AGENDA

ORDINANCE COMMITTEE

Thursday, September 26, 2019
4:00 p.m.
Chamber A

Item 1. Call to Order.

Item 2. Roll Call.

Item 3. Approval of the minutes from the August 29, 2019, meeting.

Item 4. Public Comment.

Item 5. Discussion on Commercial Marijuana Ordinance Development.

Item 6. Adjournment.

Staff has met together and with our attorney, Phil Saucier to refine the draft ordinances presented at the August 29, 2019 meeting. Some changes to the drafts include the following:

- No duplication of State effort by the Town regarding background checks
- No references to Medical Marijuana Caregiver Retail Stores as an allowed use in the Town of Scarborough
- Definition of school has been amended to include child care facilities
- No longer references an overlay zone (please see below)
- Language around signs has been removed and now references statutory requirements
- Enforcement has been changed from the Town Manager to the CEO or Police Department
- Lighting must also comply with the Good Neighbor Ordinance

Without retail stores needing consideration, staff no longer recommends the creation of an overlay district. Staff recommends the following zone/use pairings for your consideration

Manufacture: BOR, Haigis Parkway, CPD, Industrial, Light Industrial, RF (as an accessory use to marijuana cultivation only)

Testing: BOR, Haigis Parkway, CPD, Industrial, Light Industrial

Cultivation: Industrial (indoor cultivation only), Light Industrial (indoor cultivation only), RF (with reservation, please see below)

Questions to still be considered:

1. Does the Ordinance Committee wish to allow new cultivation in the RF
    a. If yes, what performance standards should be applied regarding:
        i. Set backs
        ii. Acreage minimums
        iii. Maximum canopy
2. Does the Ordinance Committee wish to allow for Dispensaries? If so, where in town would this be allowed?
3. How should we license cultivation:
    a. Unlimited canopy and unlimited licenses - Challenges may be a low ROI on grow facilities in industrial areas and residential area conflicts
    b. Limited canopy and unlimited licenses - Challenge in enforcement
    c. Unlimited canopy and limited licenses - May encourage only large, well financed companies at the harm of smaller growers
    d. Limited canopy per limited license - Would limit total canopy and total licenses but may reward companies that are already established at the harm of future would-be growers
    e. Limited licenses by canopy tier - Would limit total canopy and total licenses and would allow the town to emphasize small grow facilities while still allowing for a few larger grows
4. What fees should be assigned to licenses? Please see the table below for examples from other communities

	State	Portland	So. Portland	Auburn
Tier 1 Cultivation	$500	$500	$600	$1,000
Tier 2 Cultivation	$3,000	$5,000	$600	$1,500
Tier 3 Cultivation	$10,000	$10,000	$600	$2,500
Manufacturing	$2,500	$2,500	$300	$2,500
Testing	$1,000	$1,000	*NIA*	$2,500

Chapter 1018
Town of Scarborough
Marijuana Establishments Licensing Ordinance

Section 1. Purpose.

The purpose of this Ordinance to regulate and license Marijuana Establishments as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S. Chapter 1, and the Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended, in order to promote the health, safety, and general welfare of the residents of Scarborough.

Persons or entities wishing to establish a Marijuana Establishment within the Town of Scarborough shall first obtain a license from the Scarborough Town Council (hereinafter "the Town Council") and shall be subject to the provisions of this Ordinance.

Section 2. Authority.

This Ordinance is adopted pursuant to the authority granted by 28-B M.R.S. § 401 *et seq.,* as may be amended, and 22 M.R.S. § 2421 *et seq.*, as may be amended.

Section 3. Definitions.

The following definitions shall apply to this Ordinance.

Adult use marijuana shall mean "adult use marijuana" as that term is defined in 28-B M.R.S. § 102(1), as may be amended.

Adult Use Marijuana Cultivation Facility shall mean a "cultivation facility" as that term is defined in 28-B M.R.S. § 102(13), as may be amended.

Adult use marijuana product shall mean "adult use marijuana product" as that term is defined in 28-B M.R.S. § 102(2), as may be amended.

Adult Use Marijuana Products Manufacturing Facility shall mean a "products manufacturing facility" as that term is defined in 28-B M.R.S. § 102(43), as may be amended.

Adult Use Marijuana Testing Facility shall mean a "testing facility" as that term is defined in 28-B M.R.S. § 102(54), as may be amended.

Applicant shall mean a person that has submitted an application for licensure as a Marijuana Establishment pursuant to this Ordinance.

Cultivate or *cultivation* shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. It does not include manufacturing.

Licensed premises shall mean the premises specified in an application for a State or Local License pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use marijuana, adult use marijuana products, medical marijuana or medical marijuana products in accordance with the provisions of this Ordinance and the requirements of State law and regulations.

Licensee shall mean a person licensed pursuant to this Ordinance ~~or, in the case of a holder of an occupational license, a natural person licensed pursuant to this Ordinance~~.

Local License shall mean any license required by and issued under the provisions of this Ordinance.

Local Licensing Authority shall mean the Town Council, as further specified in the provisions of this Ordinance.

Manufacture or manufacturing shall mean the production, blending, infusing, compounding or other preparation of marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. It does not include cultivation.

*Marijuana s*hall mean "marijuana" as that term is defined in 28-B M.R.S. § 102(27) as may be amended.

Marijuana concentrate shall mean the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of marijuana concentrate in a marijuana product, the weight of any other ingredient combined with marijuana to prepare a marijuana product may not be included.

Marijuana Establishment shall mean an Adult Use Marijuana Cultivation Facility, an Adult Use Marijuana Products Manufacturing Facility,an Adult Use Marijuana Testing Facility, a Medical Marijuana Dispensary, a Medical Marijuana Testing Facility, a Medical Marijuana Manufacturing Facility, a Medical Marijuana Cultivation Facility, and a Medical Marijuana Caregiver Retail Store. A Marijuana Establishment does not include an Adult Use Marijuana Store or a Medical Marijuana Caregiver Retail Store, which ~~is~~ are not permitted in the Town of Scarborough.

Medical marijuana shall mean the medical use of marijuana, with the term "medical use" as defined in 22 M.R.S § 2422(5), as amended.

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Medical marijuana caregiver shall mean a "caregiver" as that term is defined in 22 M.R.S. § 2422(8-A), as may be amended.

Medical Marijuana Caregiver Retail Store shall mean "caregiver retail store" as that term is defined in 22 M.R.S. § 2422(1-F) as may be amended.

Medical marijuana cultivation area shall mean a "cultivation area" as that term is defined in 22 M.R.S. § 2422(3), as may be amended.

Medical Marijuana Cultivation Facility shall mean a medical marijuana cultivation area used or occupied by one or more medical marijuana registered caregivers and a facility licensed under this ordinance to cultivate, prepare and package medical marijuana at a location that is not the residence of the Registered Caregiver or Qualifying Patient.

Medical Marijuana Dispensary shall mean a "registered dispensary" as that term is defined in 22 M.R.S. § 2422(6), as may be amended.

Medical marijuana product shall mean a "marijuana product" as that term is defined in 22 M.R.S. § 2442(4-L), as may be amended.

Medical Marijuana Products Manufacturing Facility shall mean a "manufacturing facility" as that term is defined in 22 M.R.S. § 2422(4-R), as may be amended.

Medical marijuana qualifying patient shall mean a "qualifying patient" as that term is defined in 22 M.R.S. § 2422(9), as may be amended.

Medical marijuana registered caregiver shall mean a "registered caregiver" as that term is defined in 22 M.R.S. § 2422(11), as may be amended.

Medical Marijuana Testing Facility shall mean a "marijuana testing facility" as that term is defined in 22 M.R.S. § 2422(5-C), as may be amended.

Owner shall mean a person whose beneficial interest in a Marijuana Establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a Marijuana Establishment and/or has a controlling interest in a Marijuana Establishment.

Person shall mean a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

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State License shall mean any license, registration or certification issued by the State Licensing Authority.

State Licensing Application shall mean the application form and supporting materials required by the State for the purpose of a person obtaining a State license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use marijuana, adult use marijuana products, medical marijuana and/or medical marijuana products in this State.

State Licensing Authority shall mean the authority (or authorities) created by the State for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of adult use marijuana, adult use marijuana products, medical marijuana and/or medical marijuana products in this State.

Section 4. License Required.

No person may establish, operate or maintain a Marijuana Establishment without first obtaining a license from the Town Council.

Section 5. License Application.

An application for a license must be made on a form provided by the Town. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

The application for a Marijuana Establishment license shall contain the following information**:**

A. Name of Applicant.

1. If the applicant is an individual**:** The individual shall state their legal name and any aliases~~,~~ and submit proof that they are at least twenty- one (21) years of age.

2. If the applicant is a partnership**:** The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.

3. If the applicant is a corporation**:** The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.

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4. If the applicant is a limited liability company (LLC)**:** The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.

5. If the applicant intends to operate the Marijuana Establishment under a name other than that of the applicant, they must state the Marijuana Establishment's name and submit the required registration documents.

B. ~~I~~The applicant's mailing address and residential address.

C. Recent passport-style photograph(s) of the applicant(s).

D. The applicant's driver's license.

E. A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.

F. The location of the proposed Marijuana Establishment, including a legal description of the property, street address, and telephone number. The applicant must also demonstrate that the property meets the zoning requirements for the proposed use.

~~f the applicant, an officer, member or employee has been convicted of criminal activity under State and/or federal law, they must list the specified criminal activity involved, and the date, place, and jurisdiction of each conviction.~~

~~C~~G. If the applicant has had a previous license under this Ordinance or other similar Marijuana Establishment license applications in another town, in the Town of Scarborough, or state denied, suspended or revoked, they must list the name and location of the Marijuana Establishment for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the Marijuana Establishment for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.

~~D~~H. If the applicant holds any other permits/licenses under this Ordinance or other similar Marijuana Establishment license from another town, the Town of Scarborough, or state the applicant shall provide the names and locations of such other permitted/licensed businesses, including the current status of the license or permit and whether the license or permit has been revoked.

~~E~~H. The type of Marijuana Establishment for which the applicant is seeking a license and a general description of the business including hours of operation.~~, etc.~~

~~F. The location of the proposed Marijuana Establishment, including a legal description of the property, street address, and telephone number.~~

~~G~~J. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Marijuana Establishment pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

~~H~~K. ~~The applicant's mailing address and residential address.~~

~~I. Recent passport-style photograph(s) of the applicant(s).~~

~~J. The applicant's driver's license.~~

~~K. A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.~~

L. A copy of a Town Tax Map depicting~~: the subject property lines and the property lines of other properties containing any existing Marijuana Establishments within one thousand (1,000) feet of the subject property; and~~ the property lines of any public or preexisting private school within ~~seven hundred and fifty~~one thousand (~~750~~1000) ~~-~~feet of the subject property~~, measured in accordance with Section 14-659~~. For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program all as defined in 20-A M.R.S. §1, or any other educational facility that serves children from prekindergarten to grade 12, as well as any preschool or daycare facility licensed by the Maine Department of Health and Human Services.

M. Evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.

N. A copy of the security plan as required by Section 10(A)(~~8~~6) of this Ordinance.

O. A copy of the odor and ventilation mitigation plan as required by Section 10(A)(~~9~~7) of this Ordinance.

P. A copy of the operations plan as required by Section 10(A)(~~10~~8) of this Ordinance.

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~~Q. Consent for a background check and any other relevant information sufficient to conduct the background check.~~

Q. Consent for the right to access the property as required by Section 10(B) of this Ordinance.

R. Evidence of insurance as required by Section 10(C)(1) of this Ordinance

Section 6. Application and License Fees

A. Applicant Fee. An applicant must pay a $_____ application fee upon submission. Applicants are also responsible for the Town's expenses associated with the review of an application, including the criminal background checks and the cost of any third-party review if necessary.

B. License Fee. Local License fees are set forth below and shall be paid annually:

1. Adult Use Marijuana Cultivation Facility**:**

   (a) Tier 1**:** 0 to 500 SF of plant canopy**:** $_____.

   (b) Tier 2: 501-2,000 SF of mature plant canopy: $_____.

   (c) Tier 3: 2,001-7,000 SF of mature plant canopy: $_____.

   (d) Tier 4: greater than 7,000SF of mature plant canopy: $_____

   (e) Nursery Cultivation: $_____

2. Adult Use or Medical Marijuana Testing Facility: $_____

3. Adult Use or Medical Marijuana Products Manufacturing Facility: $_____

4. Medical Marijuana Cultivation Facility: $_____

~~5. Medical Marijuana Caregiver Store: $_____~~

~~6.~~5. Medical Marijuana Dispensary: $_____

Section 7. Licensing Authority and Procedure.

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A. The initial application for a license shall be processed by the Town Clerk and reviewed and approved by the Town Council.

B. Complete application. In the event that the Town Clerk determines that a submitted application is not complete, the Town Clerk shall notify the Applicant within ten (10) business days that the application is not complete and shall inform the Applicant of the additional information required to process the application.

~~C. Background checks. The Town Clerk shall order background checks of each applicant and renewal applicant. If the applicant is a business entity, every officer, director, manager and general partner of the business entity is required to submit to a criminal history record check. Failure to submit required releases for a background check is grounds for denial of a license. The cost of the background check shall be borne by the applicant.~~

~~D~~C. Public hearing. A public hearing by the Town Council on an application for a license shall be scheduled after receipt of a completed application. The Town Clerk shall post and publish public notice of the hearing not less than seven (7) days prior to the hearing. The Town Clerk shall give public notice by posting a sign in a conspicuous place on the premises identified in an Application for Local License and by publication in a newspaper of general circulation in Cumberland County.

~~E~~D. A renewal application shall be subject to the same application and review standards as applied to the initial issuance of the license. As part of the renewal process, the Town Clerk shall consider compliance from prior years, and based upon that review, may recommend conditions to any future license to correct, abate, or limit past problems to forward to the Town Council for action.

~~F~~E. Responsibilities and review authority.

1. The Town Clerk shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance. The Town Clerk shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation.

2. No Local License shall be granted by the Town Council until the Police Chief, the Fire Chief, ~~the Health Inspector,~~ and the Code Enforcement Officer have all made a positive recommendation upon the Applicant's ability to comply with this Ordinance. The Town may also consult with a third party expert on an application and charge the costs for that consultation to the applicant. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision or State law, it shall be the duty of the Applicant or licensee, or the person in charge of the premises to be

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inspected, to admit any officer, official, or employee of the Town authorized to make the inspection at any reasonable time that admission is requested.

3. The Town Council shall have the authority to approve license and renewal applications, and impose any conditions on a license that may be necessary to insure compliance with the requirements of this Chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license.

Section 8. License Expiration and Renewal.

A. Each Local License issued shall be effective for one year from the date of issuance.

B. Renewal applications must be submitted at least 45 days prior to the date of expiration of the annual Local License. An application for the renewal of an expired license shall be treated as a new license application.

C. Licenses issued under this Ordinance are not transferable to a new owner. Any change in ownership or change in the officers of an owner shall require a new license. Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A Licensee who seeks to operate in a new location shall acquire a new Local License for that location.

Section 9. Denial, Suspension or Revocation of License.

A. A Local License under this Ordinance shall be denied to the following persons:

1. A person who fails to meet the requirements of this Ordinance. Where an Applicant is an entity rather than a natural person, all natural persons with an ownership interest shall meet these requirements.

2. A person who has had a license for a Marijuana Establishment revoked by the Town or by the State.

3. An Applicant who has not acquired all necessary State approvals and other required local approvals prior to the issuance of a Local License.

B. The Town may suspend or revoke a license for any violation of this Chapter, Chapter 1000a, Chapter 405, or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has a State License for a Marijuana Establishment suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing prior to any suspension or revocation, except where the

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reason for suspension or revocation could reasonably threaten health, safety, or welfare, as long as notice and a hearing is provided as soon as practicable.

Section 10. Performance Standards for License

A. General.

1. All Marijuana Establishments shall comply with applicable state and local laws and regulations.

2. Marijuana Establishments shall only be located within the zoning districts permitted in the Scarborough Zoning Ordinance.

3. Marijuana Establishments may not be located on property within 1,000 feet of the property line of a preexisting ~~public or private~~ school as required and defined in Section 5(L) of this Ordinance. ~~For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program as defined in 20-A M.R.S. §1, or any other educational facility that serves children from prekindergarten to grade 12.~~

4. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Marijuana Establishment is located. If the Marijuana Establishment is located within a commercial subdivision, the required setback shall be measured from the ~~front door~~closest portion of a building that is used for ~~of~~ the Marijuana Establishment to the property line of the school. Presence of a town, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

~~5. Marijuana Establishments may not be located within _____ feet of any other Marijuana Establishment. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the property lines of the parcels of land on which the Marijuana Establishments are located. If the Marijuana Establishment is located within a commercial subdivision, the required setback shall be measured from the front door of each of the Marijuana Establishments.~~

~~Adult Use and Medical Marijuana Cultivation Facilities and Adult Use and Medical Marijuana Manufacturing Facilities operating within the industrial zoning district are exempt from this setback requirement.~~

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~~This setback requirement does not apply to parcels with more than one Marijuana Establishment that are subdivided, if the Marijuana Establishment(s) located on the property were operating with Town approval prior to December 13, 2018.~~

~~6.~~5. Pursuant to 22 M.R.S. §2429-D(3), Caregiver Retail Stores, Medical Marijuana Dispensaries, Medical Marijuana Testing Facilities, and Medical Marijuana Manufacturing Facilities that were operating with Town approval prior to December 13, 2018, are grandfathered in their current location and current use and shall be treated as legally non-conforming uses in accordance with Article III of the Scarborough Zoning Ordinance, provided, however, that said Marijuana Establishments shall apply for and obtain a license. If any non-conforming use of land ceases for any reason for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which such land is located.

~~7.~~6. Security measures at all Marijuana Establishment premises shall include, at a minimum, the following**:**

a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and

b. Door and window combination video and motion detector intrusion system with audible alarm and smart phone monitoring, maintained in good working condition; and

c. A locking safe or locked room permanently affixed to the premises that is suitable for storage of all marijuana, marijuana products, and cash stored overnight on the licensed premises; and

d. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and complies with applicable provisions of the lighting performance standards in the Town of Scarborough Zoning Ordinance and the Good Neighbor Ordinance; and

e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars; and

f. Methods to ensure that no person under the age of twenty-one (21) shall have access to marijuana and marijuana products.

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~~8.~~7. Odor and Ventilation. All Marijuana Establishments shall have odor mitigation systems and a plan to ensure that the smell of marijuana shall not be detectable at the property boundary or at any adjoining use of the same property, whichever is closer. A Marijuana Establishment is responsible for taking any and all measures necessary to ensure this standard is met.

~~9.~~8. Operating Plan. Marijuana Establishments which cultivate, test, and/or manufacture are required to submit an operation plan that at a minimum addresses wastewater and waste disposal. No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers. Any wastewater shall be treated such that it will not create excessive odors, contamination, or pollution.

~~10.~~9. Signs. In addition to the sign regulations contained in Chapter 405, Zoning Ordinance, ~~the following restrictions apply~~signage must comply with the requirements in 22 M.R.S. § 2429-B and 28-B M.R.S. § 702.~~:~~

~~a. Signs may not involve advertising that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age;~~

~~b. Signs may use an image or images of the marijuana plant or plants, or parts thereof, as long as such images do not exceed 20% of the sign face, but there shall be no pictorial representations of other marijuana products, by-products, or paraphernalia associated with the use or distribution of retail marijuana.~~

B. Right of Access~~/ Background Check~~/Inspection.

1. Every Marijuana Establishment shall allow the Scarborough Code Enforcement Officer ("CEO"), Fire Department, and Police Department to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance.

2. All Marijuana Establishments shall agree to be inspected annually by the Scarborough Fire Department and have a Knox Box installed at the structure's exterior entrance for emergency access. Knox Boxes shall be obtained and installed in coordination with the Scarborough Fire Department.

C. Insurance and Indemnification.

1. Each marijuana establishment shall procure and maintain commercial general liability coverage in the minimum amount of $1,000,000 per occurrence for bodily injury, death, and property damage.

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2. By accepting a license issued pursuant to this Ordinance, the licensee knowingly and voluntarily waives and releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of any Marijuana Establishment owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.

3. By accepting a license issued pursuant to this Ordinance, the permittee/licensee agrees to indemnify, defend, and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of a licensed Marijuana Establishment.

D. State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacture, distribution, or testing of Marijuana or Marijuana products, the additional or stricter regulation shall control the establishment or operation of any Marijuana Establishment in Scarborough.

Compliance with all applicable State laws and regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.

Section 11. Violations and Penalties.

This Ordinance shall be enforced by the ~~Town Manager~~Code Enforcement Officer or the Police Chief and ~~his~~her/~~her~~ his designees, who may institute any and all actions to be brought in the name of the Town.

A. Any violation of this Ordinance, including the operation of a Marijuana Establishment without a valid Local License and failure to comply with any condition, shall be subject to civil penalties in the minimum amount of $100 and the maximum amount of $2,500. Every day a violation exists constitutes a separate violation. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of this Ordinance. In any court action, the Town may seek injunctive relief in addition to penalties, and shall be entitled to recover its costs of enforcement, including its attorney's fees.

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B. In addition to any other remedies provided by this Ordinance, the Town may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for the following violations: operating a marijuana business without a Local License or State License; failure to allow entrance and inspection to any Town official on official business after a reasonable request; and any other violation that the Town determines as the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

C. The Town Manager shall inform members of the Town Council before instituting action in court, but need not obtain the consent of the Town Council, and the Town Manager may institute an action for injunctive relief without first informing members of the Town Council in circumstances where immediate relief is needed to prevent a serious public harm. In addition, the Town Manager may enter into administrative consent agreements in the name of the Town for the purposes of eliminating violations and recovering penalties without court action

Section 12. Appeals.

A. Any appeal of a decision of the Town Council to issue, issue with conditions, deny, or revoke a license shall be to the Superior Court in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

B. Any order, requirement, decision, or determination made, or failure to act, in the enforcement of this ordinance by the ~~Town Manager~~CEO or Police Chief is appealable (or not appealable) to the ~~(~~**Town Council**~~. or Zoning Board of Appeals?)~~

Section 13. Severability.

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 14. Other Laws.

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended and the Marijuana Legalization Act, 28-B M.R.S. Chapter 1, as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the above laws or any other applicable State or local law or regulation, the more restrictive provision shall control.

Section 15. Effective Date.

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The effective date of this Ordinance, and the business licensing thereunder, shall be the date of adoption by the Town Council.

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SECTION VI. DEFINITIONS (Add the following)

Marijuana Establishment shall mean an Adult Use Marijuana Cultivation Facility, an Adult Use Marijuana Products Manufacturing Facility, an Adult Use Marijuana Testing Facility, a Medical Marijuana Dispensary, a Medical Marijuana Testing Facility, a Medical Marijuana Manufacturing Facility, a Medical Marijuana Cultivation Facility, and a Medical Marijuana Caregiver Retail Store. A Marijuana Establishment does not include an Adult Use Marijuana Store or a Medical Marijuana Caregiver Retail Store, which ~~is~~ are not permitted in the Town of Scarborough. Definitions of each of the types of marijuana establishments are further defined in Chapter 1018, Marijuana Establishments Licensing Ordinance.

SECTION _____. PERFORMANCE STANDARDS

~~**SECTION XXI.C. MARIJUANA ESTABLISHMENTS OVERLAY DISTRICT – ME-O**~~

~~A. PURPOSE AND APPLICABILITY~~
~~The purpose of this overlay district is to provide for certain adult use and medical marijuana establishments uses and locations for such uses within the Town of Scarborough.~~

~~B. PERMITTED USES~~
~~In addition to the uses permitted in the underlying zoning districts, the following uses are permitted:~~

~~1. Marijuana establishments~~

~~C. SPACE AND BULK REGULATIONS~~
~~The use, modification, or expansion of buildings or structures existing as of the date of adoption of this section or the construction of new buildings shall be governed by the Space and Bulk Regulations of the underlying zoning districts and with the performance standards contained in Chapter 1018, Marijuana Establishments Licensing Ordinance.~~

~~E. OFF-STREET PARKING~~
~~Off-street parking shall be provided in accordance with the requirements of Section XI of this Ordinance.~~

~~F. SIGNS~~
~~Signs shall be regulated in accordance with the requirements of Section XII of this Ordinance.~~

DRAFT