

Ordinance to Allow and Regulate Adult Use
Marijuana
Cultivation Facilities and Adult Use Marijuana
Products Manufacturing Facilities

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

Adopted: November 2, 2021

Town of Jay, Maine

ARTICLE I: PURPOSE

The purpose of this Ordinance is to regulate and license Adult Use Marijuana Cultivation Facilities and Adult Use Marijuana Products Manufacturing Facilities as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended, and to promote the health, safety, and general welfare of the residents of the Town of Jay.

ARTICLE II: AUTHORITY

This Ordinance is adopted pursuant to the authority granted by 28-B M.R.S.A. §401, as may be amended.

ARTICLE III: DEFINITIONS.

The following definitions shall apply to this Ordinance:

Adult Use Marijuana Cultivation Facility shall mean a “cultivation facility” as that term is defined in 28-B M.R.S.A. §102(13), as may be amended. An Adult Use Marijuana Cultivation Facility shall include all license types outlined in 28-B M.R.S.A. §301, 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.A. §102(43), 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.

Inherently Hazardous Substance shall mean an “inherently hazardous substance” as defined in 28-B M.R.S. § 102(20), as may be amended.

Licensed Premises shall mean the premises specified in an application for a State and Local License pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to conduct operations 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, 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 “adult use marijuana” as that term is defined in 28-B M.R.S.A. §102(1), as may be amended.

Marijuana Establishment shall mean an Adult Use Marijuana Cultivation Facility or an Adult Use Marijuana Products Manufacturing Facility.

Plant Canopy shall mean “plant canopy” as that term is defined in 28-B M.R.S.A. §102(41), 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 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 in this State.

Town shall mean the Town of Jay unless otherwise named.

ARTICLE IV: GENERAL

Section 1. License Required.

It shall be unlawful for any Adult Use Marijuana Cultivation Facility or Adult Use Marijuana Products Manufacturing Facility to operate within the Town of Jay without obtaining a separate Local License for each type of Marijuana Establishment (i.e., cultivation or manufacturing) and all other applicable state and local approvals.

Persons wishing to establish an Adult Use Marijuana Cultivation Facility and/or Adult Use Marijuana Products Manufacturing Facility within the Town of Jay shall first obtain licenses from the Town Select Board and all applicable State Licenses from the State Licensing Authority. Licensees must comply at all times with applicable state laws and this Ordinance.

Section 2. License Application.

An application for a Local License must be made on a form provided by the Town. All Applicants must be qualified according to the provisions of this Ordinance and must obtain all required state approvals or conditional approvals prior to submitting a complete application. 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. The name, mailing address and phone number of the Applicant; the name, phone number, and e-mail address of an authorized representative of the Applicant; and the name, mailing address, and phone number of the property owners of the property to be used, if other than the Applicant.

B. A copy of the appropriate Town Tax Map (s) depicting the property lines of the proposed Marijuana Establishment, including a legal description of the property, street address, and telephone number.

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

D. 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. If the property is leased or rented, the applicant must provide a signed and notarized letter from the owner/lessor stating they are aware of the proposed use for the property.

E. A statement by the applicant that the proposed use will not be located within one thousand (1,000) feet of the property line of any preexisting schools outlined in Article V, Section 1(B) of this Ordinance and will not be within two hundred (200) feet of the property line of a neighboring lot/parcel as outlined in Article V, Section 1(C) of this Ordinance.

F. Evidence of approvals or conditional approvals (i.e. conditional license) issued to the applicant by the State Licensing Authority pursuant to Title 28-B.

G. A copy of the facility's operating plan, including the total square footage of the Licensed Premise. Applicants for an Adult Use Marijuana Cultivation Facility license must include, at a minimum, the proposed size and layout of any cultivation areas and depict the total square footage of Plant Canopy area. Adult Use Marijuana Products Manufacturing Facilities must indicate whether they intend to utilize Inherently Hazardous Substances on site and a layout of the facility, including a designation of all areas to be used for manufacturing, at a minimum.

H. Consent for the right to access the property as required by Article V, Section 2 of this Ordinance.

I. Within thirty (30) days of receiving the Local License and active state license from the State Licensing Authority, the Licensee must submit to the Town final versions of any plans of record (including, but not limited to, operating plans, security plans, facility plans, cultivation plans, etc.) submitted to the State Licensing Authority for the licensed facility.

Section 3. Application and License Fees

A. Application Fee. An applicant must pay an application fee upon submission. The application fee is set by the Select Board. Application fees shall be non-refundable and shall only be required for processing the initial application. Renewal applications shall not require payment of an application fee.

B. License Fee. After the license application is approved by the Town, the Applicant must pay the applicable Local License fee. The Local License fee schedule shall be set by the Select Board and shall be paid by the licensee annually.

C. License Categories. The fee schedule will include the initial application fee as well as the annual license fee for the following categories of licenses:

Adult Use Marijuana Cultivation Facilities

Tier 1 – no more than 500 square feet of Plant Canopy or, if the state license is for plant count, no more than 30 mature marijuana plants

Tier 2 – no more than 2,000 square feet of Plant Canopy

Tier 3 – no more than 7,000 square feet of Plant Canopy

Tier 4 – no more than 20,000 square feet of Plant Canopy, except as provided in 28-B M.R.S.A §304, as may be amended

Nursery – no more than 1,000 square feet of Plant Canopy, subject to the requirements of 28-B M.R.S.A §501(3), as may be amended

Adult Use Marijuana Products Manufacturing Facilities

Manual processing – No Inherently Hazardous Substance(s) utilized in manufacturing activities.

High hazard processing – Inherently Hazardous Substance(s) utilized in manufacturing activities.

D. Non-lapsing account. Fees collected pursuant to this ordinance shall be maintained in a separate non-lapsing account from which appropriations may be made for costs associated with the administration and enforcement of this ordinance, including without limitation, staff time and legal fees.

Section 4. Licensing Authority and Procedure.

- A. The initial application for a license shall be received and processed by the Town’s Code Enforcement Officer.

- B. Responsibilities and review authority.
 - 1. The Town’s Code Enforcement Officer shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance. The Code Enforcement Officer shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation. The Town’s Select Board shall complete a final review and issue approval for the license if it meets the requirements of this Ordinance.
 - 2. The Select Board shall have the authority to approve license and renewal applications, and impose any conditions on a license that may be necessary to ensure compliance with the requirements of this Ordinance 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 5. License Expiration and Renewal.

- A. Each Local License issued shall be effective for one year from the date of issuance of the active Marijuana Establishment license issued by the State Licensing Authority.

- B. Renewal applications must be submitted at least 60 days prior to the date of expiration of the Local License on forms made available by the Town and submitted to the Code Enforcement Officer. The annual renewal fee will be paid in accordance with the fee schedule.

ARTICLE V: PERFORMANCE STANDARDS FOR LICENSE

Section 1. General.

- A. All Marijuana Establishments shall comply with applicable state and local laws and regulations.
- B. Marijuana Establishments may not be located within one thousand (1,000) feet of any preexisting (prior to the date the application submission) public or private schools as defined in 28-B M.R.S. 402(2)(A), as may be amended. 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. 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.
- C. The Licensed Premises of a Marijuana Establishment may not be located within two hundred (200) feet of the property line of a neighboring parcel/lot. This setback shall be measured by a straight line from the property line of the neighboring parcel/lot to the closest building or perimeter fencing containing the Licensed Premises.

Section 2. Right of Access/Inspection

- A. Every Marijuana Establishment shall allow the Town Code Enforcement Officer, Police Department, and the Fire Department, or designees of such departments, to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance.
- B. All Marijuana Establishments shall agree to be inspected annually by the Town’s Code Enforcement Officer, Police Department, Fire Department, or designees of such Departments at the Town’s discretion. Annual inspections will not be required for renewals of the Local License but may be conducted at the discretion of the aforementioned Departments. Adult Use Marijuana Products Manufacturing Facilities and Tier 3 and Tier 4 Adult Use Marijuana Cultivation Facilities shall 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 Town Fire Department and/or Police Department.

Section 3. Indemnification.

- A. 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.

- B. By accepting a license issued pursuant to this Ordinance, the 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.

Section 4. 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 the Town.

Compliance with all applicable State laws and regulations 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.

ARTICLE VI: VIOLATIONS AND PENALTIES.

This Ordinance shall be enforced by the Code Enforcement Officer 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 for each violation. Every day a violation exists constitutes a separate violation. Any such fine may be in addition to any license 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 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. The Licensee shall be entitled to notice and a hearing before the Select Board prior to any suspension or revocation of a Local License, 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.

ARTICLE VII: APPEALS.

- A. Any appeal of a decision of the Town 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 is not appealable to the Town's Board of Appeals, and shall be appealed to the Superior Court in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

ARTICLE VIII: SEVERABILITY AND OTHER LAWS.

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.

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Marijuana Legalization Act, 28-B M.R.S.A. 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.

ARTICLE IX: EFFECTIVE DATE.

The effective date of this Ordinance shall be the date of adoption by the Town.