

AGENDA
ORDINANCE COMMITTEE

Thursday, October 17, 2019

4:00 p.m.
Chamber A

- Item 1.** Call to Order.
- Item 2.** Roll Call.
- Item 3.** Approval of the minutes from September 26, 2019 meeting.
- Item 4.** Public Comment.
- Item 5.** Commercial marijuana ordinance development.
- Item 6.** Adjournment

RJC Edits 10-9-19-
(only added “Product” to Marijuana Establishment definition)

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.

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 shall 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 Product Facility, and 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 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.

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.

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.
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. 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.
 - 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.
 - 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.
 - I. The type of Marijuana Establishment for which the applicant is seeking a license and a general description of the business including hours of operation.
 - 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.

- K. A copy of a Town Tax Map depicting the property lines of any public or preexisting private school within one thousand (1000) feet of the subject property. 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.
- L. 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.
- M. A copy of the security plan as required by Section 10(A)(6) of this Ordinance.
- N. A copy of the odor and ventilation mitigation plan as required by Section 10(A)(7) of this Ordinance.
- O. A copy of the operations plan as required by Section 10(A)(8) of this Ordinance.
- P. Consent for the right to access the property as required by Section 10(B) of this Ordinance.
- Q. 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: \$500.
 - (b) Tier 2: 501-2,000 SF of mature plant canopy: \$3,000.
 - (c) Tier 3: 2,001-7,000 SF of mature plant canopy: \$10,000.
 - (d) Tier 4: greater than 7,000SF of mature plant canopy: \$10,000
 - ~~(e) Nursery Cultivation: \$_____~~

2. Adult Use or Medical Marijuana Testing Facility: \$1,000
3. Adult Use or Medical Marijuana Products Manufacturing Facility: \$2,500
4. Medical Marijuana Cultivation Facility: \$240/6 mature plants. Canopy not to exceed 500 sq. ft._____
5. Medical Marijuana Dispensary: \$_____

Section 7. Licensing Authority and Procedure.

- 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. 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.
- 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.
- 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, 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 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 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 school as required and defined in Section 5(L) of this Ordinance.
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 closest portion of a building that is used for 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. 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.

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

B. Right of Access /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.
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 Code Enforcement Officer or the Police Chief and 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.
- 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 CEO or Police Chief is appealable ~~(or not appealable)~~ to the ~~Town Council~~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.

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

Chapter 405
Town of Scarborough
Zoning Ordinance- Amendments related to Marijuana Establishments

SECTION VI. DEFINITIONS (Add the following)

Marijuana Cultivation Facility shall mean a facility licensed for the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale; to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana to products manufacturing facilities, and to other cultivation facilities. This term includes an Adult Use Marijuana Cultivation Facilities as defined in the Marijuana Legalization Act and Medical Marijuana Cultivation Facilities as defined in the Scarborough Marijuana Establishment Licensing Ordinance, as may be amended.

Medical Marijuana Dispensary shall mean an entity registered under section 22 M.R.S. 2425-A, as may be amended, that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.

Marijuana Manufacturing Facility shall mean a facility licensed for 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. The Facility may also purchase marijuana from a cultivation facility or another manufacturing facility; to manufacture, label and package marijuana and marijuana products. It does not include cultivation or testing. This term shall mean both an Adult Use Marijuana Products Manufacturing Facility and Medical Marijuana Manufacturing Facility as defined in the Marijuana Legalization Act and the Maine Medical Use of Marijuana Act, as may be amended.

Marijuana Testing Facility shall mean a facility licensed to develop, research and test marijuana, marijuana products for contaminants, safety or potency. "Testing" or "test" does not include cultivation or manufacturing. This term shall mean both an Adult Use Marijuana Testing Facility and Medical Manufacturing Testing Facility as defined in the Marijuana Legalization Act and the Maine Medical Use of Marijuana Act, as may be amended.

SECTION IX. PERFORMANCE STANDARDS

**Y. PERFORMANCE STANDARDS – MARIJUANA CULTIVATION IN THE
RF DISTRICT**

(At the direction of the Ord. Committee these standards are based on the standards for
Commercial Agricultural and Commercial Animal Husbandry, section IX.Q of the Zoning Ord.)

1. Marijuana cultivation is allowed only on lots with a lot area of X acres or more.

Question to Ord. Committee: The current standards require 1 acre or more for Commercial Agriculture use, and 2 acres or more for Commercial Animal Husbandry. The minimum lot size in the RF is 80,000SF (roughly 2 acres). The Committee indicated interest in being consistent with the standards for Commercial Ag. Uses so staff requests further clarification related to minimum lot size.

2. Setbacks?

Question to the Ord. Committee: The current standards do not address setback requirements for agricultural uses. Is this an issue the Committee is interested in pursuing? Agricultural uses may be permitted right up to a property line, however associated buildings need to meet the standard setback requirements (typically 50' front yard, 15' side and rear yard).- this include setbacks for structures which house farm animals. Is the Committee satisfied that growing operations may be conducted up to the abutting property line?

Staff notes that the State rules will require all outdoor cultivation to be secured with fencing, at least 6' high which obscures the cultivation area from outside view, and to be equipped with lighting designed to illuminate at least 10 feet around any point of entry.

3. Maximum Canopy?

Question to Ord. Committee: The current standards do not address maximum canopy requirements for agricultural uses. Is this an issue the Committee is interested in pursuing?

4. Any building or structure or activity related to the planting, propagation, growing or harvesting of marijuana must be operated and maintained in accordance with the latest edition of the Maine Department of Agriculture's Manual of Best Management Practices for Maine Agriculture.

Z. PERFORMANCE STANDARDS – MARIJUANA MANUFACTURING FACILITY IN THE RF DISTRICT

(These are borrowed the Zoning Ordinance related to Agricultural Product Stores & Small Batch Processing Facilities standards, sections IX.S & IX.M.3 respectively, and the RF District section XIV)

1. A marijuana manufacturing facility in the RF must be associated with and accessory to a Marijuana cultivation use.

2. A marijuana manufacturing facility in the RF must be located on a parcel that is actively used for the Marijuana cultivation use.

3. A marijuana manufacturing facility in the RF must be designed and primarily used to process products raised as part of the Marijuana Cultivation use on site.

4. The marijuana manufacturing facility may be a free-standing building, structure or outdoor location or may be part of another building or structure (for example, an area in a barn).

5. The facility shall not exceed 2,000SF of gross floor area.

(The RF standards, section XIV of the Zoning Ord., limits agricultural processing facilities to no more than 2,000SF, at the general direction of the Committee this proposed size is derived from existing provisions)

6. The marijuana manufacturing facility will not include any outdoor storage of processing byproduct or waste, other than what may be kept inside a common trash dumpster.

7. The establishment of a marijuana manufacturing facility is subject to site plan review.

SECTION XIV. RURAL FARMING DISTRICT (RF)

B. PERMITTED USES

22. Marijuana Cultivation, subject to performance standards of section IX.Y of this Ordinance

23. Marijuana Manufacturing Facility, subject to performance standards of section IX.Z of this Ordinance.

SECTION XVIII.B HAIGIS PARKWAY DISTRICT (HP)

B. PERMITTED USES

27. Marijuana Manufacturing Facility

28. Marijuana Testing Facility

SECTION XVIII.F. PINE POINT INDUSTRIAL OVERLAY DISTRICT (I-O)

B. PERMITTED USES

24. Marijuana Manufacturing Facility

25. Marijuana Testing Facility

26. Marijuana Cultivation Facility conducted within a full enclosed structure

27. Medical Marijuana Dispensary

SECTION XX. BUSINESS OFFICE-RESREACH DISTRICT (BOR)

B. PERMITTED USES

23. Marijuana Manufacturing Facility

24. Marijuana Testing Facility

SECTION XX.C CROSSROADS PLANNED DEVELOPMENT DISTRICT (CPD)

B. PERMITTED USES

55. Marijuana Manufacturing Facility

56. Marijuana Testing Facility

SECTION XXI. INDUSTRIAL DISTRICT (I)

B. PERMITTED USES

27. Marijuana Manufacturing Facility

28. Marijuana Testing Facility

29. Marijuana Cultivation Facility conducted within a full enclosed structure

30. Medical Marijuana Dispensary

SECTION XXI.B. LIGHT INDUSTRIAL DISTRICT (LI)

C. PERMITTED USES

25. Marijuana Manufacturing Facility

26. Marijuana Testing Facility

27. Marijuana Cultivation Facility conducted within a full enclosed structure

28. Medical Marijuana Dispensary

Sec. 18-39. - Suspension or revocation.

- (a) The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under section 18-35.* Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

*Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this amendment shall apply to any actions or proceedings pending on the date of its enactment.

- (b) Before the town council conducts a hearing on a suspension or revocation, the town manager will convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; the planning director; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, an alternate member of the town business community appointed by the town council; and an alternate citizen of the town, not an employee of the town, appointed by the town council, to discuss with the licensee the situation giving rise to the possible suspension or revocation.
- (c) The purpose of the administrative board will be fact finding with the goal of resolving the situation by proposing a consent agreement with the licensee. If the licensee fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall recommend to the town council that the license be suspended or revoked, as appropriate.
- (d) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

(Ord. of 6-13-1961, § 5(C); Ord. of 2-16-1988; Ord. of 8-7-2001; Ord. of 9-18-2001; Ord. of 4-15-2008; [Ord. of 3-1-2016](#))

- d. The solar energy systems shall be designed, sized and installed to only generate electricity, hot water or heat for the building(s) located on the same lot. This standard is not intended to prohibit the transfer of excess energy to the power grid.
- e. Electrical, plumbing, and/or building permits from Code Enforcement shall be required.

3. Solar Energy Systems within Common Open Space – To the extent permitted by applicable state and/or federal laws, solar energy systems may be allowed by the Planning Board within the common open space of a residential subdivision subject to the following requirements: [adopted 01-20-16]

- a. The solar energy systems within common open space shall comply with the performance standards 2.a., 2.c., and 2.e. of the subsection above.
- b. If proposed within a conservation subdivision required under Section VII.A. of this Ordinance, the installation of solar energy systems, and any necessary associated improvements, shall avoid impacting wetlands within the subdivision open space areas.
- c. The location and number of solar energy systems shall be determined by the Planning Board and shall be based on the forecasted energy consumption of the dwellings and uses within the subdivision as well as the site's ability to accommodate these systems without impacting the other purposes of the common open space.

P. PERFORMANCE STANDARDS – ACCESSORY AGRICULTURAL ACTIVITIES
[Adopted 05/05/2010]

Accessory Agricultural Activities must be carried out in conformance with the following performance standards:

- 1. Chickens may be kept on a lot in accordance with the following standards:
 - a. Up to five (5) chickens may be kept on a lot with a lot area of less than ten thousand (10,000) square feet.
 - b. Up to ten (10) chickens may be kept on a lot with a lot area of ten thousand (10,000) square feet or more but less than forty thousand (40,000) square feet.
 - c. Any number of chickens may be kept on a lot with a lot area of forty thousand (40,000) square feet or more.
 - d. On lots with a lot area of less than ten thousand (10,000) square feet, all chickens must be female.
 - e. On lots with a lot area of less than forty thousand (40,000) square feet, the chickens must be kept in an enclosure or fenced area at all times. This requirement can be met through the use of a mobile enclosure or a so called "chicken tractor".
 - f. The chickens must be confined within a henhouse during non-daylight hours.
 - g. The henhouse must be enclosed on all sides, have a roof and door, and the access doors must be able to be shut and locked. The henhouse must be constructed from substantial materials and be visually compatible with the property. The hen house must be setback

from any property line at least fifteen feet or the minimum required setback for the district in which it is located, whichever is greater

h. The henhouse and enclosure must be maintained so that it is clean, dry, and odor free. All manure or other wastes must be stored in a fully enclosed structure or in airtight containers and must be periodically removed from the property or composted so there is no accumulation of waste material on the lot.

2. Small animals (such as sheep, goats, pot-belly pigs, or fowl that typically weigh not more than 100 pounds at maturity) other than domestic pets or chickens may be kept on a lot that has a lot area of at least 40,000 square feet.

3. Large animals (such as horses, cows, hogs, or llamas that typically weigh more than 100 pounds at maturity) may be kept on a lot that has a lot area of at least 80,000 square feet.

4. Any building or structure that is used to house animals other than domestic pets or chickens must meet the setback requirements for the zone in which it is located.

5. The sale of products produced on the property in excess of what is consumed by the occupants of the property is permitted. The sales must occur in a designated area not more than twenty (20) square feet in area and may include a display stand or table. The stand or table may only be in place during the season when products are being sold and must be removed during the “off-season”.

Q. PERFORMANCE STANDARDS – COMMERCIAL AGRICULTURE AND COMMERCIAL ANIMAL HUSBANDRY INCLUDING PROCESSING [Adopted 05/05/2010]

Commercial Agriculture and Commercial Animal Husbandry must be carried out in conformance with the following performance standards:

1. A lot must have a lot area of at least one (1) acre to have any permanent agricultural buildings or structures.

2. Commercial Animal Husbandry is allowed only on lots with a lot area of two (2) acres or more.

3. Any building or structure that is used to house animals other than domestic pets and any facilities for the storage or handling of manure or materials that contain manure must conform to the setback requirements of the zone in which it is located. The facilities must be operated and maintained in accordance with the latest edition of the Maine Department of Agriculture’s Manual of Best Management Practices for Maine Agriculture.

4. Facilities for the processing of agricultural products must be designed and primarily used to process products raised as part of the Commercial Agriculture and/or Commercial Animal Husbandry use but the processing of other agricultural products not raised as part of the Commercial Agriculture or Animal Husbandry use is allowed provided that the processing facilities are accessory and subordinate to the principal agricultural use of the property.

5. Processing facilities must be operated and maintained in accordance with the latest edition of the Maine Department of Agriculture’s 01-001 Chapter 343 Rule, “Food Processing and Manufacturing” requirements.

R. PERFORMANCE STANDARDS – FARM STANDS [Adopted 05/05/2010]

A Farm Stand must conform to the following performance standards:

1. A farm stand must be associated with and accessory to a Commercial Agriculture and/or Commercial Animal Husbandry use.
2. A farm stand must be located on a parcel that is actively used for the Commercial Agriculture or Commercial Animal Husbandry use.
3. A farm stand may be a free-standing building, structure or outdoor location or may be part of another building or structure (for example, an area in a barn or house that is used for sales).
4. The total area devoted to retail sales is limited to four hundred (400) square feet. This includes the area of a free-standing building or structure, the area for outside display and/or sales, the outdoor area used for retail sales if there is no building or structure, and the area used for sales in another building.
5. The sale of products is limited to: a) those grown, raised, or produced by the Commercial Agriculture or Commercial Animal Husbandry use with which the farm stand is associated, b) processed products that are made from products grown or raised by the agricultural use (for example, cheese or ice cream made from milk, yarn made from wool, processed foods such as apple butter or salsa made from items grown by the use, or baked goods made using items grown by the agricultural use), c) agriculture products including processed products that are not produced by the agricultural use with which the stand is associated, and d) handmade art and craft products.
6. If the stand sells products that are not grown or raised by the use or made from products grown or raised by the use, at least 51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture and/or Commercial Husbandry use. In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage.
7. The farm stand must be located on the parcel so that it meets side and rear setback requirements but a free-standing farm stand is not required to meet the front setback requirements.
8. The farm stand must be located so that it provides appropriate parking and access for customers. Customer vehicles must not be required to back out on to a public street.
9. The farm stand may be open for business only when it is selling products that are grown, raised, or produced as part of the Commercial Agriculture or Commercial Animal Husbandry use.
10. A farm stand is not subject to site plan review but does require a permit from the CEO

S. PERFORMANCE STANDARDS – AGRICULTURAL PRODUCTS STORES [Adopted 05/05/2010]

An Agricultural Products Store must conform to the following performance standards:

1. An agricultural product store must be associated with and accessory to a Commercial Agriculture or Commercial Animal Husbandry use.
2. A store must be located on a parcel that is actively used for the Commercial Agriculture and/or Commercial Animal Husbandry use.
3. The primary vehicle access to the store must be from a street/road that is classified by the Town as an arterial, collector, or minor collector.
4. An agricultural products store may be a free-standing building or may be part of another building or structure (for example, an area in a barn or house that is used for sales)
5. A free-standing building used for retail sales or the area used for sales in another building is limited to one thousand (1,000) square feet of sales area. An additional outside area of not more than five hundred (500) square feet may be used for the display and/or sales of products. These limits shall not apply to greenhouses or areas for the growing and/or display of nursery stock or other plants for sale as part of the agricultural use.
6. The sale of products may include: a) those grown, raised, or produced by the Commercial Agriculture or Commercial Animal Husbandry use with which it is associated, b) processed products that are made from products grown or raised by the use (for example, cheese or ice cream made from milk, yarn made from wool, processed foods such as apple butter or salsa made from items grown by the use, or baked goods made using items grown by the use), c) agriculture products including processed products that are not produced by the Commercial Agriculture or Commercial Animal Husbandry use with which the store is associated, d) live or fresh fish, shellfish, and lobsters, and e) handmade art and craft products.
7. If the store sells products that are not grown or raised by the use or made from products grown or raised by the use, at least 51% of the dollar amount of gross retail sales per calendar year must be from products associated with the Commercial Agriculture or Commercial Husbandry use. In January of each year, the owner shall calculate and report to the Code Enforcement Officer the percentage of gross retail sales attributable to off-premises products for the preceding calendar year and, if requested by the Code Enforcement Officer, shall provide documentation of the calculated percentage.
8. The building in which the store is located must meet the front, side, and rear setback requirements for the district in which it is located
9. The store must be located so that it provides appropriate parking and access for customers. Parking must be provided in accordance with the requirements of Section XI. for retail uses.
10. The store may be open for business only when it is selling products that are grown, raised, or produced as part of the Commercial Agriculture or Commercial Animal Husbandry use.
11. The construction of a building or the conversion of an existing building for use as a agricultural products store is subject to site plan review.

T. PERFORMANCE STANDARDS – BED AND BREAKFASTS [Adopted 05/05/2010]

A Bed and Breakfast (B&B) must conform to the following performance standards: