

**ORDINANCE NO. 2018 – 01**

**AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, PROHIBITING APPROVAL OF APPLICATIONS WITHIN THE BOROUGH OF BAY HEAD THAT REQUIRE BOROUGH GOVERNMENT APPROVAL WHICH ARE VIOLATIVE OF FEDERAL LAW AND AMENDING CHAPTER 147 SO AS TO PROHIBIT SALE OR DISPENSING OF MARIJUANA OR ANY CANNABIS-BASED PRODUCTS**

**WHEREAS**, the United States Government has elected to adopt various laws which govern the conduct of persons and/or businesses within the United States by declaring matters to be concordance with or in violation of Federal law; and

**WHEREAS**, the State of New Jersey has also elected to adopt various laws which govern the conduct of persons and/or businesses within the State of New Jersey by declaring matters to be in concordance with or in violation of State law; and

**WHEREAS**, there are instances in which Federal law and State law on an issue are in direct contravention of each other. However, where the actions of the State government that are in contravention of Federal law do not open the State to civil and/or criminal liability from the United States government, they may open said civil and/or criminal liability upon subordinate aspects of State government, such as counties and municipalities; and

**WHEREAS**, a criterion for approval by the Borough of Bay Head Land Use Board, other applicable Borough employee, and the Board of Health, an applicant seeking any approval from said entities, must comply with all Federal laws or otherwise that application will be deemed non-compliant.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Bay Head, County of Ocean, and State of New Jersey, as follows:

**SECTION 1.** That the Mayor and Borough Council of Bay Head Borough does hereby prohibit the actions/activities and shall not support or sanction any actions/activities within the geographic boundaries of Bay Head Borough of any person or persons, business, non profit or entity or any other group which require any decision, action and/or inaction of the Borough which is violative of Federal law. Borough shall be defined herein as either the Borough Council and any and/or all its members, any official, officer and/or employee of the Borough (whether they be full-time or part-time), the Borough Land Use Board and any and/or all of its members if any and/or all of them jointly and/or severally, are acting within the scope of their elected and/or appointed positions and/or employment with Bay Head Borough.

**SECTION 2.** That Chapter 147 of the Borough Code entitled, "Land Use," is hereby amended and supplemented so as to amend §147-6 entitled, "General provisions," so as to add subsection Q. which shall read in its entirety as follows:

Q. There shall be no sale of goods or merchandise of any kind within the Borough of Bay Head which contain any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis nor shall there be any facility for the cultivating, processing, transporting or dispensing of marijuana or any cannabis-based products or cannabis plants.

**SECTION 3.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 4.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 5.** This ordinance shall take effect after second reading and publication as required by law.

**ATTEST:**

**APPROVED:**

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**Patricia M. Applegate, Municipal Clerk**

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**William W. Curtis, Mayor**

**Introduced on First Reading:**  
**Introduced on Second Reading:**  
**Approved on Second Reading:**

**January 2, 2018**  
**February 5, 2018**  
**February 5, 2018**

**ATTEST:**

**APPROVED:**

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**Patricia M. Applegate, Municipal Clerk**

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**William W. Curtis, Mayor**