

To: City Council
From: Ordinance Review Committee
Subject: Marijuana Establishments Licensing Ordinance
Date: Revised October 21, 2019

If the City wants to exercise ongoing oversight of allowed marijuana establishments to supplement state oversight, the City could enact a licensing requirement for some or all allowed marijuana establishments. The Committee has put together a draft of an ordinance to license all adult use and medical marijuana establishments in the City. The draft Land Use Code provisions provide for limits on what types of marijuana establishments can be located where in the City and the provisions for Planning Board review assure that the initial operation meets the City's requirements. The licensing ordinance provides for annual licensing of all marijuana establishments to allow the City Council to review the operation of each facility once a year and to address any issues with the operation. If the situation warrants, the Council can refuse to issue or renew a license. Since state approval is tied to municipal approval of each establishment this creates a powerful tool for the Council to assure that any allowed establishments do not create problems for the City. The draft of the licensing ordinance has been reviewed by Jon Pottle and his suggested edits have been incorporated into the draft.

The draft is focused on the possible impacts of a marijuana establishment on the City, public safety, impacts on the sewer system, operations, lighting, odors, etc. It does not deal with the technical issues of how marijuana is cultivated, processed, tested, etc. since these topics are addressed in detail in the state laws and regulations. The draft tries to keep the process reasonably simple and straightforward. The draft establishes three different sets of requirements, one for first-time applications, a second for renewal applications, and a third hybrid for applications involving the expansion or relocation of a facility.

The key issues the Council should address in considering this draft a possible licensing ordinance are the process components (application submission requirements, Council procedures, etc.), the issues addressed, and the standards for reviewing applications for licenses.

Draft Marijuana Establishment Licensing Ordinance

Section 1. Authority

This ordinance is adopted by the City under its home rule authority, Title 30-A M.R.S. Section 3001 and in accordance with the provisions of Title 28-B M.R.S Chapter 1 Subchapter 4 which authorizes municipal regulation of adult use marijuana establishments and Title 22 M.R.S Chapter 558-C Section 2429-D which authorizes municipal regulation of medical marijuana establishments.

Section 2. License Required

No marijuana establishment as defined in this ordinance shall operate within the City of Gardiner unless the establishment is currently licensed by the City in accordance with the provisions of this ordinance.

Section 3. Term of License

A license for a marijuana establishment shall be valid for one year from the date that the license is approved by the City Council unless otherwise specifically limited by vote of the City Council. The City Council may approve a license for less than one year to coordinate state and City licensing timeframes or as a conditional license to allow an applicant to address conditions of approval on the license.

Section 4. Licensing Procedures

Applications for a marijuana establishment license shall be processed and reviewed according to the following procedures.

4.1. Application Submission

An application for a marijuana establishment license shall be submitted to the City Clerk. Applications for renewal of a license or for the renewal of a license involving the expansion or relocation of the establishment must be submitted at least forty-five (45) days prior to the expiration of the current license. The application must include all of the materials set forth in the submission requirements of Section 5, 6 or 7 depending on the type of application.

4.2. Review of Application for Completeness

The City Manager or her/his designee shall review the application for completeness in accordance with the submission requirements of Section 5, 6 or 7. If the City Manager or her/his designee finds the application to be complete, he/she shall notify the City Clerk that the application should be advertised for public hearing and placed on the City Council's agenda. If the City Manager or his/her designee finds that the application is not complete, he/she shall notify the applicant of the additional materials required. Upon receipt of additional information the City Manager or her/his designee shall repeat the process until the application is deemed to be complete. An application shall not be advertised for public hearing or scheduled for City Council consideration until the application is found to be complete.

4.3. Public Hearing

The City Council shall hold a public hearing on a completed application for a marijuana establishment license. The notice of the public hearing shall be posted in accordance with City procedures and shall be advertised in a newspaper that is widely circulated in the City at least seven (7) days prior to the public hearing. The notice shall include the date, time and location of the hearing together with the name of the applicant, the type of marijuana establishment for which the license is sought and the location of the establishment identified by both street address and Tax Map and Lot number.

4.4. Council Action

Within thirty (30) days of the public hearing, the City Council shall review the application for conformance with the applicable standards set forth in Section 5, 6 or 7 depending on the type of licensing. The City Council shall make findings of fact as to the application's conformance with the standards of approval. The Council shall act to approve the granting of the license, to deny the granting of the license, or to approve the granting of the license with conditions. The Council may grant conditional approval of a license for a period of less than one year. When an application involves the renewal and relocation of an existing license, the City Council may allow for an overlap of up to ninety (90) days between the existing license and the renewal license to allow for the preparation of the new facility. When the City Council allows overlapping licenses, no retail sales shall occur at the new location until retail sales at the prior location have ceased.

Section 5. First-Time License Application

An application for a new marijuana establishment license shall be processed and reviewed in accordance with the following:

5.1. Submission Requirements

An application for a marijuana establishment license for an establishment that is not currently licensed by the City of Gardiner shall include all of the following information:

- 5.1.1. A completed and signed application form (provided by the City)
- 5.1.2. The appropriate annual license fee for the type of facility in accordance with the schedule of fees set forth in Section 8.
- 5.1.3. If the application is for an adult use marijuana establishment, a copy of the applicant's approved state conditional license including all submissions made to obtain that license.
- 5.1.4. If the application is for a medical marijuana establishment, written evidence that applicant has obtained all state approvals for the type of facility proposed including all materials submitted to the state to obtain those approvals.
- 5.1.5. A copy of the Planning Board's notice of decision approving the facility in accordance with the Land Use Code. If the Planning Board's approval included any conditions of approval, written documentation setting forth how those conditions have been or will be met.
- 5.1.6. A written report prepared by the Code Enforcement Officer documenting the proposals compliance with all applicable land use, building, plumbing and electrical codes. If the report of the Code Enforcement Officer identifies any areas of noncompliance, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.
- 5.1.7. A written report prepared by the Fire Chief documenting the proposals compliance with all applicable fire and life safety codes. If the report of the Fire Chief identifies any areas of noncompliance, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.
- 5.1.8. A written report prepared by the Police Chief addressing the adequacy of provisions to provide for the security of the establishment and to avoid any potential for nuisances from the use of the establishment. If the report of the Police Chief identifies any areas of concern, the

applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

5.1.9. If the proposed establishment will discharge to the public sewer system, a written report prepared by the Superintendent of the Wastewater Treatment System addressing the potential implications of discharging wastewater to the sewer system and providing treatment for this material including the need for any pre-treatment of discharges. If the report of the Superintendent identifies any areas of concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

5.2 Approval Standards

The City Council shall approve an application for a new marijuana establishment license only if it finds that all of the following standards are met or will be met as a result of conditions of approval applied to the license:

- 5.2.1 The applicant has obtained a conditional license for the proposed adult-use marijuana establishment or approval for the proposed medical marijuana establishment from the State of Maine.
- 5.2.2. The proposed establishment conforms or will conform to the approval of the Planning Board including any conditions of approval prior to receiving City authorization to open.
- 5.2.3 The proposed establishment conforms or will conform to the all applicable land use, building, plumbing and electrical codes prior receiving City authorization to open.
- 5.2.4 The proposed establishment conforms or will conform to the all applicable fire and life safety codes prior receiving City authorization to open.
- 5.2.5 The applicant has made or will make adequate provisions to provide for the security of the establishment and to avoid any potential for nuisances from the use of the establishment prior receiving City authorization to open.
- 5.2.6 The proposed establishment will not discharge effluent or process water to the public sewer system that will exceed the capacity of the system to transport and treat the material and that any requirements for pre-treatment or limits on the quantity of quality of discharges will be met.

Section 6. Renewal License Applications

An application for the renewal of a marijuana establishment license shall be processed and reviewed in accordance with the following:

6.1. Submission Requirements

An application for the renewal of a marijuana establishment license that is currently licensed by the City of Gardiner and that will occupy the same space as existing operation shall include all of the following information:

- 6.1.1. A completed and signed application form (provided by the City)
- 6.1.2. The appropriate annual license fee for the type of facility in accordance with the schedule of fees set forth in Section 8.
- 6.1.3. If the application is for an adult use marijuana establishment, written documentation that the applicant has applied for a renewal of its state license.
- 6.1.4. If the application is for a medical marijuana establishment, written evidence that applicant has obtained all state approvals for the type of facility proposed.
- 6.1.5. A written report prepared by the Code Enforcement Officer documenting the establishment's ongoing compliance with all applicable land use, building, plumbing and electrical codes. The report shall identify any enforcement actions or other concerns during the prior year. If the report of the Code Enforcement Officer identifies any areas of noncompliance or concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.
- 6.1.6. A written report prepared by the Fire Chief documenting the establishment's on-going compliance with all applicable fire and life safety codes. The report shall include the results of any inspections performed by the department and records of all calls for service during the prior year and the reason for each call. If the report of the Fire Chief identifies any areas of noncompliance or concern about use of the fire service, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.
- 6.1.7. A written report prepared by the Police Chief documenting the ongoing adequacy of provisions to provide for the security of the establishment and to avoid any potential for nuisances from the use of the establishment. The report of the Police Chief shall document the number of calls for service and the reason for the calls during the prior year. If the report of the Police Chief identifies any areas of concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

6.1.8. If the establishment discharges to the public sewer system, a written report prepared by the Superintendent of the Wastewater Treatment System addressing the impacts of the wastewater on the sewer system and sewage treatment plant including compliance with any pre-treatment requirements or limitations on the volume of discharges. If the report of the Superintendent identifies any areas of concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

6.2 Approval Standards

The City Council shall approve an application for the renewal of a marijuana establishment license only if it finds that all of the following standards are met or will be met as a result of conditions of approval applied to the license:

6.2.1 The applicant has applied to the State of Maine for the renewal of its adult-use marijuana establishment license or approval as a medical marijuana establishment.

6.2.2 The applicant has addressed any complaints or violations with respect to all applicable land use, building, plumbing and electrical codes during the prior year in a timely manner to the satisfaction of the Code Enforcement Officer and the establishment is or will be in conformance with all applicable code requirements.

6.2.3 The applicant has addressed any complaints or violations with respect to all applicable fire protection and life safety codes during the prior year in a timely manner to the satisfaction of the Fire Chief and the establishment is or will be in conformance with all applicable code requirements.

6.2.4 The applicant has addressed any complaints or violations with respect to provisions for the security of the establishment and to avoid nuisances from the use of the establishment during the prior year in a timely manner to the satisfaction of the Police Chief and has made adequate provisions to prevent the recurrence of any problems.

6.2.5 If the establishment discharges to the public sewer system, the applicant has addressed any discharges of effluent or process water to the public sewer system that has exceeded the capacity of the system to transport and treat the material including any requirements for pre-treatment during the prior year to the satisfaction of the Superintendent of the Wastewater Treatment System and has made adequate provisions to prevent the recurrence of any problems.

Section 7. Renewal License Application Involving an Expansion or Relocation of the Facility

An application for the renewal of a marijuana establishment license that involves either the relocation of the establishment to a new location or the expansion of the facility shall be processed and reviewed in accordance with the following:

7.1. Submission Requirements

An application for the renewal of marijuana establishment license that is currently licensed by the City of Gardiner in which the location of the establishment is proposed to be changed or the size of the establishment increased shall include all of the following information:

- 7.1.1. A completed and signed application form (provided by the City)
- 7.1.2. The appropriate annual license fee for the type of facility in accordance with the schedule of fees set forth in Section 8.
- 7.1.3. If the application is for an adult use marijuana establishment, written documentation that the applicant has applied for renewal of its state license. The applicant shall provide all documentation provided to the state in support of the request for renewal of its license.
- 7.1.4. If the application is for a medical marijuana establishment, written evidence that applicant has applied for or obtained all state approvals for the type of facility proposed.
- 7.1.5. A copy of the Planning Board's notice of decision approving the relocated or expanded facility in accordance with the Land Use Code. If the Planning Board's approval included any conditions of approval, written documentation setting forth how those conditions have been or will be met.
- 7.1.6. A written report prepared by the Code Enforcement Officer documenting the existing facility's ongoing compliance with all applicable land use, building, plumbing and electrical codes. The report shall identify any enforcement actions or other concerns during the prior year.
- 7.1.7. A second written report prepared by the Code Enforcement Officer documenting the compliance of the proposal for a relocated or expanded facility with all applicable land use, building, plumbing and electrical codes. If the report of the Code Enforcement Officer identifies any areas of noncompliance, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

7.1.8. A written report prepared by the Fire Chief documenting the existing establishment's on-going compliance with all applicable fire and life safety codes. The report shall include the results of any inspections performed by the department and records of all calls for service during the prior year and the reason for each call. The report of the Fire Chief shall identify any areas of noncompliance or concern about the use of the fire service. The report shall also document the compliance of the proposal for a relocated or expanded facility with all applicable fire and life safety codes. If the report of the Fire Chief identifies any areas of noncompliance with the new or expanded establishment, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

7.1.9. A written report prepared by the Police Chief documenting the ongoing adequacy of provisions at the existing facility to provide for the security of the establishment and to avoid any potential for nuisances from the use of the establishment. The report of the Police Chief shall document the number of calls for service and the reason for the calls during the prior year. The report shall also review the proposal for a relocated or expanded facility. If the report of the Police Chief identifies any areas of concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

7.1.10. If the existing establishment discharges to the public sewer system, a written report prepared by the Superintendent of the Wastewater Treatment System addressing the impacts of the wastewater on the sewer system and sewage treatment plant including compliance with any pre-treatment requirements or limitations on the volume of discharges. The report shall evaluate the potential implications of discharging wastewater to the sewer system and providing treatment for this material including the need for any pre-treatment of discharges from the relocated or expanded facility. If the report of the Superintendent identifies any areas of concern, the applicant shall provide a written response setting forth how the identified issues have been or will be addressed.

7.2 Approval Standards

The City Council shall approve an application for the renewal of a marijuana establishment license only if it finds that all of the following standards are met or will be met as a result of conditions of approval applied to the license:

7.2.1 The applicant has applied to the State of Maine for the renewal of its adult-use marijuana establishment license or approval as a medical marijuana establishment.

7.2.2 The proposed relocated or expanded establishment conforms or will conform to the approval of the Planning Board including any conditions of approval prior to receiving City authorization to open.

7.2.3 The applicant has addressed any complaints or violations with respect to all applicable land use, building, plumbing and electrical codes during the prior year in a timely manner to the satisfaction of the Code Enforcement Officer and the relocated or expanded establishment is or will be in conformance with all applicable code requirements.

7.2.4 The applicant has addressed any complaints or violations with respect to all applicable fire protection and life safety codes during the prior year in a timely manner to the satisfaction of the Fire Chief and the relocated or expanded establishment is or will be in conformance with all applicable code requirements.

7.2.5 The applicant has addressed any complaints or violations with respect to provisions for the security of the establishment and to avoid nuisances from the use of the establishment during the prior year in a timely manner to the satisfaction of the Police Chief and has made adequate provisions to prevent the recurrence of any such problems at the relocated or expanded establishment.

7.2.6 If the existing establishment discharges to the public sewer system, the applicant has addressed any discharges of effluent or process water to the public sewer system that has exceeded the capacity of the system to transport and treat the material including any requirements for pre-treatment during the prior year to the satisfaction of the Superintendent of the Wastewater Treatment System and has made adequate provisions to prevent the recurrence of any such problems at the relocated or expanded location.

Section 8. Fees

An application for a license or renewal of a license for a marijuana establishment shall include an application fee in the amount set forth in the following table:

Type of Marijuana Establishment	Annual Fee
Medical Marijuana Cultivation Facility – Tier 1	\$500

Medical Marijuana Cultivation Facility – Tier 2	\$1,500
Marijuana Cultivation Facility – Tier 3	\$2,000
Marijuana Cultivation Facility – Tier 4	\$2,500
Marijuana Products Manufacturing Facility	\$2,000
Marijuana Testing Facility	\$500
Marijuana Retail Store	\$1,500
Medical Marijuana Registered Caregiver Retail Store	\$1,000
Medical Marijuana Registered Dispensary	\$1,000
Marijuana Nursery Cultivation Facility	\$1,500

This is nonrefundable and will be used to offset the City’s costs in the review of the application and in the oversight with respect to conformance of the establishment with respect to the license and any conditions of approval.

Section 9. Definitions

- **Marijuana Establishment:** Any use or facility that is a Medical Marijuana Cultivation Facility – Tier 1 or Tier 2, a Marijuana Cultivation Facility – Tier 3, a Marijuana Cultivation Facility – Tier 4, a Marijuana Products Manufacturing Facility, a Marijuana Testing Facility, a Marijuana Retail Store, a Medical Marijuana Registered Caregiver Retail Store, a Medical Marijuana Registered Dispensary, or a Marijuana Nursery Cultivation Facility as defined by this ordinance.
- **Medical Marijuana Cultivation Facility – Tier 1:** An establishment registered with the State of Maine for the cultivation of medical marijuana by a Registered Caregiver in accordance with the rules established under Title 22 M.R.S. Chapter 558-C that involves the growing of not more than thirty (30) mature marijuana plants, not more than sixty (60) immature marijuana plants and any number of marijuana seedlings.
- **Medical Marijuana Cultivation Facility – Tier 2:** An establishment registered with the State of Maine for the cultivation of medical marijuana in accordance with the rules established under Title 22 M.R.S. Chapter 558-C that involves the growing of mature marijuana plants with a plant canopy of not more than two thousand (2,000) square feet.
- **Marijuana Cultivation Facility – Tier 3:** An establishment licensed by the State of Maine for the cultivation of medical marijuana in accordance with the rules

established under Title 22 M.R.S. Chapter 558-C and/or licensed by the State of Maine for the cultivation of adult use marijuana in accordance with the rules established under Title 28-B M.R.S. Chapter 1 that involves the growing of mature marijuana plants with a plant canopy of more than two thousand (2,000) but not more than seven thousand (7,000) square feet.

- **Marijuana Cultivation Facility – Tier 4:** An establishment licensed by the State of Maine for the cultivation of medical marijuana in accordance with the rules established under Title 22 M.R.S. Chapter 558-C and/or licensed by the State of Maine for the cultivation of adult use marijuana in accordance with the rules established under Title 28-B M.R.S. Chapter 1 that involves the growing of mature marijuana plants with a plant canopy of more than seven thousand (7,000) square feet.
- **Marijuana Products Manufacturing Facility:** An establishment licensed by the State of Maine as a Tier 1 or Tier 2 medical marijuana products manufacturing facility in accordance with the rules established under Title 22 M.R.S. Chapter 558-C and/or licensed by the State of Maine as an adult use marijuana products manufacturing facility in accordance with the rules established under Title 28-B M.R.S. Chapter 1.
- **Marijuana Testing Facility:** An establishment licensed by the State of Maine as a medical marijuana testing facility in accordance with the rules established under Title 22 M.R.S. Chapter 558-C and/or licensed by the State of Maine as an adult use marijuana testing facility in accordance with the rules established under Title 28-B M.R.S. Chapter 1.
- **Marijuana Retail Store:** An establishment licensed by the State of Maine as an adult use marijuana store in accordance with the rules established under Title 28-B M.R.S. Chapter 1.
- **Medical Marijuana Registered Caregiver Retail Store:** An establishment licensed by the State of Maine as an Medical Marijuana Registered Caregiver Retail Store in accordance with the rules established under Title 22 M.R.S. Chapter 558-C.
- **Medical Marijuana Registered Dispensary:** An establishment licensed by the State of Maine as an Registered Medical Marijuana Dispensary in accordance with the rules established under Title 22 M.R.S. Chapter 558-C.
- **Marijuana Nursery Cultivation Facility:** An establishment licensed by the State of Maine as an adult use nursery cultivation facility in accordance with the rules established under Title 28-B M.R.S. Chapter 1.
- **Marijuana Plant – Immature:** A marijuana plant that is not a mature marijuana plant or a marijuana seedling.
- **Marijuana Plant – Mature:** A marijuana plant that is flowering.

- **Marijuana Seedling:** A marijuana plant that is not flowering, is less than six (6) inches high and less than six (6) inches in width.

Section 10. Amendments

The City Council may amend this ordinance at any time in accordance with the City's procedures for the adoption and amendment of an ordinance.

Section 11. Severability and Validity

If a court of law in the State of Maine finds a portion of this ordinance to be invalid for any reason or purpose, the balance of the ordinance shall remain in effect and shall continue to apply to marijuana establishments. If a court of law finds the entire ordinance invalid, that action shall automatically void the municipal opt-in provisions of Title 28-B M.R.S Chapter 1 Subchapter 4 which authorizes municipal regulation of adult use marijuana establishments and Title 22 M.R.S Chapter 558-C Section 2429-D which authorizes municipal regulation of medical marijuana establishments. In such case no new or expanded marijuana establishments shall be permitted in the City of Gardiner but marijuana establishments with a valid City license as of the date of any such legal action shall be allowed to continue to operate in accordance with that license and the City shall, if requested, certify to the State that an application for renewal of a state license or approval is in conformance with local requirements.