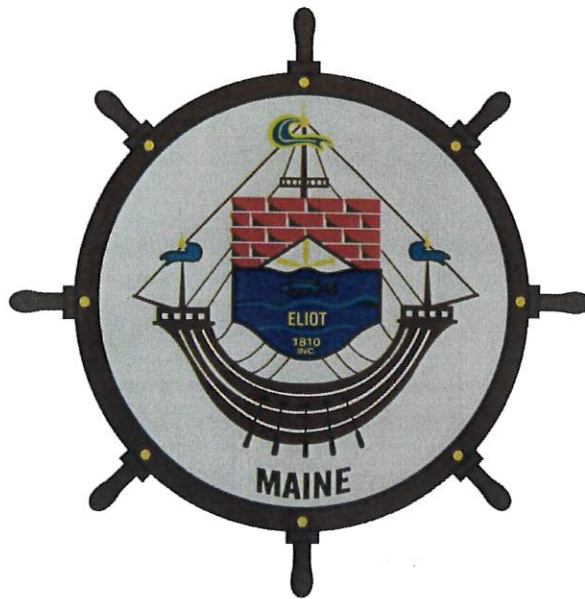


**Town Code Amendments of Chapter 11 – Marijuana Establishments
and Chapter 33 – Planning and Development, Related to Limiting the
Number of Marijuana Establishment and Medical Marijuana
Establishment Licenses**

Town of Eliot, Maine



Date of Enactment: November 8, 2022

ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance:

November 8, 2022

Per the Charter of the Town of Eliot, Article 2(11) this Ordinance
shall become ***effective on November 15, 2022***

Certified by the Town Clerk:

On the 19th day of December, 20 22

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments and Chapter 33 – Planning and Development, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

Planning Board recommends approval (4-0)

Select Board recommends approval (3-2)

Short title

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments and Chapter 33 – Planning and Development, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

Ballot question – Town Special Referendum Election, November 8, 2022

ARTICLE #6: Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments and Chapter 33 – Planning and Development, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses” be enacted?

(A copy of this ordinance is available in the Town Clerk’s Office)

Background and rationale

The Town has opted in to a range of marijuana establishments (adult use) and medical marijuana establishments. “Opted in” means that the Town has made these uses allowable, subject to Planning Board Site Plan Review, in the Commercial-Industrial (C/I) zoning district, and has set up a local licensing program for them. They are prohibited in all other zoning districts. In addition to these zoning restrictions, certain marijuana establishments and medical marijuana establishments may not be located within 500 ft. of a public facility, place of worship, residential property, or childcare facility. Also, based on State law or rulemaking, no marijuana establishment or medical marijuana establishment may be located within 500 ft. of a public or private school.

Within the confines of these limitations, an estimated 30 marijuana or medical marijuana establishments are active or proposed in town, insofar as having their local and State active license (adult use), being otherwise in operation (medical), having been approved by the Planning Board, or having applied to the Planning Board as of the writing of these proposed amendments. Since multiple establishment types might be located on the same property or even in the same building, these 30 active or proposed establishments are associated with 14 properties in the C/I district. An estimated 8 adult use and 5 medical marijuana establishments have their State active license (adult use) or are otherwise in operation. These 13 active establishments are associated with 7 properties in the C/I district.

Concerns have been voiced by the community that relate to the collective scale and number of establishments that are in place or could potentially be built under current zoning. These concerns include traffic impacts, odors, and indirect effects on the ability for other businesses to purchase suitable land and become established along Route 236, the Town’s primary commercial corridor. Economic Policy 1 in the 2009 Comprehensive Plan encourages continued support of “broad-based community economic development activity, reflecting community desires and the

Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments and Chapter 33 – Planning and Development, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses

community's role in the region". The Comprehensive Plan also recommends that the Town "continually seek ways to provide support to...small businesses and help them to grow".

These amendments would limit the number of local marijuana licenses that can be active at any one time. Proposed new Section 11-6.1 would set the maximum number of licenses by establishment type, or group of establishment types, as follows:

- Marijuana store: Eight (8)
- Marijuana cultivation facility or marijuana products manufacturing facility (combined total): Thirteen (13)
- Medical marijuana caregiver retail store or medical marijuana dispensary: Four (4)
- Medical marijuana cultivation facility or medical marijuana products manufacturing facility (combined total): Three (3)

The Select Board would not be able to issue a local marijuana license when the maximum number of active licenses has been reached for a particular marijuana establishment type. In order to provide some flexibility, cultivation and manufacturing activities have been grouped, such that an overall cap would apply to the combined total licenses for these activities. Testing facilities would also be exempt. The numbers above have been developed to account for adult use or medical marijuana establishments that are, as of the writing of these ordinance amendments, either in operation or are at some stage of the review process, from Planning Board application submittal to receipt of a State active license. (They total 28, which is 30 minus the active marijuana testing facility that tests both adult use and medical marijuana.)

Section 11-6.1 would also establish rules for review of local marijuana license applications with respect to the maximum license numbers. This would be on a first-come, first-serve basis with regard to complete license applications with all required fees paid. Subsection 11-6.1(d) would allow for the automatic reduction, down to a specified floor, in the maximum number of licenses available in the event a license is revoked, expires, or is voluntarily terminated by the licensee. Section 11-6.1(e)(4) clarifies the need for a local medical marijuana license.

Section 33-190 – the site plan review standards for marijuana and medical marijuana establishments – would also be updated to reflect that Planning Board site plan review cannot begin for an establishment whose maximum license number is reached unless the applicant submits a signed statement acknowledging that they are aware of this and that they may not be able to obtain a local marijuana license until such time as one becomes available.

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New text underlined in bold

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[Text in brackets, bold, and italics introduces a large block of new text:]

[Text in brackets and italics is a temporary explanatory note]

[Add a new section:]

Sec. 11-6.1. – Maximum number of local marijuana licenses.

- (a) Except pursuant to subsection (d) of this section, for each type of marijuana establishment, the maximum number of local marijuana licenses issued by the local licensing authority that may be active at any one time is as follows:
 - (1) Marijuana store: Eight (8)
 - (2) Marijuana cultivation facility or marijuana products manufacturing facility (combined total): Thirteen (13)
- (b) Except pursuant to subsection (d) of this section, for each type of medical marijuana establishment, the maximum number of local marijuana licenses issued by the local licensing authority that may be active at any one time are as follows:
 - (1) Medical marijuana caregiver retail store or medical marijuana dispensary (combined total): Four (4)
 - (2) Medical marijuana cultivation facility or medical marijuana products manufacturing facility (combined total): Three (3)
- (c) Marijuana testing facilities and medical marijuana testing facilities are not subject to this section.
- (d) The maximum numbers of local marijuana licenses for an applicable establishment type, or group of establishment types, in subsections (a) and (b), shall be reduced when the following occurs:
 - (1) If a local marijuana license is revoked pursuant to subsection 11-8(c), and, if appealed under Section 11-13, such revocation is upheld by court action, then the maximum number for that establishment type (or group of establishment types) shall be reduced by one (1).
 - (2) If a local marijuana license has expired pursuant to Section 11-10 or has been otherwise voluntarily terminated by the licensee, then the maximum number for that establishment type (or group of establishment types) shall be reduced by one (1).
 - (3) The maximum numbers shall not be reduced below the following:
 - i. Marijuana store: Four (4)
 - ii. Marijuana cultivation facility or marijuana products manufacturing facility (combined total): Seven (7)

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- iii. Medical marijuana caregiver retail store or medical marijuana dispensary (combined total): Two (2)
 - iv. Medical marijuana cultivation facility or medical marijuana products manufacturing facility (combined total): Two (2)
- (e) The following rules apply to review of local marijuana license applications with regard to this section:
- (1) The intent of the maximum numbers in subsections (a) and (b) is to account for the number of establishments (or proposed establishments) that are currently in operation, have their state license, have received Planning Board approval, and-or have, as of (and including) August 16, 2022, active applications before the Planning Board that have received at least one Planning Board review.
 - (2) Applications for new local marijuana licenses shall be reviewed on a first-come, first-served basis.
 - (3) Applications that are not complete, pursuant to Section 11-7, are not guaranteed any priority order of review. If a local license is granted pursuant to Section 11-8, but the applicant has not yet paid any or all fees pursuant to Section 11-9, the local license application is not considered active with respect to this section until said fees have been paid.
 - (4) The Town finds that the requirements for medical marijuana licenses were added to this section after some medical marijuana establishments had begun operation and that a grace period is warranted to allow medical marijuana establishments to obtain a local marijuana license pursuant to this chapter. Medical marijuana establishments that have been approved by the Planning Board, are in operation as of the effective date of this ordinance amendment, and are in good standing with respect to the Maine Medical Use of Marijuana Program Rule (18-691 Code of Maine Rules, Chapter 2) and the Town Code shall be given until May 15, 2023, to apply for a local marijuana license for their existing operation and shall be given priority order with respect to subsection (b) of this section.

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Sec. 11-8. - Issuance of local marijuana license.

[this section was updated in the June 14, 2022, Town Election, but has not yet been updated in Municode]

(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 the town authorized to make the inspection at any reasonable time that admission is requested.

(3) No local marijuana license for a specific type of marijuana establishment or medical marijuana establishment shall be granted by the local licensing authority if the maximum number of local marijuana licenses for that type of marijuana establishment or medical marijuana establishment, pursuant to Section 11-6.1, is met.

(b) Upon the filing of a completed application for a marijuana license, **unless the maximum number of licenses has been met pursuant to subsection (a), paragraph (3) of this section,** the town manager shall immediately schedule a public hearing on the application before the town select board to occur within 30 days. The town manager 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. At least ten days before such hearing, notices shall be posted in at least three prominent places, advertised in a newspaper with local circulation, and forwarded to the clerk of an adjacent municipality in the case where the premises for which the local marijuana license is sought is located within 500 feet of a municipal boundary. Abutters shall be notified by certified mail, return receipt requested.

- (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:

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- a. An applicant is less than 21 years of age.
 - b. 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.
 - c. The establishment is in a location where a marijuana establishment is not permitted.
 - d. 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):
 1. Been declared by a court of law to be a nuisance; or
 2. Been subject to an order of closure.
 3. Been convicted of or pled guilty or nolo contendere to a specified criminal activity.
 - e. A person who has had a license for a marijuana establishment and/or medical marijuana establishment revoked by the town or by the state.
 - f. 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.

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Sec. 33-190. - Performance standards for marijuana establishments and medical marijuana establishments.

[this section was updated in the June 14, 2022, Town Election, but has not yet been updated in Municode]

Notwithstanding anything to the contrary of 1 M.R.S.A. § 302 or any other law, to any application relating to the establishment or operation of a proposed marijuana establishment or medical marijuana establishment, whether or not such application had become "pending proceeding" as defined in 1 M.R.S.A. § 302 prior to the enactment of this section.

All marijuana establishments and medical marijuana establishments require site plan review and approval from the planning board prior to the issuance of any building permit or certificate of occupancy. The review of an application for a marijuana establishment shall not begin until the applicant has submitted to the town a valid state-issued conditional license to operate the marijuana establishment pursuant to 28-B M.R.S.A. § 205. **The review of an application for a marijuana establishment or medical marijuana establishment, where such type establishment has, at the time of said application, reached the maximum number of licenses pursuant to Chapter 11, shall not begin until the applicant submits a signed statement acknowledging that they are aware of the maximum having been reached and that they may not be able to obtain a local marijuana license until such time as one becomes available.** The following performance standards are to be used by the planning board in reviewing site plan applications and compliance with the same shall serve as requirements for approval of such site plans.

Reference section 11-3 for definitions related to this section.

(1) All marijuana establishments and medical marijuana establishments shall be screened in accordance with section 33-175.

(2) All marijuana establishments and medical marijuana establishments shall comply with applicable parking requirements of subsection 45-495(15).

(3) Signage and advertising.

a. All signage and advertising for any marijuana establishment or medical marijuana establishment shall comply with the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, in addition to all applicable provisions of chapter 45 in this Code. No interior signage, advertising as described above shall be visible from the exterior of the building in which the marijuana establishment is located. Signage containing misleading or deceptive marketing or marketing towards individuals under the age of 21 is prohibited.

b. There is a compelling governmental interest to the town in marijuana establishments and medical marijuana establishments abiding by the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, including, but not limited to, reducing the likelihood of reaching persons under 21 years of age, who may frequently ride in (or may be old enough to drive) vehicles upon streets, town ways, or public ways from which signage is visible and legible. Many persons in this age range may understand

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words such as "marijuana" and "cannabis", or any other word, phrase or symbol commonly understood to refer to marijuana. The use of these terms may increase the appeal or awareness of marijuana establishments, medical marijuana establishments, or marijuana use to these persons. To reduce the likelihood of this appeal and awareness, no signage visible from a street, town way, or public way may use the word "marijuana" or "cannabis", or any other word, phrase or symbol commonly understood to refer to marijuana.

(4) Area of activities for all marijuana establishments and medical marijuana establishments; control of odors and emissions; sealed walls; disposal plan; security.

a. All activities of marijuana including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana establishments and medical marijuana establishments are not permitted to conduct outdoor sales or services of any kind. Any common areas, including, but not limited to, storage areas and building facilities, shared with another marijuana establishment and/or medical marijuana establishment must be clearly identified as such on the site plan application.

b. Odor management. For all marijuana establishments and medical marijuana establishments, odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Marijuana stores, marijuana product manufacturing facilities, marijuana testing facilities, medical marijuana caregiver retail stores, medical marijuana product manufacturing facilities, and medical marijuana testing facilities are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the town does not mandate any particular equipment specifications with regard to filtration, all marijuana establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

c. Noxious gases and fumes. Marijuana product manufacturing facilities, marijuana testing facilities, medical marijuana manufacturing facilities, and medical marijuana testing facilities shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.

d. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment must be provided at all times.

e. Prior to planning board approval and for the duration of their operation, all marijuana establishments shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times. Security cameras must be installed to record activities in the area of such trash receptacles.

f. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:

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1. Security surveillance cameras installed and operating 24 hours a day, seven days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
2. Door and window intrusion robbery and burglary alarm systems with audible and police department notification components that are professionally monitored and maintained in good working condition;
3. A locking safe or secure storage container permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;
4. Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of this Code;
5. Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g. windows); and
6. Identification checks ensuring that areas within the premises where marijuana or marijuana product cultivation, storage, weighing, manufacturing, sampling, packaging, preparation for testing, transfer or retail sale take place are only accessed by authorized persons displaying individual identification cards or authorized contractors of the marijuana establishment or medical marijuana establishment who are aged 21 and older and who display a valid visitor identification badge.

All security recordings shall be preserved as the state requires. All marijuana establishments shall provide the police chief or their designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the town may provide notice of any operating problems associated with the establishment.

(5) Separation (buffering) from sensitive uses.

a. No marijuana establishment or medical marijuana establishment shall be sited within 500 feet of the lot lines of a public or private school. This standard may not be relaxed by variance or waiver.

b. No marijuana store, medical marijuana caregiver retail store, or medical marijuana dispensary shall be sited within 500 feet of the lot lines of any public facility, place of worship, residential property, or childcare facility.

The planning board will not preclude a sensitive use listed in a. and b. above from opening at a location within the applicable buffer zones solely because the sensitive use is within such buffer zones.

A marijuana store, medical marijuana caregiver retail store, or medical marijuana dispensary may continue to operate in its present location as a pre-existing use if a sensitive use as listed in a. and b. above later locates within the applicable buffer zone; however, the marijuana store does so at its own risk, and town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a marijuana store, near a sensitive use listed in a. and b. above.

The distance cited in this subsection shall be measured as the aerial straight-line distance between the nearest point of the operating boundary of the marijuana establishment or medical

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marijuana establishment and the nearest point along a lot line of the site of the use listed in a. or b. above.

For purposes of this measurement, if a marijuana establishment or medical marijuana establishment is in a freestanding building, the operating boundary shall consist of the outer walls of the building. If a marijuana establishment or medical marijuana establishment leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the operating boundary of such establishment shall be the outer wall of the room or suite of rooms being leased by the establishment.

(6) Hours of operation. Marijuana stores, medical marijuana caregiver retail stores and medical marijuana dispensaries are limited to the same hours of operation as those for establishments serving or selling alcoholic beverages or products in accordance with chapter 6 section 11 or as may be set forth in state statute. When there is a conflict between state statute and local zoning, the more restrictive hours of operation shall apply.

(7) Cultivation area limitation. The number of plants or area of the plant canopy in a marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by the facility's cultivation facility license tier issued by the state in accordance with 28-B M.R.S.A. § 301. The number of plants or area of the plant canopy in a medical marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by 22 M.R.S.A. § 2423-A, para. 2, as may be amended. The site plan shall include the facility's cultivation area allowance and show or list the square footage of the proposed cultivation area.

(8) Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana establishment except in compliance with all operating and other requirements of state, local law and regulation, and compliance with this Code including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

(9) Drive-through and home delivery. Marijuana establishments and medical marijuana establishments are prohibited from having drive-through pick-up facilities. Marijuana stores are prohibited from providing home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.

(10) Pesticides. The only pesticides allowed to be used in marijuana establishments and medical marijuana establishments are non-synthetic substances, unless specifically listed as "prohibited" on the National List of Allowed and Prohibited Substances in 7 CFR Part 205, as may be amended from time to time, and pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time. All marijuana establishments and medical marijuana establishments shall comply with all packaging and labeling requirements from the state.

(11) Inspections. The code enforcement officer or their designee will inspect all marijuana establishments and medical marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the application submitted, the land use approval(s) issued and the requirements of this section, local and state building codes and electrical codes. The fire chief or their designee will inspect all

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marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the requirements of all applicable state and local fire codes. The initial inspection shall occur after the establishment is ready for operation, but no marijuana, marijuana products will be permitted on the premises until the inspection is complete and a certificate of occupancy is issued. Nothing herein shall prevent the fire chief or their designee from inspecting marijuana establishments at random intervals, but not to exceed four times a year, and without advance notice provided that the inspection is during normal business hours of the establishment.

(12) Change of use/addition of use. If any type of marijuana establishment or medical marijuana establishment is to change to another type of establishment or to add another type of marijuana establishment or medical marijuana establishment to its existing operations, such change of use or additional use must be reviewed and approved by the planning board for compliance with this section.

(13) Other laws remain applicable. A marijuana establishment or medical marijuana establishment shall meet all operating, local and state licensing and other requirements of state and local laws and regulations. To the extent the state has adopted or adopts in the future any stricter law or regulation governing adult use marijuana and/or medical marijuana establishments, the stricter law or regulation shall control.

(T.M. of 11-5-2019(4); T.M. of 6-8-2021(4) , art. 31)

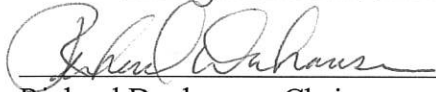
Municipal Officers' Certification of Official Text of a Proposed Ordinance

To the 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 "Proposed Town Code Amendments of Chapter 11 – Marijuana Establishments and Chapter 33 – Planning and Development, Related to Limiting the Number of Marijuana Establishment and Medical Marijuana Establishment Licenses", which is to be presented to the voters for their consideration on November 8, 2022.

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.

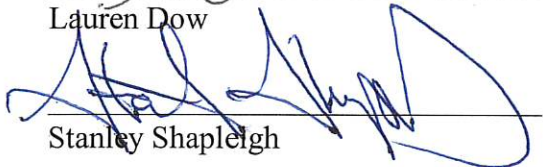
Dated: August 25, 2022


Richard Donhauser, Chairman


William Widi, Vice Chairman


Robert McPherson, Secretary


Lauren Dow


Stanley Shapleigh

**Select Board
Town of Eliot, Maine**