

TOWN OF MACHIAS

Adult Use and Medical Cannabis Ordinance

Enacted: May 20, 2024

CERTIFIED BY: *Sandra N Clifton*
Sandra Clifton, Town Clerk

Affix Seal

Adult use and Medical Cannabis Ordinance

1-1 Title:

This ordinance shall be known and cited as the “Town of Machias Adult Use and Cannabis Stores, Cultivation Facilities, Manufacturing Facilities, and Testing Facilities Ordinance” and will be referred to hereinafter as “this Ordinance”. This Ordinance regulates all the subject adult use and medical Cannabis Businesses to the area, except as exempted within this ordinance; prescribes definitions of these adult use and medical Cannabis Businesses; provides for permitting/licensing and regulation of adult use and medical Cannabis Businesses; and provides standards for adult use and medical Cannabis Businesses.

1-2 Authority and Applicability:

WHEREAS, implementing a system for the regulation of stores, manufacturing, and testing for both adult use and medical Cannabis, a controlled substance, is a complex function with significant administrative demands on the Town of Machias; and

WHEREAS, the Town of Machias believes that any production, processing, or selling of adult use or medical Cannabis should be conducted in a safe and fair manner for the health, safety, and welfare of the community, which includes complying with provisions of all Maine Statutes regulating Medical Cannabis throughout the Town of Machias; and

NOW THEREFORE, this Ordinance is adopted pursuant to the Cannabis Legalization Act, 28-B M.R.S. c. 1; Maine’s Medical Cannabis laws and regulations, including but not limited to 22 M.R.S. c. 558-C; Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of the Municipal Home Rule Authority (30-A M.R.S. §3001 et seq.); and the provisions of the Planning and Land Use Regulation Act, 30-A M.R.S. §4312 et seq.

1-3 Purpose:

It is the purpose of this Ordinance to regulate Adult Use and Medical Cannabis businesses in order to promote the health, safety, and general welfare of the citizens of Machias, and to establish reasonable and uniform regulations for the appropriate operation, and location of Adult Use and Medical Cannabis businesses in Machias.

Persons or entities wishing to establish an Adult Use or a Medical Cannabis business within the Town of Machias shall first obtain a permit/license from the Machias Board of Selectpersons (hereinafter “the Municipal Officers”) and shall be subject to the provisions of this Ordinance.

This Ordinance may not be construed to limit any privileges or rights of a qualifying patient, caregiver, or registered caregiver under Maine’s Medical Cannabis laws and regulations, including but not limited to 22 M.R.S. c. 558-C, except that Medical Cannabis Stores operated by registered caregivers are subject to the provisions of this Ordinance.

1-4 Conflict with Other Ordinances; State Law:

Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or of any other ordinance, regulation or standard, the more restrictive provision shall apply. Nothing herein is intended to conflict with State law; whenever a provision of this Ordinance conflicts with State law the more restrictive provision shall apply. All applicants and licensees shall comply with all applicable State laws.

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacturing, distribution, or testing of medical or adult use Cannabis or medical or adult use Cannabis products, the additional or stricter regulation shall control the establishment or operation of any medical or adult use Cannabis business in the town of Machias.

1-5 Effective Date:

The effective date of this Ordinance, and the permitting/licensing of the establishment or operation of any Adult Use or Medical Cannabis Store, Adult Use or Medical Cannabis Cultivation Facility, Adult Use or Medical Cannabis Manufacturing Facility, or Adult Use or Medical Cannabis Testing Facility in Machias thereunder, shall be the date of adoption by the voters at Town Meeting.

1-6 Validity and Severability;

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

1-7 Definitions:

For the purpose of this Ordinance, Adult Use Cannabis businesses, including Adult Use Cannabis Stores, Adult Use Cannabis Cultivation Facilities (including Adult Use Cannabis Nursery Cultivation Facilities), Adult Use Cannabis Manufacturing Facilities, and Adult Use Cannabis Testing Facilities, are defined as set forth in 28-B M.R.S. §102.

For the purpose of this Ordinance, Medical Cannabis businesses, including Medical Cannabis Stores, Medical Cannabis Cultivation Facilities, Medical Cannabis Manufacturing Facilities, and Medical Cannabis Testing Facilities are either defined in Maine's Medical Cannabis Law or are the medical equivalent of those Adult Use Cannabis businesses listed in the previous paragraph.

For the purpose of this Ordinance, the term, "Cannabis Business" means any Adult Use or Medical Cannabis business listed in the two preceding paragraphs.

1-8 Permit/License Required:

No person may establish, operate, or maintain an Adult Use or Medical Cannabis business without first obtaining a permit/license from the Municipal Officers.

It is a violation of this Ordinance for any person to operate an Adult Use or Medical Cannabis business within the Town of Machias without a valid Adult Use or Medical Cannabis business permit/license issued by the Town pursuant to this Ordinance.

It is a violation of this Ordinance for any person to operate an Adult Use or Medical Cannabis business within the Town of Machias without a valid Adult Use or Medical Cannabis business permit/license issued by the State pursuant to State Adult Use and Medical Cannabis laws and regulations.

Pursuant to 28-B M.R.S. §402, the Town has placed the following permit/license limits for the following four (4) categories of Adult Use and Medical Cannabis businesses: Stores – five (5) total, in any combination of Adult Use and Medical; No limit on Cultivation Facilities; No limit on Manufacturing Facilities; and no limit on Testing Facilities. Whenever a permit/license expires and is not renewed, or the Town declines to renew a permit/license, other permit/license applications may be reviewed, but the cap of permits/licenses per each category shall be maintained.

Should the limit of 5 storefronts be reached upon the adoption of this ordinance, or at any other time, the Town of Machias will not accept any additional Cannabis store front applications. In the event that a Cannabis storefront permit/license expires and is not renewed, or the town declines to renew a permit/license, a 60 day application period will open. Upon the closing of the 60 day application period all qualified applicants will be entered into a lottery and the open permit/license will be assigned to the individual/business that is chosen by said lottery. Lottery will be conducted publicly. All lottery participants must be present during lottery drawing, if lottery winner is not present, a new entrant will be selected. In the event that no applications are received within the 60 day period the Town of Machias will remain open to accepting applications indefinitely and the open permit/license will be assigned to the first qualified applicant.

In the event of the proposed sale of an existing Cannabis business, the tentative purchaser may forgo the lottery and shall be given preference to obtain a new permit/license to replace the seller's permit/license within sixty (60) days prior to the date of the sale.

The tentative purchaser shall file an application with fee and provide all the information required in this Ordinance. If the application is approved by the Town, the Municipal Officers shall specify that the permit/license approval is contingent on the sale being completed and the Town's receipt of permit/license fees.

The holder of a permit/license for a Cannabis storefront may only possess one permit/license for one storefront at any time. Any holder of a permit/license for a Medical Cannabis Store prior to the adoption of this ordinance may exchange their permit/license for an Adult Use Cannabis Store permit/license in the same location. Said holder must file an application and pay the applicable fee. Any permit/license for an Adult Use Cannabis Store or Medical Cannabis Store permit/license that is granted after the adoption of this ordinance may not be exchanged. Applicants for a permit/license within the storefront category cannot be domiciled together, or be owned by the same entity or ownership interest.

All Adult Use and Medical Cannabis Stores must be operated from permanent non movable structures with access to either private or public septic/well facilities, which may utilize telephone and internet orders as long as the buyer, on the day the order is made, pays for and picks up such orders in the store.

Adult Use and Medical Cannabis Stores may not use vending machines for sales, may not have "drive-through" or "drive-up" window-serviced sales.

Pursuant to 28-B M.R.S. § 402, an applicant seeking to operate an Adult Use Cannabis Business may not submit an application for a license unless the applicant has been issued a conditional license by the State of Maine to operate the Adult Use Cannabis Business.

Pre-existing businesses in operation upon the approval of this Cannabis Ordinance by the voters of Machias shall have One Hundred Twenty (120) days to comply with the requirements of this ordinance. The Board of Selectpersons may extend this requirement a maximum of One Hundred Twenty (120) additional days for extenuating circumstances. Should a pre-existing business be operating in a non-permanent/movable structure, said business shall not be deemed non-compliant with this ordinance and will be considered "grandfathered" as is, where is.

1-9 Application Procedure:

An application for a permit/license must be made on a form provided by the Town and submitted to the Town Office with the Application fee. The Town office will submit the application for Planning Board review. The applicant must notify all abutting property owners by certified mail at least fourteen (14) days in advance of the Planning Board Meeting and bring proof of notification to the meeting for attachment to the application.

All applicants must be qualified according to the provisions of this Ordinance. The applicant shall provide all required information to the Town. Any falsification or substantive omission in the application process may be considered grounds for denial of any license under this ordinance. The Town will then determine whether the applicant meets the qualifications established in this Ordinance.

If the applicant who wishes to operate a Medical Cannabis or Adult Use Cannabis business is a single individual, this person must sign the application for a permit/license. If the applicant who wishes to operate a Medical Cannabis or Adult Use Cannabis Business is more than one individual, each person who has an interest in the business must sign the application for a permit/license as an applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a permittee/licensee if a permit/license is granted.

The completed application for an Adult Use or Medical Cannabis business permit/license shall contain the following information and shall be accompanied by the following documents:

A: If the applicant is an individual: The individual shall state their legal name and any aliases, and submit proof that they are at least twenty-one (21) years of age.

B: If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.

C: If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.

D: If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.

E: If the applicant intends to operate the Medical or Adult Use Cannabis Business under a name other than that of the applicant, they must state the Cannabis Business' name and submit the required registration documents.

F: If the applicant or a potential employee has been convicted of criminal activity under State and/or federal law, they must list the specified criminal activity involved, and the date, place, and jurisdiction of each conviction.

G: If the applicant has had a previous permit/license under this Ordinance or other similar Cannabis business ordinances from another Town, City, or State denied, suspended, or revoked, they must list the name and location of the Cannabis business for which the permit/license was denied, suspended or revoked, as well as the date of the denial, suspension, or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose permit/license has previously been denied, suspended, or revoked, listing the name and location of the Cannabis business for which the permit was denied, suspended, or revoked as well as the date of denial, suspension, or revocation.

H: If the applicant holds any other permits/licenses under this Ordinance or other similar Cannabis business ordinance from another Town, City, or State the names and locations of such other permitted/licensed businesses must also be provided.

I: The classification of permit/license for which the applicant is filing.

J: The location of the proposed Adult Use or Medical Cannabis business, including a legal description of the property, street address, and telephone number. As well as sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Cannabis Business 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.

K: The applicant's mailing address and residential address.

L: Recent passport-style photograph(s) of the applicant(s).

M: Copy of Drivers license or equivalent legal identification.

N: A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.

O: A copy of a Town Tax Map depicting the subject property lines and the property lines of other properties containing any existing Cannabis Businesses of any kind within one thousand (1,000) feet of the subject property; the property lines of any public or private school within one thousand (1,000) feet of the subject property; the property lines of any pre-existing state licensed daycare facility located within 500 feet under 10-148 CMR c. 32, and/or recreational areas designated for use by children up to eighteen (18) years in age, and/or areas designated as municipal "safe zones" pursuant to 30-A M.R.S. §3253, within five hundred (500) feet of the subject property.

Application permit/license fees:

All fees related to this ordinance can be found on the Town of Machias Fee Sheet.

1-10 Standards for Permit/License

A: General

1: Medical and Adult Use Cannabis Manufacturing, Cultivating, and Testing Facilities, may exist and operate in Machias with the exceptions listed below: within one thousand (1,000) feet of any public or private school; within five hundred (500) feet of any pre-existing state licensed daycare facility; or within five hundred (500) feet of recreational areas designated for use by children up to eighteen (18) years in age, and/or or areas designated as a municipal "safe zones" pursuant to 30-A M.R.S. §3253, within five hundred (500) feet of the subject property. Medical and Adult Use store fronts may operate only outside of the designated areas outlined on map 1A.

2: More than one Adult Use or Medical Cannabis business (Store and/or Cultivation Facility and/or Manufacturing Facility and/or Testing Facility) may be co-located and operated within the same building, structure, or portion thereof, as long as all ordinance and application requirements are met.

3: Cannabis Businesses may only be open for business between the hours of 7:00 a.m. and 9:00 p.m., locally prevailing time.

4. The sale or offering for sale of Medical Cannabis and/or Medical Cannabis products under permit/license and the sale or offering for sale of Adult Use Cannabis and/or Adult Use Cannabis products under permit/license within the same facility or building by the same licensee is prohibited per 28-B M.R.S. §504.5.

5. For the purpose of subsection A.1 of this Section, measurement shall be made in accordance with MRSA 28A Chapter 29 subsection 701-2. 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.

6. Security measures at all Cannabis Business premises shall be in accordance with all state licensing regulations.

7. Ventilation, Noise, and Lighting - All Cannabis Businesses are responsible for proper ventilation for odor control, noise control, and proper lighting to ensure the property of others is not negatively impacted by Cannabis business operations. The Board of Selectpersons shall have the authority to suspend and/or revoke any license for non-compliance with this standard or based upon numerous substantiated complaints from property abutters.

8. Signs

All signs used by and all marketing and advertising conducted by or on behalf of the Cannabis business may not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age. The signs, marketing, or advertising is prohibited from making any health or physical benefit claims. Signage may use an image or images of the Cannabis plant or plants, or parts thereof, as long as they do not exceed 20% of the sign face, there shall be no pictorial representations of other Cannabis products, by-products, or paraphernalia associated with the use or distribution of retail Cannabis. The exterior of all Adult Use and Medical Cannabis Stores shall display a 1' x 1' image of any universal symbol for same adopted by the State's Department of Administration and Financial Services. Only one (1) free standing outside sign and one (1) sign on the exterior of the building are allowed for a Medical or Adult Use Cannabis Business, excluding Registered Caregivers. Each sign cannot be more than 15 square feet in size. No exterior/outside electronic or digital signs are allowed. Proposed signage shall be submitted with the application to the Town Officials and is subject to approval.

9. Every Cannabis Business shall allow the Machias Code Enforcement to enter the premises at reasonable times for the purpose of checking compliance with this Ordinance.

Due to fire, explosion, and other hazards inherent in Cannabis Manufacturing facilities, including, but not limited to, heavy electrical loads, hot lighting fixtures, CO2 enrichment, extraction solvents (acetone, butane, propane, ethanol, heptane, isopropanol, CO2, etc.), high- pressure extraction methods (CO2, etc.), and flammable contents, the owners of all such facilities shall agree to be inspected in the same manner as all other Machias businesses using or storing these types of chemicals.

Cannabis cultivation and manufacturing facilities must comply with NFPA-1 Chapter 38 standards for Cannabis Growing, Processing, or Extraction Facilities, and these standards will be utilized by the Town of Machias during their inspections of these premises.

10. Indemnification

By accepting a permit/license issued pursuant to this Ordinance, the permittee/licensee 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 Adult Use or Medical Cannabis business owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.

By accepting a permit/license issued pursuant to this Ordinance, the permittee/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 permitted/licensed Adult Use or Medical Cannabis business.

11. 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 Adult Use or Medical Cannabis or Cannabis products, the additional or stricter regulation shall control the establishment or operation of any Adult Use or Medical Cannabis Store, Cultivation Facility, Manufacturing Facility, or Testing Facility in Machias. Compliance with 28-B M.R.S. c. 1, State laws and regulations pertaining to medical Cannabis, and any other applicable State laws or regulations shall be deemed an additional requirement for issuance or denial of any permit/license under this Ordinance, and noncompliance with 28-B M.R.S. c. 1 and any other applicable State law or regulation shall be grounds for revocation or suspension of any permit/license issued hereunder.

Activation

1. Once a Licensee/Permittee has had their License(s)/Permit(s) issued by the town of Machias, they have one year to begin business activity thereunder at their designated location.
2. If a Licensee/Permittee has not implemented business activity within one year of having been Licensed/Permitted by the town of Machias, their License(s)/Permit(s) shall become null and void.
3. Once a Licensee/Permittee has had their License(s)/Permit(s) issued by the town of Machias, they have one year to obtain their State license(s) from the Office of Cannabis Policy (OCP) for their designated location.

4. If a Licensee/Permittee has not obtained their State license(s) from OCP for their designated location within one year of having been Licensed/Permitted by the town of Machias, their License(s)/Permit(s) shall become null and void.

5. If a Licensee/Permittee has had a State license application on file for one year with OCP, and OCP has not yet issued a State license, and such delay has not been the result of any action or fault of the applicants, and the issuance of said OCP license remains pending, the applicant is entitled to the remaining time necessary for OCP to complete said licensing.

Enforcement

1. Any violation of this Ordinance, including failure to comply with any condition, shall be deemed to be a violation of 30-A M.R.S. §4452. Each day of violation constitutes a separate offense.

2. Commencement of any Adult Use or Medical Cannabis business without a Town permit/license for same shall be a violation of this Ordinance. Any party committing such a violation shall immediately cease operations, whether of a construction, renovation, or business nature, upon notification by the Code Enforcement Officer (CEO). Upon such CEO notification, the Town can pursue fines and/or penalties under 30-A M.R.S. §4452.

Code Enforcement Officer (CEO)

1. If the CEO finds that any provision of this Ordinance is being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including but not limited to, discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement or mitigation of violations. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

2. The CEO shall keep a complete record of all essential transactions of the CEO, including all Cannabis related permit/license applications submitted. Records of all permits/licenses granted or denied, revocation actions, revocation of permits/licenses, appeals, court actions, violations investigated, violations found and fees collected are maintained by the municipality.

Legal Actions

When the above notification and/or inspection actions do not result in the voluntary correction or abatement of the violation by the subject Adult Use or Medical Cannabis Business, the Municipal Officers, upon receiving written notification from the CEO, shall institute any and all actions and proceedings, either legal or equitable, including injunctions of violations and the impositions of penalties and/or fines in order to enforce the provisions of this Ordinance. The Municipal Officers or their authorized agent is hereby authorized to enter administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.

Penalties/Fines

Any person, including but not limited to, an Adult Use or Medical Cannabis Business owner, a property owner where such business is located, or any agent or contractor for same, who orders or conducts any activity in violation of this Ordinance, or upon failure to comply with any of its requirements, shall be penalized in accordance with 30-A M.R.S. §4452 which can include suspension or revocation of a Medical or Adult Use Cannabis license

Amendments

A. Initiation of Amendments

An amendment to this Ordinance may be initiated by:

1. The Municipal Officers, provided a majority of the Municipal Officers has so voted; or
2. Written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the municipality at the last gubernatorial elections.

B. Public Hearing

The Municipal Officers shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing.

C. Adoption of Amendment

An amendment of this Ordinance shall be adopted by a majority vote of a Town Meeting.

License/Permit Fee Payment

A. Promissory Agreement

Applicants must sign a Promissory Agreement (form provided by Town) unconditionally promising to pay the Town their License/Permit fee(s) upon approval by the Municipal Officers of their application for a License/Permit submitted under this Ordinance.

B. License/Permit Renewals

After an initial License/Permit has been approved by the Municipal Officers under this Ordinance and the initial License/Permit fee has been paid, in order to retain an active License/Permit and keep same current as approved by the Municipal Officers under this Ordinance, the Licensee/Permittee must, 30 days before the subsequent anniversaries of the initial date of License/Permit approval by the Municipal Officers, pay to the Town their renewal Permit/License fee.

C. License/Permit Suspension and Revocation

Licensees/Permittees who fail to make payments when due will enter a grace period where business may continue for 30 days. Failure to pay within the 30 day grace period will result in an immediate suspension of all business related activities for an additional 30 days. Failure to pay beyond the second 30 day period will result in an immediate revocation of said Licenses/Permits previously approved under this Ordinance by the Municipal Officers.

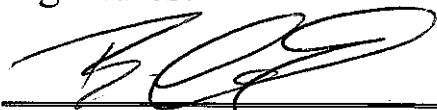
D. Consequences of License/Permit Revocation

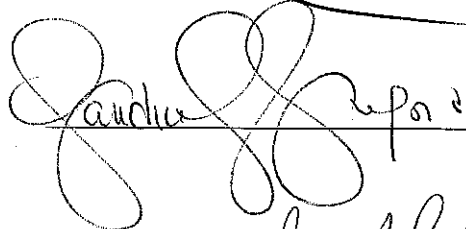
Licensees/Permittees that have had their Licenses/Permits revoked for non-payment cannot file a new Notification of Intent (NOI) to file a new application until they have

paid all standing delinquent Permit/License fees owed to the Town. If the permit/license revoked is in the storefront category while the cap of 5 storefronts is reached, subject permit/licensee must undergo the application process outlined in this ordinance under section 1-8.

Approved by the Inhabitants of Machias on 20th of May, 2024

Signatures:





Joel Patry

Carole Poucher