

TOWN OF MACHIAS, MAINE  
SPECIAL TOWN MEETING  
DECEMBER 5, 2018

6:00 P.M. @ MACHIAS MEMORIAL HIGH SCHOOL GYNASIAM

To: Larry Armstrong a resident of the Town of Machias  
County of Washington, State of Maine

**GREETINGS:**

In the name of the State of Maine, you are hereby required to warn and notify the Inhabitants of the Town of Machias, in said country and state, qualified by law to vote in town affairs, to meet at the Machias Memorial High School Gymnasium on Wednesday, the Fifth day of December, AD 2018, at 6:00 P.M., then and there to act on the following articles, to wit:

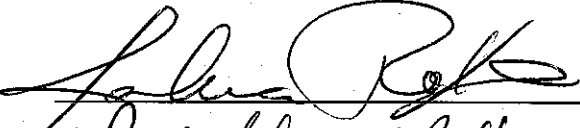
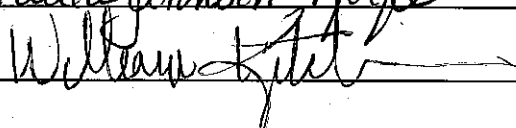
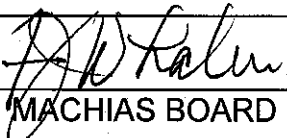
**ARTICLE 1:** To elect a Moderator to preside at said meeting.

**ARTICLE 2:** Shall an ordinance entitled "Town of Machias Medical Marijuana Ordinance" be enacted?

The registrar of voters hereby gives notice that she will be in session, at the Machias Town Office, from 9:00 A.M. until 4:00 P.M. on the day of the Special Town Meeting, December 5, 2018 for the purpose of revising and correcting the list of registered voters.

An attested copy of the proposed "Town of Machias Medical Marijuana Ordinance" is attached to the Warrant Postings and is also available at the Machias Town Office.

Given under our hands in the Town of Machias, this 27<sup>th</sup> day of November in the year of our Lord, Two Thousand Eighteen,

  
Paula Johnson-Golpe  
  
William Lytle  
  
J.P. Kaler  
MACHIAS BOARD OF SELECTMEN

## **Medical Marijuana Ordinance**

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**1-1 Title:**

This ordinance shall be known and cited as the “Town of Machias Medical Marijuana Retail Stores, Manufacturing Facilities, and Testing Facilities Ordinance” and will be referred to hereinafter as “this Ordinance”. This Ordinance regulates all these subject Medical Marijuana Businesses to the areas, except as exempted within this ordinance; prescribes definitions of these Medical Marijuana Businesses; provides for permitting/licensing and regulation of Medical Marijuana Businesses; and provides standards for Medical Marijuana Businesses.

**1-2 Authority and Applicability:**

**WHEREAS**, implementing a system for the regulation of stores, manufacturing, and testing for the medical use of marijuana, 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 medical marijuana 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 Marijuana throughout the Town of Machias; and

**NOW THEREFORE**, this Ordinance is adopted pursuant to the Medical Marijuana Act the provisions of the Municipal Home Rule Authority (30-A M.R.S. §3001 et seq.).

**1-3 Purpose:**

It is the purpose of this Ordinance to regulate Medical Marijuana 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 of Medical Marijuana Businesses in Machias.

Persons or entities wishing to establish a Medical Marijuana Business within the Town of Machias 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, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Marijuana Act.

**1-4 Conflict with Other Ordinances; Severability:**

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.

### **1-5 Effective Date:**

The effective date of this Ordinance, and the permitting/licensing of the establishment or operation of any medical marijuana retail store, medical marijuana products manufacturing, or medical marijuana testing facility in Machias thereunder, shall be the date of adoption by the voters at Town Meeting. Businesses in operation prior to the adoption of the ordinance will be required to apply within thirty (30) days and will be subject to the permitting process.

### **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 purposes of this Ordinance, medical marijuana businesses, including medical marijuana retail stores medical marijuana products manufacturing facilities, and medical marijuana testing facilities, are defined as set forth in Maine Statutes regulating Medical Marijuana except the definition of a Medical Marijuana retail storefront.

**Medical Marijuana Storefront** shall be described as follows: Any store, house, garage, shed, or structure having a location on a street or thoroughfare having display windows, business signs, or advertising media for the purpose of selling medical marijuana or any given location that provides medical marijuana products to ten (10) caregivers selling medical marijuana products to ten (10) or more patients within a fifteen (15) day period regardless of the number of caregivers operating out of said location.

The Town of Machias has prohibited all medical marijuana retail stores, medical marijuana products manufacturing facilities, and medical marijuana testing facilities, are defined as set forth in Maine Statutes regulating Medical Marijuana from being located within 1000 feet of the property line of a pre-existing public or private school or within 500 feet of a 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.

A daycare facility or recreational facility may locate closer than regulation allows to an existing medical marijuana retail stores, medical marijuana products manufacturing facilities, and medical marijuana testing facilities, however, this will not cause a closure of the already existing facility.

### **1-8 Permit/License Required:**

No person may establish, operate or maintain a Medical Marijuana Business without first submitting the application with all required documentation to the Machias Planning Board for Review and obtaining a permit/license from the Selectpersons. It is a violation of this Ordinance for any person to operate a Medical Marijuana Business without a valid Medical Marijuana Business permit/license issued by the Town pursuant to this Ordinance.

The Town has placed no limits on the number of permits or licenses for the following: medical marijuana retail stores, medical marijuana products manufacturing facilities, and medical marijuana testing facilities.

All Medical Marijuana Retail Stores must be operated from storefront locations. No internet sales or telephone sales will be allowed at any Medical Marijuana Business licensed in the Town of Machias. Orders may utilize telephone and internet orders so long as the buyer, upon pick up or delivery shows proper identification showing the individual to be a qualifying patient according to Maine Statutes. Medical Marijuana Retail Stores may not use vending machines for sales and may not have internet-based sales with credit/debit card payment and delivery by USPS, UPS, FedEx, or any other global or local delivery service or courier, unless in accordance with Maine Revised Statutes.

Pre-existing businesses in operation upon the Medical Marijuana Ordinance approval 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.

### **1-9 Application Procedure:**

- A. 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.
- B. All applicants must be qualified according to the provisions of this Ordinance. The applicant shall provide all required information to the Town. The Town will then determine whether the applicant meets the qualifications established in this Ordinance.
- C. Application to establish a Medical Marijuana Business
  1. If the applicant who wishes to operate a Medical Marijuana Business is a single individual, this person must sign the application for a permit/license. If the applicant who wishes to operate a Medical Marijuana Business is more than one individual, each person who has an interest in the business must sign the application for a permit/license as 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.

2. The completed application for a Medical Marijuana 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 Marijuana Business under a name other than that of the applicant, they must state the Medical Marijuana 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 Medical Marijuana Business ordinances from another Town, City, or State denied, suspended or revoked, they must list the name and location of the Medical Marijuana Business for which the permit/license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation. 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 Medical Marijuana 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 Medical Marijuana Business ordinance from another Town, City, or State and, if so, the names and locations of such other permitted/licensed businesses.
- i. The classification of permit/license for which the applicant is filing.
- j. The location of the proposed Medical Marijuana Business, including a legal description of the property, name of the property owner, the current street address, and a contact telephone number.
- k. The applicant's mailing address and residential address.
- l. Recent passport-style photograph(s) of the applicant(s).
- m. The applicant's driver's license.
- 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 Medical Marijuana Businesses 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 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.

**D. Application and Permit/License Fees**

All applications must be submitted with the appropriate fee for same per below. If an application is approved, the following permit/license fees must be paid before the Town will issue a permit/license:

- 1. Medical Marijuana Retail Store: Application Fee: \$250 non-refundable; License Fee: \$3,000 first license and \$5,000 per each additional renewal (annually)
- 2. Medical Manufacturing Facility: Application Fee: \$250 non-refundable; License Fee:
  - Tier 1: License Fee: \$2,500 for up to 40 lbs of product on site (annually)
  - Tier 2: License Fee: \$5,000.00 for up to 200 lbs of product on site (annually)

3. Medical Marijuana Testing Facility: Application Fee: \$250 non-refundable;  
License Fee: \$500 (annually)

The Town may choose to structure quarterly payment of the licensing fees during the first license year to assist start-up businesses. However, each business owner shall ensure that the payment is made to the Town of Machias by the due date or their license is immediately and automatically under suspension and shall not become effective again until reviewed by the Board of Selectpersons.

For all Medical Marijuana Permit/License holders there shall be an annual renewal fee.

### **1-10 Standards for Permit/License:**

#### **A. General**

1. Medical Marijuana Businesses, Retail Stores, 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.
2. More than one Medical Marijuana Business 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. Medical Marijuana Businesses may be open for business only 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 Marijuana and/or Medical Marijuana products under permit/license and the sale or offering for sale of Medical Marijuana and/or Marijuana products under permit/license within the same premises is allowed subject to Maine Revised Statutes.
5. For the purpose of subsection A 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 Medical Marijuana Business premises shall be in accordance with all state licensing regulations.



## 7. Ventilation, Noise, and Lighting

All Medical Marijuana 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 Medical Marijuana 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 complaints from property abutters.

### B. Right of Access/Background Check/Inspection

Every Medical Marijuana 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 Medical Marijuana Manufacturing facilities, including, but not limited to, heavy electrical loads, hot lighting fixtures, CO<sup>2</sup> enrichment, extraction solvents (acetone, butane, propane, ethanol, heptane, isopropanol, CO<sup>2</sup>, etc.), high- pressure extraction methods (CO<sup>2</sup>, 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.

### C. 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 Medical Marijuana 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 Medical Marijuana Business.

### D. State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, manufacturer, distribution, or testing of Medical Marijuana or Medical Marijuana products, the additional or stricter regulation shall control the establishment or operation of any Medical Marijuana Retail Store, Medical Marijuana Products Manufacturing, or Medical Marijuana Testing Facility in Machias.

Compliance with all applicable Maine State laws and regulations shall be deemed an additional requirement for issuance or denial of any permit/license under this Ordinance,

and noncompliance with other applicable Maine State laws and regulations shall be grounds for revocation or suspension of any permit/license issued hereunder.

## **1-11 Enforcement**

### **A. Violations**

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. Every day a violation exists constitutes a separate violation.
2. Commencement of any Medical Marijuana 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 CEO or their designee.

Upon such notification, the Town can pursue fines and/or penalties under 30-A M.R.S. 4452.

### **B. Code Enforcement Officer**

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 Medical Marijuana 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.

### **C. 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 Medical Marijuana 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.

#### **D. Penalties/Fines**

Any person, including but not limited to, a Medical Marijuana 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 marijuana license.

#### **E. Monies Collected from Licensing Fees, Fines, and Penalties**

1. Licensing Fees shall be placed in a fund the first year to determine the additional costs of the enforcement of this ordinance. At the end of the first fiscal year the Town shall pay all costs of Code Enforcement first and then split the remaining proceed as follows:

- A. The remaining funds will be used for the following:
  - 1. Youth Recreation Activities and Facilities
  - 2. Bad Little Falls Park Improvements
  - 3. Alcohol and Tobacco Education and Recovery
  - 4. Community Marketing
  - 5. Machias Valley Airport

The Selectpersons shall decide annually how the collected funds will be appropriated to the above programs and services.

#### **1-12 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.