



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



Meeting Date	02/02/2022	Department	Planning/Economic Dev
Agenda Item	4.c) Consideration of a First Read on the Ordinance Review Committee's (ORC) draft amendments to the City's marijuana code		
Est. Cost			

Background Information	<p>This is the First Read on this draft amendment.</p> <p>The Ordinance Review Committee developed draft amendments to both the marijuana establishment licensing provisions in the City Code and the land use provisions in the Land Use Code. The proposed amendments exempt marijuana establishments that go into an existing building or commercial space from some of the review submission requirements. It also removes the requirement to submit copies of the state application when applying for a City license.</p>
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Requested Action	"I move to send these ORC amendments to the City's marijuana code to a Second and final Read on February 16, 2022."
City Manager and/or Finance Review	The Acting City Manager approves the above motion.
Council Vote/ Action Taken	
Departmental Follow-Up	

City Clerk Use Only	1 st Reading _____	Advertised _____	EFFECTIVE DATE _____
	2 nd Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

To: City Council
From: Ordinance Review Committee/Mark Eyerman/Planning Board
Subject: Marijuana Amendments Continued
Date: January 25, 2022

The Ordinance Review Committee developed draft amendments to both the marijuana establishment licensing provisions in the City Code and the land use provisions in the Land Use Code. The proposed amendments exempt marijuana establishments that go into an existing building or commercial space from some of the review submission requirements. It also removes the requirement to submit copies of the state application when applying for a City license. The amendments also simplify the separation distance provisions and add performance standards that will apply to all cultivation of marijuana in the City. The proposed changes to the City Code go directly to the Council. The Planning Board held a public hearing on the changes to the Land Use Code and the Board is recommending adoption of the amendments. The City Code amendments and the Land Use Code revisions are interrelated so the City Council should consider them as a package.

Here is an overview of the proposed changes to the Land Use Code:

1. The submission requirements for applications for Planning Board approval for marijuana establishments that do not otherwise trigger Planning Board or Site Plan Review include an automatic waiver for the map/drawing requirements when they are simply going into an existing space.
2. The separation distance around schools, etc. is changed to a flat 1000 foot donut measured from property lines with no provisions for reductions.
3. The separation distance between retail marijuana establishments is changed to a 500 foot donut measured from property lines.
4. Performance standards for the cultivation of marijuana are added including that all cultivation be done in a fully enclosed structure with provisions for odor control and that the structure meets setback requirements. It also includes a provision requiring that an accessory cultivation facility not be visible from a public street if it is a freestanding structure.
5. The definitions of cultivation facilities are revised to require that the growing occur within a fully enclosed facility with walls and a roof.

The proposed changes to the licensing provisions in the City Code remove the requirement that an applicant provide the City Council with the application materials that were submitted to the state. Instead it provides for a consistent provision that the applicant has to provide evidence that they applied for and/or received state approval.

November 8, 2021

Draft Amendments to Chapter 11 Marijuana Establishment Licensing Ordinance

1. Amend Section 5.1.3 to read:

5.1.3. If the application is for an adult use marijuana establishment, ~~a copy of the applicant's written evidence that the applicant has received a approved~~ state conditional license for the type of facility proposed ~~including all submissions made to obtain that license.~~

2. Amend Section 5.1.4 to read:

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.~~

3. Amend Section 7.1.3 to read:

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.~~

December 30, 2021

Proposed Amendments to the Land Use Code Dealing with Marijuana Establishments

Proposed additions to the ordinance are underlined;
proposed deletions are ~~struck-out~~.

1. Amend Section 6.3.1 to read:

6.3.1 Waiver of Submission Requirements

The CEO or Planning Board may, for good cause shown and only upon the written request of an applicant specifically stating the reasons therefor, waive any of the application requirements set forth in Sections 6.3.2, 6.3.3 and 6.3.4 provided such waiver will not unduly restrict the review process. The CEO or Planning Board may condition such a waiver on the applicant's compliance with alternative requirements. Good cause may include the CEO or Planning Board's finding that particular submissions are inapplicable, unnecessary, or inappropriate for a complete review. Notwithstanding the waiver of a submission requirement, the CEO or Planning Board may, at any later point in the review process, rescind such waiver if it appears that the submission previously waived is necessary for an adequate review. A request for a submission previously waived shall not affect the pending status of an application.

6.3.1.1 The following submission requirements of 6.3 are automatically waived for an application for the establishment or expansion of a marijuana establishment in accordance with 6.2.3.2.9 if the proposed activity does not otherwise require Planning Board or Site Plan approval:

6.3.1.1.1 The requirements of 6.3.2.7.1

6.3.1.1.2 The requirements of 6.3.2.7.2 other than those of items 5, 6, 7 and 8 if applicable to the application

6.3.1.1.3 The requirements of 6.3.3

2. Amend Section 10.29.1 to read:

10.29.1 Any property line of the lot upon which a marijuana establishment is located shall be a minimum of one thousand (1,000) feet from any property line of a lot upon which a public or private school, daycare center/nursery school, athletic field or playground is located. A "school" includes public school, private school, or public preschool program as defined in 20-A M.R.S §1, or any other

educational facility including commercial schools that serve children that are less than eighteen (18) years old,

3. Amend 10.29.3 to read:

10.29.3 Any property line of the lot upon which a Marijuana Retail Store, a Medical Marijuana Registered Caregiver Retail Store, a Medical Marijuana Registered Dispensary, or a Marijuana Nursery Cultivation Facility is located shall be a minimum of five hundred (500) feet from any property line of a lot upon which any other existing Marijuana Retail Store, a Medical Marijuana Registered Caregiver Retail Store, a Medical Marijuana Registered Dispensary, or a Marijuana Nursery Cultivation Facility is located. A legally existing medical marijuana establishment at the time of adoption of this provision or an establishment that has received a City Marijuana Establishment License shall be considered an existing facility for the purpose of this limit.

Deleted: ; provided however, a functional equivalent minimum setback of five hundred (500) feet may apply provided that the Planning Board finds that any of the following are met: ¶
10.29.1.1 The location of the buildings or areas actively used on either or both lots results in the entrance to the marijuana establishment being more than one thousand (1,000) feet from the area of the protected lot that is actively used or that provides access to the building or facilities; or ¶
10.29.1.2 The marijuana establishment is physically separated from the protected lot by a natural physical feature that makes pedestrian access between the two lots impractical.

4. Amend Section 10.29 to add a new section 10.29.8 to read:

10.29.8 All cultivation of marijuana including but not limited to cultivation by a Licensed Marijuana Cultivation Facility, a Registered Medical Marijuana Caregiver, or an individual growing for personal use shall be conducted in accordance with the following requirements:

10.29.8.1 All cultivation and processing of marijuana shall occur within a fully enclosed structure with solid walls and a solid roof.

10.29.8.2 The structure within which the cultivation and/or processing occur shall be designed and operated to control odors in accordance with 10.29.7, 10.29.8.3 Any structure used for the cultivation and/or processing of marijuana shall comply with the setbacks for the district within which it is located.

10.29.8.4 No freestanding accessory structure used for the cultivation and/or processing of marijuana shall be located where it can be seen from a public street unless the structure is more than one hundred (100) feet from any street right-of-way.

Deleted: The primary customer or registered patient entrance to a Marijuana Retail Store, a Medical Marijuana Registered Caregiver Retail Store, a Medical Marijuana Registered Dispensary, or a Marijuana Nursery Cultivation Facility shall not be located within five hundred (500) feet of the primary customer or registered patient entrance of an existing Marijuana Retail Store, a Medical Marijuana Registered Caregiver Retail Store, a Medical Marijuana Registered Dispensary, or a Marijuana Nursery Cultivation Facility. The distance between entrances shall apply to establishments on both sides of a street. The separation distance shall be measured along the edge of the street right(s)-of way. If the entrances are on different streets, the separation distance shall be measured along the edge of the rights-of-way of the streets connecting the two establishments. If the entrance(s) is set back from the street right-of-way, the distance shall be measured along the right-of way from a point on the edge of the right-of-way that is perpendicular to the center of the entrance(s).

Deleted: ¶

5. Amend the definitions in Section 17 of Marijuana Cultivation Facility – Tier 3, Marijuana Cultivation Facility – Tier 4, Medical Marijuana Cultivation Facility – Tier 1, and Medical Marijuana Cultivation Facility – Tier 2 to read:

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 [within a fully enclosed facility with walls and a roof](#) 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 [within a fully enclosed facility with walls and a roof](#) of mature marijuana plants with a plant canopy of more than seven thousand (7,000) square feet.

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 [within a fully enclosed facility with walls and a roof](#) 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 [within a fully enclosed facility with walls and a roof](#) of mature marijuana plants with a plant canopy of not more than two thousand (2,000) square feet.

December 30, 2021

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