts in the Borough and that such prohibition shall be continued in the future and that the manufacture, sale, or distribution of medicinal marijuana by or through a State licensed and authorized dispensary, otherwise known as a “medical marijuana alternative treatment center” or “alternative treatment center” or “ATCs” as defined in N.J.S.A. 24: 6i -1 *et seq.* and the location of Cultivation Sites is also prohibited within the Borough and that such prohibition shall be continued in the future; and

WHEREAS, due to the limited number of licenses authorized for issuance by the Department of Health for “medical marijuana alternative treatment centers” or “alternative treatment centers” or “ATCs” and the fact that such licenses must be geographically located throughout the State of New Jersey as mandated by the New Jersey Compassionate Use Medical Marijuana Act, as above specified, it appears that the location of an ATC within the Borough of Avalon is very unlikely based on need and a small year-round population; [NJS 24:6i-7(a)]; and

WHEREAS, further support for the conclusion that the location of ATCs or Cultivation Sites within the Borough is neither desired nor necessary is found in the fact that of the 51 applications for either a Dispensary or Cultivation Site for the southern region of the state, none sought to establish a location in the Borough;

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

marijuana by or through a State licensed and authorized dispensary, otherwise known as a “medical marijuana alternative treatment center” or “alternative treatment center” or “ATCs” as defined in N.J.S.A. 24: 6i -1 *et seq.* is also prohibited within all zoning districts in the Borough and that such prohibition shall be continued in the future; and

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 any and all businesses and enterprises, including “medical marijuana alternative treatment centers” or “alternative treatment centers” or “ATCs”, engaged in the manufacturing, selling, or distributing of either medicinal or recreational marijuana, or the growing or cultivation thereof, are not currently a permitted use in any zoning district within the Borough and, since such zoning uses 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 authorized or permitted and continue to be prohibited in each of the several zoning districts within the Borough.

- C. Other states that have legalized the 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.

A report prepared by the National Highway Traffic Safety Administration (“NHTSA”) entitled “Marijuana-Impaired Driving – A Report to Congress” and dated July 2017 confirms that currently there is no impairment standard for drivers under the influence of marijuana due to the fact that there is no chemical test for marijuana impairment similar to that which exists for alcohol. (at page 13)

A study conducted by the Missouri Substance Abuse Prevention Network found that:

- I. Marijuana is the most prevalent illegal drug detected in impaired drivers, fatally injured drivers, and motor vehicle crash victims (Reference: National Highway Traffic Safety Administration, *Drug Involvement of Fatally Injured Drivers, November 2010*, US Department of Transportation Report No. DOT HS 811415).

- II. Marijuana impairs motor coordination and reaction time and is the second most prevalent drug (after alcohol) implicated in automobile accidents (Reference: National Institute of Drug Abuse (NIDA). *Drugged Driving: A White Paper, 2011*)

- III. In the five years following the establishment of the California Medical Marijuana Program (Jan.2004) there were 1240 fatalities in fatal car crashes involving marijuana, compared to 631 for the five years prior, for an increase of almost 100%. [Reference: Alfred Crancer and Alan Crancer, *The Involvement of Marijuana in California Fatal Motor Vehicle Crashes – 1989-2008 (2011)*]

Since medical marijuana was approved in California, the Los Angeles Police Department reported that areas surrounding cannabis clubs had:

- 200% increase in robberies
- 52% rise in burglaries
- 57% increase in aggravated assaults
- 131% increase in auto burglaries near dispensaries (Reference: Healthy and Drug Free Colorado, Organized Crime, Violence, and Drug Use Go Hand-in-Hand <http://www.healthdrugfreecolorado.org/default.aspx/MenultemID/170/MenuSubID/14/MenuGroup/Home.htm>)

- D. After diligent 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, including the location of a “medical marijuana alternative treatment center” or “alternative treatment center” or “ATCs” as defined in N.J.S.A. 24: 6i -1 *et seq*
- 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, including a “medical marijuana alternative treatment center” or “alternative treatment center” or “ATCs” as defined in N.J.S.A. 24: 6i -1 *et seq*
- 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.
- i. 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 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 recreational purposes within the Borough of Avalon or within any zoning district thereof.

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 7. 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 8: 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 March 13, 2019. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 27th day of March, 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.

C. DANIELLE NOLLETT
Borough Clerk