

“Chapter 11, Marijuana Establishments” of the Municipal Code of Ordinances of the Town of Eliot, Maine

Chapter 11

MARIJUANA ESTABLISHMENTS

Sec. 11-1. Purpose.

The purpose of this Article is to provide for and regulate the issuance of Local Licenses for Adult Use Marijuana Establishments as defined in this Article and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended.

Sec. 11-2. Authority.

This Article is adopted pursuant to the authority granted by 28-B M.R.S.A. § 401 et seq., as may be amended, and 22 M.R.S.A. § 2421 et seq., as may be amended.

Sec. 11-3. Definitions.

As used in this Article, the following words and phrases shall have the meanings ascribed to them in this section and Section 33-190 of Eliot’s ordinances.

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 Establishment pursuant to this Article.

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.

Harvested marijuana shall mean “harvested marijuana” as that term is defined in 22 M.R.S.A. § 2422(3-C), as may be amended.

Immature plant shall mean “Immature marijuana plant” as a marijuana plant that is not a mature marijuana plant or a seedling.

Licensed premises shall mean the premises specified in an application for a State or Local License pursuant to this Article 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, or adult use marijuana products in accordance with the provisions of this Article and the requirements of State law and regulations.

Licensee shall mean a person Licensed pursuant to this Article or, in the case of a holder of an occupational License, a natural person Licensed pursuant to this Article.

Local Marijuana License shall mean any License required by and issued under the provisions of this Article.

Local Licensing Authority shall mean the Select Board as further specified in the provisions of this Article.

Manufacture or manufacturing of marijuana 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" is the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is incapable of germination and as that term is defined in 28-B M.R.S.A. § 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 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. A Marijuana Cultivation Facility is an entity Licensed to cultivate, prepare and package adult use marijuana and to sell adult use marijuana to Marijuana Establishments.

Marijuana Establishment shall mean a "Marijuana Establishment" as that term is defined in 28-B M.R.S.A. § 102(29), as may be amended. A Marijuana Establishment is a Marijuana Store, a Marijuana Cultivation Facility, a Marijuana Products Manufacturing Facility, or a Marijuana Testing Facility or a Marijuana Social Club.

Marijuana Products Manufacturing Facility shall mean a "products manufacturing facility" as that term is defined in 28-B M.R.S.A. § 102(4243), as may be amended. A Marijuana Products Manufacturing Facility is an entity Licensed to purchase adult use marijuana; to manufacture, label and package adult use marijuana products; and to sell adult use marijuana products from a Marijuana Cultivation Facility only to other Marijuana Products Manufacturing Facilities, or Marijuana Stores and Marijuana Social Clubs.

Marijuana Social Club shall mean a "marijuana social club" as that term is defined in 28-B M.R.S.A. § 102(33), as may be amended. A Marijuana Social Club is an entity Licensed to purchase adult use marijuana products from a Marijuana Products Manufacturing Facility and to sell adult use marijuana products to consumers for consumption on the Licensed premises. Marijuana Social Clubs are prohibited within Eliot.

Marijuana Store shall mean a "marijuana store" as that term is defined in 28-B M.R.S.A. § 102(34), as may be amended. A Marijuana Store is an entity Licensed to purchase adult use marijuana from a Marijuana Cultivation Facility and to purchase adult use marijuana products from a Marijuana Products Manufacturing Facility and to sell adult use marijuana and adult use marijuana products to consumers.

Marijuana Testing Facility shall mean a “testing facility” as that term is defined in 28-B M.R.S.A. § 102(5354), as may be amended. A Marijuana Testing Facility is a facility Licensed to develop, research and test marijuana, marijuana products and other substances.

Mature marijuana plant shall mean “Mature marijuana plant” is a marijuana plant that is flowering.

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 has a controlling interest in a Marijuana Establishment.

Plant Canopy shall mean “Plant Canopy” is the total surface area within the Licensed premises of a cultivation facility that is authorized by the Department for use at any time by the cultivation facility Licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by defined boundaries. If a tiered or shelving system is used by the cultivation facility Licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the Licensed cultivation facility that are used to cultivate immature marijuana plants and seedlings and that are not used at any time to cultivate mature marijuana plants.

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.

Public facility shall mean any facility, including, but not limited to, buildings, property, and recreation areas which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Seedling shall mean “Seedling” is a marijuana plant that is: a. Not flowering; b. Less than 6 inches in height; and c. Less than 6 inches in width.

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, and/or adult use 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, and/or adult use marijuana products in this State.

Sec. 11-4. Marijuana Establishments.

- (a) Marijuana Establishments shall be allowed, subject to the requirements and restrictions of this Chapter and Chapter 45 of this Code.

Sec. 11-5. Prohibited Activities.

- (a) No Marijuana Establishment shall be established or operated within Eliot without first receiving and then maintaining all approvals required under this Code, including, but not limited to, this Chapter and Chapter 45 in Eliot's Code of Ordinances.
- (b) No Marijuana Establishment shall conduct any activity for which it has not received the required State License and Local Marijuana License.
- (c) Marijuana Social Clubs are prohibited within Eliot.

Sec. 11-6. License Required.

- (a) State License. A Marijuana Establishment shall not operate until it is Licensed by the State Licensing Authority pursuant to the requirements of 28-B M.R.S.A. Chapter 1, as may be amended. An Applicant may not operate a Marijuana Establishment without a State License and all other necessary Town approvals.
- (b) Local Marijuana License. A Local Marijuana License issued under the provisions of this Article is required for any Marijuana Cultivation Facility, Marijuana Products Manufacturing Facility, or Marijuana Store. A Marijuana Testing Facility does not require a Local Marijuana License issuance but is required to file an application.

Sec. 11-7. Marijuana Licensing procedures.

- (a) License required. It shall be unlawful for a Licensee for any Marijuana Establishment, except for a Marijuana Testing Facility, to operate without a valid Local Marijuana License from the Town.
- (b) Application. An applicant for a Local Marijuana License shall file in person at the office of the Town Administrative Assistant a completed application made on a form provided by the administrative assistant. The application shall be signed as required by subsection (c) herein and shall be notarized. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the appropriate License application fee:
 - (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
 - (2) Current business address or another mailing address for the applicant.
 - (3) Written proof of age, in the form of a driver's License, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
 - (4) The business name, location, legal description, mailing address and phone number.

- (5) The name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A copy of the applicant's State License for operation of Marijuana Establishment.
- (7) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (8) A statement of whether any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
- (i) Been declared by a court of law to be a nuisance; or
 - (ii) Been subject to a court order of closure.
- (9) The completed application entitled: Adult Use Marijuana Stores, Cultivation Facilities, Manufacturing Facilities, and Testing Facilities Application.
- (10) 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.
- (11) Evidence of all State approvals or conditional approvals required to operate a Marijuana Establishment, including, but not limited to, a State License as defined by this Article, a State retail certificate, or a State health License.
- (12) 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.
- (13) 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.
- (14) If not included in the Applicant's State License Application, a release authorized by 16 M.R.S.A. § 620(6), as may be amended, with the application for each Applicant and for each officer, owner, member, manager, or partner of the Applicant seeking a Local License.
- (15) Evidence of all land use approvals or conditional land use approvals required to operate a Marijuana Establishment pursuant to Eliot's Code of Ordinances, including, but not limited to, a building permit, special exception approval, site plan approval, change of use permit or certificate of occupancy.

(16) Evidence of all other local approvals or conditional approvals required to operate a Marijuana Establishment pursuant to Eliot's Code of Ordinances, including, but not limited to, food License or victualer's License.

(17) A description of the premises for which the 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.

(18) A copy of the Applicant's security plan and operations manual.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, or in person to the town administrative assistant within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(c) Signature. If a person who seeks a Local Marijuana License under this section is an individual, they shall sign the application as applicant. If a person who seeks a License is other than an individual, each person with an influential interest in the establishment or in a legal entity that controls the establishment shall sign the application for a License as applicant. Each applicant must be qualified under this article and each applicant shall be considered a Licensee if a Marijuana License is granted.

(d) The information provided by an applicant in connection with an application for a Local Marijuana License under this article shall be maintained by the office of the Town Administrative Assistant on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by State or federal law shall be redacted prior to such disclosure.

Sec. 11-8. Issuance of Local Marijuana License

(a) Responsibilities and review authority.

(1) The Local Licensing Authority shall have the authority to impose any conditions on a License that may be necessary to ensure 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.

(2) No Local Marijuana License shall be granted by the Local Licensing Authority until the Police Chief, the Fire Chief, the Code Enforcement Officer, and if applicable the Health Inspector have all made their recommendation upon the Applicant's ability to comply with this Article. 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 Eliot authorized to make the inspection at any reasonable time that admission is requested.

(b) Upon the filing of a completed application for a Marijuana License, the Town administrative assistant shall immediately schedule a public hearing on the application before the Eliot Select Board to occur within 30 days. The Administrative Assistant shall provide written notice of the public hearing to the applicant and to the Select Board within five days of the filing of a completed application.

(1) At the public hearing on the Local Marijuana License application, the Select Board shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a permit.

(2) The Select Board shall issue to the applicant written notice of its decision to grant or deny the License. If the board denies the permit, the written notice shall set forth the Board's reasons for the denial. The Select Board shall grant a Marijuana License unless it finds that the issuance of the License would be detrimental to public health, safety or welfare, as demonstrated by the following criteria:

(i) An applicant is less than 21 years of age.

(ii) An applicant has failed to provide information required by this article for issuance of a License or has falsely answered a question or request for information on the application form.

(iii) The establishment is in a location where a Marijuana Establishment is not permitted.

(iv) Any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law to be a nuisance; or

b. Been subject to an order of closure.

c. Been convicted of or pled guilty or nolo contendere to a specified criminal activity.

(v) A person who has had a License for a Marijuana Establishment and/or Medical Marijuana Establishment revoked by the Town or by the State.

(vi) An Applicant who has not acquired all necessary State approvals and Licenses and other required local approvals prior to the issuance of a Local Marijuana License.

(c) The Town may suspend or revoke a License for any violation of this Chapter, Chapter 45 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 and/or Medical Marijuana Establishment suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing prior to any suspension or revocation.

(d) The License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the License issued to the Licensee(s), the expiration date, and the address of the business. The License shall be posted in a conspicuous place at or near the entrance to the

business so that it may be read at any time that the business is occupied by patrons or is open to the public.

(e) A Local Marijuana License 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 Select Board 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.

Sec. 11-9. License Fees.

(a) The initial License and annual renewal fees for Marijuana Establishments Licenses shall follow Eliot's Master Fee Schedule.

Sec. 11-10. License Expiration and Renewal.

(a) Each Local Marijuana License issued shall be effective for one year from the date of issuance.

(b) Renewal applications must be submitted at least 30 days prior to the date of expiration of the annual Local Marijuana License. An application for the renewal of an expired License shall be treated as a new License application.

Sec. 11-11. Operating Requirements.

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

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

(b) Location. All Licensed Premises shall be in fixed, permanent locations. Licensees shall not be permitted to operate Marijuana Establishments in temporary locations such as mall kiosks, Town events or farm stands.

(c) Compliance with other laws. A Marijuana Establishment 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 Establishments the stricter law or regulation shall control.

Sec. 11-12. Transfer of Ownership and Change of Location.

(a) Licenses issued under this Article are not transferable to a new owner.

(b) A State Transfer License shall require a new Local Marijuana License.

(c) 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.

(d) Licensees shall provide evidence to the Town Clerk annually of their License Issue date with complete list of employees, owners, directors, and stake holders.

Sec. 11-13. Appeals.

- (a) Any appeals of decision shall be made to the Maine Superior Court.

Sec. 11-14. Violations and Penalties.

- (a) The operation of any Marijuana Establishment without the required Local Marijuana License or in violation of the requirements of this Chapter shall be a violation of this Chapter.
- (b) Fines shall be set forth for violation of any of the provisions of this article; violators shall be punished by a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the Town of Eliot. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.

Sec. 11-15. Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

Sec. 11-16. Other Laws.

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Maine 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 Maine Marijuana Legalization Act or any other applicable State or local law or regulation, the more restrictive provision shall control.

Sec. 11-17. Effective Date.

This Article shall take effect and be in force from the time of its adoption by the voters of the Town of Eliot. However, no application for any Local Marijuana License for a Marijuana Establishment shall be acted upon until the effective date of regulations promulgated and adopted pursuant to 28-B M.R.S.A. Chapter 1, as may be amended.

Revised: August 21st, 2019

Municipal Officers' Certification of Official Text of a Proposed Ordinance

To Wendy Rawski, Town Clerk of the Town of Eliot, Maine:

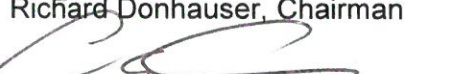
We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled:

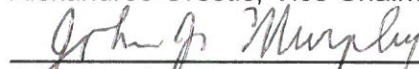
"Chapter 11, Marijuana Establishments" of the Municipal Code of Ordinances of Eliot, Maine", which is to be presented to the voters for their consideration on November 5, 2019.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Given under our hands this 22nd day of August, 2019.


Richard Donhauser, Chairman


Alexandros Orestis, Vice Chairman


John Murphy, Secretary


Philip Lytle, Selectman

Robert McPherson, Selectman

**Select Board
Town of Eliot, Maine**