

Chapter 150 – Marijuana Business Licensing

Sec. 150-01. Purpose.

The purpose of this Chapter is to provide for and regulate the issuance of licenses for Marijuana Businesses as defined in this Chapter and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. §101 et seq. and the Maine Medical Use of Marijuana Act, 22 M.R.S.A. § 2421 et seq., as may be amended, and to provide for and regulate Registered Caregivers operating within the Town of Topsham.

Sec. 150-02. Authority.

This Chapter is adopted pursuant to the authority granted by 28-B M.R.S.A. § 101 et seq., as may be amended, 22 M.R.S.A. § 2421 et seq., as may be amended, and the Town’s home rule authority under Chapter VIII, Part 2, Section 1 of the Maine Constitution.

Sec. 150-03. Definitions.

As used in this Chapter, the following words and phrases shall have the meanings ascribed to them in this section.

Adult use marijuana shall mean “adult use marijuana” as that term is defined in 28-B M.R.S.A. § 102(1), 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.A. § 102(2), as may be amended.

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

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

Harvested Marijuana shall mean the plant material harvested from a mature marijuana plant, except the stalks, leaves and roots of the plant that are not used for a qualifying patient's medical use. "Harvested marijuana" includes marijuana concentrate and marijuana products.

Licensed Premises shall mean the premises specified in an application for a license pursuant to this Chapter 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 Chapter and the requirements of State law and regulations.

Licensee shall mean a person licensed pursuant to this Chapter.

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 leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes marijuana concentrate.

Marijuana Business shall mean a Marijuana Cultivation Facility, a Marijuana Products Manufacturing Facility, a Marijuana Testing Facility, or a Registered Caregiver Retail Store.

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 Cultivation Facility. A Marijuana Cultivation Facility is a facility licensed to cultivate, prepare and package adult use and/or medical marijuana and to sell adult use and medical marijuana to Marijuana Manufacturing Facilities, Marijuana Stores, and other Cultivation Facilities. A Marijuana Cultivation Facility is not authorized as an accessory use, and only where expressly allowed as a permitted or conditional use.

Marijuana Products Manufacturing Facility. A Marijuana Products Manufacturing Facility shall mean a facility licensed to purchase adult use and/or medical marijuana from a marijuana cultivation facility or another marijuana products manufacturing facility; to manufacture, label and package adult use and/or medical marijuana products; and to sell adult use and/or medical marijuana products to other Marijuana Products Manufacturing Facilities and to Registered Caregiver Retail Stores.

Marijuana Testing Facility. *Marijuana Testing Facility is a Medical Marijuana Testing Facility or Adult Use Marijuana Testing Facility, as described within this definition. A Marijuana Testing Facility is not authorized as an accessory use:*

Adult Use Marijuana Testing Facility: *a facility licensed under this chapter to develop, research and test adult use marijuana, marijuana products and other substances.*

Medical Marijuana Testing Facility. *Medical Marijuana Testing Facility is a public or private laboratory that:*

A. Is authorized in accordance with 22 M.R.S. §2423-A, subsection 10 to analyze contaminants in and the potency and cannabinoid profile of samples; and

B. Is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the State of Maine.

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

Owner shall mean a person whose beneficial interest in a Marijuana Business 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 Business and has a controlling interest in a Marijuana Business.

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.

Qualifying patient: a person who has been a resident of the State for at least 30 days and who possesses a valid written certification regarding medical use of marijuana in accordance with 22 M.R.S.A. § 2423-B.

Registered Caregiver shall mean a person or an assistant of that person that provides care for a qualifying patient and who is registered by the State of Maine pursuant to 22 M.R.S. § 2425-A.

Registered Caregiver Retail Store shall mean a facility operated by a single medical marijuana registered caregiver and licensed to sell harvested marijuana to qualifying patients for the patients' medical use and may include an area for consultation with patients.

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

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.

Sec. 150-04. Distribution of Licenses

The Selectboard shall only issue a limited number of Marijuana Business licenses in accordance with this Chapter. Licenses are apportioned for each category of activity where allowed in the land use code, Chapter 225-16.

1. Number of licenses allowed per use –

The Selectboard is authorized to issue the following Marijuana Business licenses:

(a) Registered Caregiver Retail Store – maximum of two licenses

(b) Marijuana Cultivation Facility –

a. Tier 1 ≤ 30 plants, ≤ 500 sq. ft. of plant canopy maximum of two licenses

b. Tier 2 ≥ 501 sq. ft. ≤ 2,000 sq. ft. of plant canopy..... maximum of two Licenses

c. Tier 3 ≥ 2,001 sq. ft. ≤ 7,000 sq. ft. of plant canopy.....maximum of two Licenses

d. Tier 4 ≥ 7,001 sq. ft. ≤ 20,000 sq. ft. of plant canopymaximum of two Licenses

e. Nursery ≤ 1,000 sq. ft. of plant canopy maximum of four Licenses

(c) Marijuana Products Manufacturing Facility – maximum of six licenses

(d) Marijuana Testing Facility maximum of six licenses.

2. Prioritization of License Issuance. Marijuana Businesses that were operating with Town approval prior to December 18, 2018 shall have a priority of review for license issuance by the Selectboard

and such businesses shall be included in the maximum number of licenses permitted in each category.

Sec. 150-05 Caregiver Registration

All Registered Caregivers currently operating within the Town of Topsham prior to the enactment of this Chapter, or seeking to operate within the Town shall register with the Town Clerk's office by completing and signing a Topsham Registered Caregiver registration form prescribed by the Town Clerk. Registered Caregivers who cultivate medical marijuana only for themselves and/or members of their household are exempt from this requirement and are not required to register.

Registered Caregivers shall meet the following operating requirements:

1. All Registered Caregivers within the Town of Topsham shall file a caregiver registration form with the Town Clerk's office, and be placed on the Town's caregiver registry.
2. No sales of any marijuana products shall be conducted within a residential structure, use, or zone within the Town of Topsham.
3. Marijuana products manufacturing and marijuana testing shall be prohibited from a residential structure, use, or zone.
4. No signage identifying registered caregiver services is allowed within any residential structure, use, or zone.

Sec. 150-06. Marijuana Businesses.

Marijuana Businesses are permitted, pursuant to a license issued by the Selectboard and subject to the requirements and restrictions of this Chapter and Chapter 225 of this Code.

Sec. 150-07. Prohibited Activities.

(a) No Marijuana Business shall be established or operated within the Town without first receiving and then maintaining all approvals required under this Code, including, but not limited to, this Chapter and Chapter 225 of the Code.

(b) No Marijuana Business shall conduct any activity for which it has not received the required State License and Marijuana Business License.

(c) No adult use marijuana retail stores are permitted within the Town of Topsham

Sec. 150-08. License Required.

(a) State License. Marijuana Businesses shall not operate until they receive all necessary State licenses and all other necessary approvals. Pursuant to 28-B M.R.S. § 402, an applicant seeking to operate an Adult Use Marijuana Business may not submit an application for a Marijuana Business license unless the applicant has been issued a conditional license by the State of Maine to operate the Adult Use Marijuana Business.

(b)Business License. A Marijuana Business license issued under the provisions of this Chapter is required for any Marijuana Cultivation Facility, Marijuana Products Manufacturing Facility, Marijuana Testing Facility or Registered Caregiver Retain Store. No person shall operate a Marijuana Business, nor shall any property owner permit the use of his or her premises to be operated as a Marijuana Business, without a valid license issued by the Town.

Sec. 150-09. Licensing Authority.

(a) Licensing procedures.

(1) The initial application for a license shall be processed by the Town Clerk but shall be reviewed and may be approved by the Town Selectboard. Application shall be made on a form prepared by the Town and must include all information required by Sec. 150-10 of this Chapter and by the form.

(2) Public hearing. A public hearing on an application for a license shall be scheduled after receipt of a completed application pursuant to Sec. 150-10. The Town Clerk shall post and publish public notice of the hearing not less than seven (7) days prior to the hearing.

(3) A renewal application shall be subject to the same review standards as applied to the initial issuance of the license and the same notice requirement as a new application. As part of the renewal process, the Town Selectboard shall consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems. The Town Clerk shall refer action on a renewal application to the Town Selectboard for public hearing and action.

(c) 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 Chapter. The Town Clerk shall consult with other Town Departments and any appropriate State Licensing Authority as part of this investigation.

(2) The Selectboard shall have the authority to 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.

(3) No Marijuana Business License shall be granted by the Selectboard until the Police Chief, the Fire Chief, the Health Inspector, and the Planning and Code Enforcement Office have all made a positive recommendation upon the Applicant's ability to comply with this Chapter. 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.

(d) Confidentiality.

Medical marijuana registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. § 2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. § 403(3)(F), shall mark such information as confidential.

Sec. 150-010. License Fees.

Fees for a Local License shall be as set forth in the Schedule of License, Permit, Inspection and Application Fees established by Selectboard order and shall be paid annually.

Sec. 150-11. Application.

(a) Application required. Each Applicant for a Marijuana Business License shall complete and file an application on a form prescribed by the Town Clerk, together with a license fee as required by Sec. 150-10 of this Chapter and as specified in the Schedule of License, Permit, Inspection and Application Fees, together with the following submissions:

1. If a State License is required for the proposed use, a copy of the Applicant's State License Application and supporting documentation as filed with the State Licensing Authority, and any amendments thereto.
2. Evidence of all State approvals or conditional approvals required to operate a Marijuana Business, including, but not limited to, a State License as defined by this Chapter, a State retail certificate, or a State health license.
3. If not included in the Applicant's State License Application, attested copies of the articles of incorporation and bylaws if the Applicant is a corporation, operating agreement if the Applicant is a limited liability company, evidence of partnership if the Applicant is a partnership, or articles of association and bylaws if the Applicant is an association.
4. If not included in the Applicant's State License Application, an affidavit that identifies all owners, officers, members, managers, or partners of the Applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three (3) years.
6. Evidence of a property interest in the premises in which the Marijuana Business will be located, along with the written consent of the owner of the premises for such use if the applicant is not the owner.

7. A description of the premises for which the Local License is sought, including a floor plan of

the premises showing how the floor space is or will be used, parking for the premises, total floor area of the building(s), and the nature and location of any existing or proposed exterior lighting and signage.

8. A copy of the Applicant's security plan and operations manual.

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

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

Sec. 150-12. License Expiration and Renewal.

A separate license must be obtained for each business located on the same premises. Each license shall be for a period of one year from the date of its issuance. A license must be obtained prior to the opening of a Marijuana Business. Applications for renewal licenses shall be submitted at least ninety (90) days prior to expiration of the existing term. Any licensee that fails to submit a renewal application by the applicable deadline shall not have authority to operate until a new license is granted.

Sec. 150-13. Denial, Suspension or Revocation of License.

(a) A Marijuana Business License under this Chapter shall be denied to the following persons:

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

(2) A person who has had a license for a Marijuana Business 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 225 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 Business suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing prior to any suspension or revocation.

Sec. 150-14. Operating Requirements.

The Licensee shall comply with all of the following requirements during the term of the Local License:

(a) Display of License. The current Local License shall be displayed at all times in a conspicuous location within the Licensed Premises.

(b) Compliance with other laws. A Marijuana Business shall meet all operating and other requirements of State and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing Marijuana Business, the stricter law or regulation shall control.

(c) Location.

1. All Licensed Premises shall be fixed, permanent locations. Licensees shall not be permitted to operate Marijuana Business in temporary locations such as mall kiosks or farm stands.
2. No Marijuana Business shall be located within 1,000 feet of the entrance of a pre-existing public or private school. For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program as defined in 20-A M.R.S. §1, or any other educational facility that serves children from prekindergarten to grade 12. Distance shall be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of the school to the nearest entrance of the Marijuana Business.
3. No Marijuana Business shall be located such that the nearest entrance to the facility is any closer than 1,000 feet, measured in a straight line, without regard to intervening structures or objects, to the nearest entrance of another marijuana business located on a separate parcel of land.
4. No Marijuana Business shall be located inside a building containing residential units, including transient housing such as lodging, group homes, hotels, motels, and boardinghouses.
5. No Registered Caregiver Retail Store shall be located within 200 feet of any residence, a building containing residents, or residential use. Distance shall be measured in a straight line, without regard to intervening structures or objects, from the nearest entrance of the residential building or use to the nearest entrance of the Marijuana Business.

(d) Operating Standards:

1. No Marijuana Business is permitted to utilize or provide a drive up service window
2. Hours of operation may be established by the Selectboard, but in no event shall a Marijuana Business be open to the public, and no sale or other distribution of marijuana shall occur upon the premise or via delivery from the premises, between the hours of 8:00pm and 8:00am.
3. No Registered Caregiver Retail Store shall have a gross floor area open to the public in excess of 1,500 square feet.
4. No outside storage is permitted for a Marijuana Business.
5. Outdoor Cultivation of marijuana is prohibited.
6. A ventilation plan shall be included for Marijuana Cultivation Facilities, Marijuana Manufacturing facilities, and Marijuana Testing Facilities that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
7. Marijuana-Businesses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the Marijuana-Business. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems,

facility plans or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.

(e) Advertising/ Signage:

1. Only one on-site sign per Marijuana Business is allowed.
2. Maximum size for all signage shall be 75 square feet, or as permitted by Chapter 225-33, whichever is less
3. Any signage is limited to displaying the following information: name of business; logogram of business; and business' address, hours of operation and contact information. Other than the forgoing information, no advertising for Marijuana or Marijuana Products shall be displayed on any sign in a publicly visible location.
4. Portable signs or sandwich board signs located in the public right of way are prohibited.
5. Electronic Message Center and internally illuminated signs are prohibited.
6. Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the Marijuana Business is located.

Sec. 150-15. Transfer of Ownership and Change of Location.

Licenses issued under this Chapter are not transferable. 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 Marijuana Business License for that location.

Sec. 150-16. Appeals.

Any appeal of a decision of the Town Selectboard shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

Sec. 150-17. Violations and Penalties.

The operation of any Marijuana Business without the required Marijuana Business License or in violation of the requirements of this Chapter shall be a violation of this Chapter. Violations shall be subject to fines and/or penalties under 30-A M.R.S. §4452 . Each day of a violation shall constitute a separate violation. Any such fine may be in addition to any suspension or revocation imposed in accordance with the provisions of Sec. 150-13 of this Chapter. In any court action, the Town may seek injunctive relief in addition to penalties. The Town shall be entitled to recover its costs of enforcement, including its attorney's fees.

Sec. 150-18. Severability.

The provisions of this Chapter 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.

Sec. 150-19. Other Laws.

Except as otherwise specifically provided herein, this Chapter incorporates by reference the requirements and procedures set forth in the Maine Marijuana Legalization Act, 28-B M.R.S.A. §101 et seq. and the Maine Medical Use of Marijuana Act, 22 M.R.S.A. § 2421 et seq., as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the Maine Marijuana Legalization Act or any other applicable State or local law or regulation, the more restrictive provision shall control.

Sec. 150-20. Effective Date.

This Chapter shall take effect pursuant to the date of Town legislative approval.