

**BOROUGH OF ISLAND HEIGHTS**

**PLANNING BOARD**

**REGULAR MEETING MINUTES**

**JULY 8, 2021**

**CHAIRMAN NOBLE issued the:**

**CALL TO ORDER**

**and led all in the:**

**SALUTE OF THE FLAG OF THE UNITED STATES OF AMERICA**

**Chairman Noble read the:**

**PUBLIC MEETING ANNOUNCEMENT:**

IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT OF THE STATE OF NEW JERSEY, ADEQUATE NOTICE OF THIS MEETING WAS PUBLISHED IN THE ASBURY PARK PRESS AND THE STAR LEDGER ON DECEMBER 10, 2020 STATING THE TIME, DATE, PLACE OF THIS MEETING. NOTICE OF THIS MEETING WAS ALSO POSTED ON BULLETIN BOARD AT THE MUNICIPAL BULLETIN BOARD, ADVERTISED ON THE BOROUGH TELEVISION CHANNEL AND WEBSITE AND FILED WITH THE BOROUGH CLERK.

THIS MEETING IS A JUDICIAL PROCEEDING. ANY QUESTIONS OR COMMENTS MUST BE LIMITED TO ISSUES THAT ARE RELEVANT TO WHAT THE BOARD MAY LEGALLY CONSIDER IN REACHING A DECISION, AND DECORUM APPROPRIATE TO A JUDICIAL HEARING MUST BE MAINTAINED AT ALL TIMES.

Chairman Noble requested the:

**ROLL CALL OF THE MEMBERS OF THE PLANNING BOARD:**

Mr. Baxter	Present	X	Absent	_____
Ms. Bottomley	Present	X	Absent	_____
Mr. Brodbeck	Present	_____	Absent	X
Ms. Kier	Present	_____	Absent	X
Mr. Noble	Present	X	Absent	_____
Mr. Parisi	Present	X	Absent	_____
Mr. Parks	Present	_____	Absent	X
Ms. Pendleton	Present	X	Absent	_____
Mr. MacNeal	Present	X	Absent	_____
Mr. Wilber	Present	_____	Absent	X

**Chairman Noble introduced the:**

**APPROVAL OF PRIOR MEETING MINUTES:**

Adoption of the Proposed Minutes (Closed and Public) of the Meeting Conducted on March 11, 2021

Motion By: Ms. Pendleton  
Second By: Ms. Bottomley

Board Member Comments/Discussion: None

Voting Record:

Mr. Baxter <u>Yes/No</u> Abs.	Ms. Bottomley <u>Yes/No</u> Abs.	Mr. Brodbeck Yes/No <u>Abs.</u>	Ms. Kier Yes/No <u>Abs.</u>	Mr. Parisi <u>Yes/No</u> Abs.	Mr. Parks Yes/No <u>Abs.</u>
	Ms. Pendleton <u>Yes/No</u> Abs.	Mr. MacNeal <u>Yes/No</u> Abs.	Mr. Wilber Yes/No <u>Abs.</u>	Mr. Noble <u>Yes/No</u> Abs.	

**Chairman Noble introduced the:**

**Consideration of Proposed Ordinance 2021-08**

**ORDINANCE NO. 2021-08**

**AN ORDINANCE OF THE BOROUGH OF ISLAND HEIGHTS, COUNTY OF OCEAN, STATE OF NEW JERSEY, PROHIBITING THE OPERATION OF ANY CLASS OF CANNABIS BUSINESSES WITHIN ITS GEOGRAPHICAL BOUNDARIES AND AMENDING AND SUPPLEMENTING CHAPTER 32 OF THE CODE OF THE BOROUGH OF ISLAND HEIGHTS ENTITLED "ZONING"**

**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 Council of the Borough of Island Heights 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 Island Heights in particular, it is at this time necessary and appropriate, and in the best interest of the health, safety and welfare of Borough of Island Heights’ residents and members of the public who visit, travel, or conduct business in the Borough of Island Heights, to amend the Borough of Island Heights’ zoning regulations to prohibit all manner of marijuana-related land use and development within the geographic boundaries of the Borough of Island Heights; and

**WHEREAS**, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (those organizations being the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, 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 Borough of Island Heights, in the County of Ocean, 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 Island Heights, except for the delivery of cannabis items and related supplies by a delivery service.
2. Section 32-7 entitled "Prohibited Uses" of the Borough of Island Heights Code is hereby amended by adding to the list of prohibited uses, so as Section 32-7 shall be amended and shall read as follows: "All uses not expressly included in the ordinances are prohibited. Adult book stores as defined in N.J.S.A. 2C:34-3A are expressly excluded in all zones within the Borough. 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 shall be prohibited."
3. Any article, section, paragraph, subsection, clause, or other provision of the Borough of Island Heights 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. This ordinance shall take effect upon its passage and publication and filing with the Ocean County Planning Board, and as otherwise provided for by law.

## NOTICE

**NOTICE IS HEREBY GIVEN** that the foregoing Ordinance was introduced and approved on first reading at the regular meeting of the Mayor and Council of the Borough of Island Heights, in the County of Ocean, held on the 15<sup>th</sup> day of June, 2021 and will be considered for second reading and final passage at the regular meeting of said Borough Council to be held on the 17<sup>th</sup> day of August, 2021 at 7:00 p.m. at the Borough Hall located at 1 East End Avenue, Island Heights, New Jersey at which time and place any person desiring to be heard will be given an opportunity to be so heard.

**Chairman Noble asked Mr. Baxter to provide a summary of the proposed Ordinance and the proceedings that have already taken place before the Mayor and Council:**

**Mr. Baxter summarized the proposed Ordinance and the background involving the recent votes to legalize recreational cannabis in New Jersey. He explained that because this proposed Ordinance would amend and supplement the Zoning Code of the Borough, a review by the Planning Board was required.**

**Mr. Brady explained the responsibilities of the Planning Board in the review of such proposed Ordinances.**

Ordinance 2021-08 has been introduced by the Mayor and Council and is now hereby presented to the Planning Board for their consideration as an Ordinance that is proposed to amend and supplement the Zoning Code (Chapter 32) of the Borough.

Board Member Comments/Discussion:

**Mr. MacNeal and Mr. Noble questioned the manner in which this proposed Ordinance would be enforced.**

**Mr. Brady explained that this proposed change to the Zoning Code would prevent covered recreational cannabis businesses from being able to operate in the Borough.**

**Chairman Noble entertained a:**

Motion to Recommend Adoption of Ordinance 2021-08 as Introduced:

Motion By: Mr. Baxter  
Second By: Ms. Pendleton

Board Member Comments/Discussion: None

Voting Record:

Mr. Baxter <u>Yes/No</u> Abs.	Ms. Bottomley <u>Yes/No</u> Abs.	Mr. Brodbeck Yes/No <u>Abs.</u>	Ms. Kier Yes/No <u>Abs.</u>	Mr. Parisi <u>Yes/No</u> Abs.	Mr. Parks Yes/No <u>Abs.</u>
	Ms. Pendleton <u>Yes/No</u> Abs.	Mr. MacNeal <u>Yes/No</u> Abs.	Mr. Wilber Yes/No <u>Abs.</u>	Mr. Noble <u>Yes/No</u> Abs.	

**Chairman Noble requested an update on pending litigation from Mr. Brady:**

Mr. Brady updated the Board Members on:

Block 7 – Lot 2 – 42 River Ave. – Tokarski – Subdivision:

This matter is before the Superior Court – Appellate Division – final briefs were submitted as of 7/6/21, Mr. Brady will provide copies of the briefs for Board Members, a decision can be expected in eight to twelve months.

Block 56 – Lot 7 – 14 Ocean Bend – Moustakis – Certificate of Non-Conformity:

This matter is before the Superior Court – briefs have been requested and a trial date has been set for 9/27/21, it will be conducted via Zoom at the request of Counsel for Mr. Moustakis.

**NEXT PLANNING BOARD MEETING: August 12, 2021**

Chairman Noble entertained a Motion for:

**ADJOURNMENT**

Meeting adjourned by unanimous consent at 7:25 PM.



**Respectfully submitted,**

**Gary Stocco  
Board Secretary**