

*Memo from the Bradley Beach Planning Board  
From the desk of Kristie Dickert, Board Secretary  
(732) 776-2999 Ext. 1017  
[kdickert@bradleybeachnj.gov](mailto:kdickert@bradleybeachnj.gov)*

Date: May 28, 2021

To: Erica Kostyz, Municipal Clerk (via e-mail)  
David Brown, Business Administrator (via e-mail)  
Gregory Cannon, Esq. – Borough Attorney (via e-mail)  
Michael Mulcahy, Zoning Officer (via e-mail)  
Monica C. Kowalski, Esq. – Planning Board Attorney (via e-mail)  
Christine Bell, PP, AICP – Planning Board Planner (via e-mail)  
Gerald Freda, PE – Planning Board Engineer (via e-mail)

Re: Planning Board Resolution #2021-12  
Ordinance No. 2021-13  
Section 26 Consistency Determination

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Attached please find a copy of the adopted and memorialized Resolution approved by the Planning Board regarding Ordinance No. 2021-13, a copy of correspondence from Christine L. Bell, PP, AICP addressed to the Planning Board dated April 28, 2021, as well as a copy of said Ordinance No. 2021-13. The membership agrees that Ordinance 2021-13 is consistent with the Borough's Master Plan as indicated in said Resolution #2021-12.

If you require additional information please do not hesitate to contact this office.

**BOROUGH OF BRADLEY BEACH  
PLANNING BOARD  
RESOLUTION NO. 2021-12**

**RESOLUTION OF THE BOROUGH OF BRADLEY BEACH PLANNING  
BOARD, COUNTY OF MONMOUTH, STATE OF NEW JERSEY  
FINDING THE PROPOSED AMENDMENT TO ORDINANCE NO. 2021-13 ENTITLED  
AN ORDINANCE AMENDING CHAPTER 450: “ZONING” OF THE BOROUGH’S  
REVISED GENERAL ORDINANCES TO PROVIDE THAT ALL MEDICAL  
CANNABIS AND/OR RECREATIONAL CANNABIS BUSINESSES ARE DEEMED  
PROHIBITED USES WITHIN THE BOROUGH  
IS CONSISTENT WITH THE MASTER PLAN  
OF THE BOROUGH OF BRADLEY BEACH**

**WHEREAS**, the BOROUGH COUNCIL on APRIL 27, 2021 referred Ordinance No. 2021-13 to the Planning Board for review and recommendations with regard to a proposed amendment to the Land Development Ordinance for review pursuant to N.J.S.A. 40:55D-24; and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-26 of the Municipal Land Use Law, the Planning Board is to prepare a “report including identifications of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate”; and

**WHEREAS**, the Planning Board Planner, by a memorandum dated April 28, 2021 opined that “Pursuant to NJAC 40:550-26, The Borough of Bradley Beach Ordinance 2021-13, An Ordinance of Bradley Beach, County of Monmouth, and State of New Jersey, to amend Chapter 450 "Zoning" of the Borough's Revised General Ordinances to provide that all medical cannabis and/or recreational cannabis businesses are deemed prohibited uses within the Borough, is not inconsistent with the Borough's Master Plan.”

**WHEREAS**, the Board Planner opined, “While the Master Plan does not speak directly to the matter contained within the ordinance; promoting the public health, safety, morals, and

generally welfare is an overall goal of the Borough's master plan and the proposed ordinance amendment intends to further this goal” and this ordinance comes as a direct result of the Borough’s Mayor and Council engaging in a comprehensive review of the Revised General Ordinances as recommended, so that the proposed amendment is appropriate.

**WHEREAS**, recently, the Mayor & Council of the Borough of Bradley Beach (the “Borough”) have revised the Borough’s Zoning Ordinances at Section 4 and Section 10, entitled “Definitions” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach to revise definitions contained therein; and

**WHEREAS**, in March 2020, the Borough of Bradley Beach, County of Monmouth, and State of New Jersey (the “Borough”) adopted Ordinance No. 2020-05 to prohibit all cannabis businesses within the limits of the Borough under its Zoning Ordinance; and

**WHEREAS**, in November 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 cannabis operations, use and possession; and

**WHEREAS**, pursuant to Section 31(b) of the Act, “Only an ordinance to prohibit one or more classes of cannabis establishment or cannabis distributors enacted pursuant to the specific authority to do so by this section shall be valid and enforceable”; and

**WHEREAS**, the Borough’s Mayor and Council are concerned about the health and safety

problems posed by the legalization of cannabis products, the potential for abuse, and especially, any use by minors; and

**WHEREAS**, pursuant to the authority granted to the Borough under the Act, the Mayor and Council believe that prohibiting all possible classes of cannabis uses within the Borough will help address these concerns and be in the best interest of the citizens of the Borough; and

**WHEREAS**, Based upon the Opinion of the Board Planner and Board discussion, the proposed amendment promotes the public health, safety, morals, and general welfare which is an overall goal of the Borough's master plan and the proposed ordinance amendment intends to further this goal and therefore is found consistent with the goals and objectives of the Borough Master Plan in that it supports the overall goal of the Land Use Element of the Master Plan; and

**WHEREAS**, in addition to the Planner's Report, the Board engaged in discussion and independent findings as to whether the proposed Ordinance amendment proposed is or is not substantially consistent with the Land Development Ordinance and other Elements of the current Borough of Bradley Beach Master Plan; and

**WHEREAS**, the Board, after carefully considering the evidence submitted by the Planning Board's experts, makes the following findings of fact and conclusion of law:

1. The Borough Master Plan Re-Examination was adopted on June 28, 2018.
2. The Board finds that the proposed Ordinance #2021-13, serves appropriately as an amendment to the Borough Code by permitting the amendment of Chapters 450-4 and 450-10, to revise the definitions referenced therein in Chapter 450 of the Revised General Ordinances and determines that said revision is consistent with the Master Plan of the Borough of Bradley Beach.

3. Such amendment is deemed consistent with the overall goals of the Land Use Element of the Master Plan in that it relates promotes the health, safety and welfare of the residents of the Borough.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Bradley Beach that Ordinance No. 2021-13 is consistent with the Land Use and other elements of the current Borough of Bradley Beach Master Plan and the Board and does advance the purposes of planning and zoning as well as advancing the planning objectives of the Borough Master Plan.

**WHEREFORE:**

- I. That the Planning Board recommends that the proposed amendment/supplement be adopted with the revisions as suggested.
- II. The Board secretary shall transmit this resolution to the Clerk of the Borough together with a copy of the memorandum prepared by Leon S. Avakian, Inc. dated April 28, 2021.
- III. That the Board's Professionals be authorized to draft any additional or supplemental report in connection with this finding that the ordinance promotes the general welfare as well as advancing the purposes of planning and zoning objectives of the Borough Master Plan as may be directed by the Board's Administrative Officer after forwarding a copy of this Resolution and enclosures to the Borough Council and Borough Attorney in connection with their actions as to Ordinance 2021-13 of the Borough of Bradley Beach.

**MOTION TO ADOPT & MEMORALIZE:**

Offered By: William Psiuk

Seconded By: Douglas Jung

**ROLL CALL ON VOTE:**

THOSE IN FAVOR: William Psiuk, Michael Mulcahy, Douglas Jung, Robert Mehnert,  
Kelly Reilly-Ierardi, and Arianna Bocco

THOSE OPPOSED: None.


THOSE RECUSED: Mayor Larry Fox & Alan Gubitosi

THOSE ABSENT: Marc Rosenthal and Meredith DeMarco

**CERTIFICATION**

I hereby certify that this is a true copy of a resolution of the Borough of Bradley Beach Planning Board adopted on May 27, 2021.

Dated: May 28, 2021

  
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Kristie Dickert, Secretary  
Borough of Bradley Beach Planning Board

**LEON S. AVAKIAN, INC.** *Consulting Engineers*

788 WAYSIDE ROAD • NEPTUNE, NEW JERSEY 07753

April 28, 2021

LEON S. AVAKIAN, P.E., P.L.S. (1953-2004)  
PETER R. AVAKIAN, P.E., P.L.S., P.P.  
MEHRYAR SHAFI, P.E., P.P.  
GREGORY S. BLASH, P.E., P.P., CPWM  
LOUIS J. LOBOSCO, P.E., P.P.  
GERALD J. FREDA, P.E., P.P.  
RICHARD PICATAGI, L.L.A., P.P.  
JENNIFER C. BEAHM, P.P., AICP  
CHRISTINE L. BELL, P.P., AICP  
SAMUEL J. AVAKIAN, P.E.

Bradley Beach Planning Board  
701 Main Street  
Bradley Beach, NJ 07720

**Re: Ordinance 2021-13**  
***Section 26 Consistency Determination***

Dear Board Members:

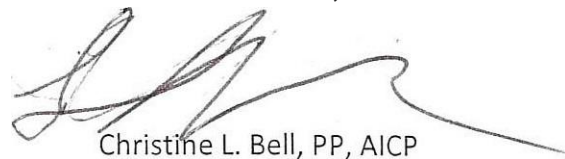
Pursuant to NJAC 40:550 -26, The Borough of Bradley Beach Ordinance 2021-13, An Ordinance of Bradley Beach, County of Monmouth, and State of New Jersey, to amend Chapter 450 "Zoning" of the Borough's Revised General Ordinances to provide that all medical cannabis and/or recreational cannabis businesses are deemed prohibited uses within the Borough, is not inconsistent with the Borough's Master Plan.

While the Master Plan does not speak directly to the matter contained within the ordinance; promoting the public health, safety, morals, and generally welfare is an overall goal of the Borough's master plan and the proposed ordinance amendment intends to further this goal.

Should you have any questions or require any clarification regarding this matter, please do not hesitate to contact our office.

Very truly yours,

**LEON S. AVAKIAN, Inc.**



Christine L. Bell, PP, AICP  
*Planning Board Planner*

cc: Jerry Freda, P.E., Board Engineer  
Monica Kowalski, Esq., Board Attorney

**BOROUGH OF BRADLEY BEACH, MONMOUTH COUNTY**

**ORDINANCE 2021-13**

**AN ORDINANCE AMENDING CHAPTER 450: “ZONING” OF THE BOROUGH’S REVISED GENERAL ORDINANCES TO PROVIDE THAT ALL MEDICAL CANNABIS AND/OR RECREATIONAL CANNABIS BUSINESSES ARE DEEMED PROHIBITED USES WITHIN THE BOROUGH**

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**Mayor Fox** offered the following Ordinance and moved its introduction:

**WHEREAS**, in March 2020, the Borough of Bradley Beach, County of Monmouth, and State of New Jersey (the “Borough”) adopted Ordinance No. 2020-05 to prohibit all cannabis businesses within the limits of the Borough under its Zoning Ordinance; and

**WHEREAS**, in November 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 cannabis operations, use and possession; and

**WHEREAS**, pursuant to Section 31(b) of the Act, “[o]nly an ordinance to prohibit one or more classes of cannabis establishment or cannabis distributors enacted pursuant to the specific authority to do so by this section shall be valid and enforceable”; and

**WHEREAS**, the Borough’s Mayor and Council are concerned about the health and safety problems posed by the legalization of cannabis products, the potential for abuse, and especially, any use by minors; and

**WHEREAS**, pursuant to the authority granted to the Borough under the Act, the Mayor and Council believe that prohibiting all possible classes of cannabis uses within the Borough will help address these concerns and be in the best interest of the citizens of the Borough;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Borough of Bradley Beach, County of Monmouth, and State of New Jersey as follows:



SECTION 1. Section 4 entitled “Definitions” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (stricken text deleted; underlined text added):

~~**MEDICINAL CANNABIS RETAIL ESTABLISHMENT**—an entity licensed pursuant to the New Jersey Compassionate Use Medical Marijuana Act (P.L. 2009, c. 307) to lawfully purchase or receive medical cannabis and to sell medical cannabis and medical cannabis products to consumers from a retail store, with a full-time pharmacist on-site during operational hours, which shall also be known as a medical cannabis dispensary or medical marijuana dispensary.~~

~~**MARIJUANA CULTIVATION FACILITIES**—A facility licensed to grow and cultivate marijuana and/or cannabis and to sell marijuana and/or cannabis to cultivation facilities but not to consumers.~~

~~**MARIJUANA PRODUCT MANUFACTURING FACILITIES**—An entity licensed to purchase marijuana and/or cannabis; manufacture, prepare and package marijuana and/or cannabis items; and sell items to other marijuana and/or cannabis product manufacturing facilities and to marijuana and/or cannabis retailers, but not to consumers.~~

~~**MARIJUANA TESTING FACILITIES**—An independent, third-party entity meeting accreditation requirements and is licensed to analyze and certify the safety and potency of marijuana and/or cannabis products and/or items.~~

~~**RECREATIONAL MARIJUANA RETAIL ESTABLISHMENTS**—an entity licensed to purchase recreational marijuana and/or cannabis from Marijuana Cultivation Facilities and recreational marijuana and/or cannabis items from Marijuana Product Manufacturing Facilities or recreational marijuana and/or cannabis wholesalers, and to sell recreational marijuana and/or cannabis and recreational marijuana and/or cannabis products to consumers from a retail store, which shall also be known as a dispensary.~~

**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 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.

**MEDICAL CANNABIS ALTERNATIVE TREATMENT CENTER** - An organization issued a permit, including a conditional permit, by the State to operate as a medical cannabis cultivator, medical cannabis manufacturer, medical cannabis dispensary, or clinical registrant.

**MEDICAL CANNABIS CULTIVATOR** - An organization holding a permit issued by the State that authorizes the organization to: possess and cultivate cannabis and deliver, transfer, transport, distribute, supply, and sell medical cannabis and related supplies to other medical cannabis cultivators and to medical cannabis manufacturers, clinical registrants, and medical cannabis dispensaries, as well as to plant, cultivate, grow, and harvest medical cannabis for research purposes.

**MEDICAL CANNABIS DISPENSARY** - An organization issued a permit by the State that authorizes the organization to: purchase or obtain medical cannabis and related supplies from medical cannabis cultivators; purchase or obtain medical cannabis products and related supplies from medical cannabis manufacturers; purchase or obtain medical cannabis, medical cannabis products, and related supplies and paraphernalia from other medical cannabis dispensaries and from clinical registrants; deliver, transfer, transport, distribute, supply, and sell medical cannabis and medical cannabis products to other medical cannabis dispensaries; furnish medical cannabis, including medical cannabis products, to a medical cannabis handler for delivery to a registered qualifying patient, designated caregiver, or institutional caregiver; and possess, display, deliver, transfer, transport, distribute, supply, sell, and dispense medical cannabis, medical cannabis products, paraphernalia, and related supplies to qualifying patients, designated caregivers, and institutional caregivers.

**MEDICAL CANNABIS MANUFACTURER** - An organization issued a permit by the State that authorizes the organization to: purchase or obtain medical cannabis and related supplies from a medical cannabis cultivator or a clinical registrant; purchase or obtain medical cannabis products from another medical cannabis manufacturer or a clinical registrant; produce, manufacture, or otherwise create medical cannabis products; and possess, deliver, transfer, transport, distribute, supply, and sell medical cannabis products and related supplies to medical cannabis manufacturers and to medical cannabis dispensaries and clinical registrants.

SECTION 2. Section 10 entitled “Prohibited Uses In All Zones” of Chapter 450 entitled “Zoning” of the Revised General Ordinances of the Borough of Bradley Beach is hereby amended as follows (~~stricken~~-text deleted; underlined text added):

- (39) The operation of ~~Medical Cannabis Retail Establishments, Recreational Marijuana Retail Establishments, Marijuana Cultivation Facilities, Marijuana Production Facilities and Marijuana Testing Facilities.~~ Cannabis Cultivators, Cannabis Distributers, Cannabis Manufacturers, Cannabis Wholesalers, Cannabis Retailers, Medical Cannabis Alternative Treatment Centers, Medical Cannabis Cultivators, Medical Cannabis Dispensaries, and Medical Cannabis Manufacturers.

SECTION 3. 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 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Bradley Beach, the provisions hereof shall be determined to govern. All other parts, portions and provisions of The Revised General Ordinances of the Borough of Bradley Beach are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 5. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Bradley Beach for its review in accordance with 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 Borough’s 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 6. 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.

**SO ORDAINED** as aforesaid.

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ERICA KOSTYZ  
Municipal Clerk

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LARRY FOX  
Mayor

Introduced: April 27, 2021

Date of Hearing and Adoption: