

Town of Mercer

Adult Use
Marijuana
Manufacturing and
Cultivation
Facilities
Ordinance

Enacted: _____, 2021

Certified By: Nancy Gove, Town Clerk
2-4-2021

**TOWN OF MERCER ADULT USE MARIJUANA MANUFACTURING AND CULTIVATION FACILITIES
ORDINANCE**

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AUTHORITY

To regulate the location, licensing and operation of adult use marijuana manufacturing or cultivation facilities as authorized by Title 28-B M.R.S.A. §101 et seq. Marijuana Legalization Act, within the Town of Mercer. The town also reserves the right for additional siting and licensing requirements pursuant to Municipal Home Rule Authority (Title 30-A M.R.S.A. §3001 et seq).

PURPOSE

It is the purpose of this ordinance to regulate adult use manufacturing and cultivation facilities in order to promote the health, safety and general welfare of the citizens of Mercer, and to establish reasonable and uniform regulations for said facilities.

Persons or entities wishing to establish an adult use marijuana manufacturing or cultivation facility within the Town of Mercer shall first obtain a license from the Mercer Select Board (hereinafter "the Municipal Officers") and shall be subject to the provisions of this ordinance.

CONFLICT WITH OTHER ORDINANCES

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.

EFFECTIVE DATE

The effective date of this ordinance, and the business licensing thereunder, shall be the date of adoption by the voters at a duly-called town meeting.

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.

DEFINITIONS

As used in this ordinance, the terms below shall be defined as indicated. All other terms used in this ordinance, if not defined below, shall have the same definition set forth in 28-B M.R.S.A. §102, as amended.

A. Adult Use Cultivation Facility: a facility licensed under this ordinance to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to adult use products manufacturing facilities, adult use marijuana stores, and or other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

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B. Adult Use Products Manufacturing Facility: a facility licensed under this ordinance to purchase adult use marijuana from a cultivation facility or other products manufacturing facility; to manufacture, label, and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

C. Cultivation or Cultivate: the planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana for use or sale.

D. Manufacture or Manufacturing: the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including but not limited to, marijuana extraction or preparation by means of chemical synthesis. “manufacturing” or “manufacture” does not include cultivation or testing.

E. Applicant: Applicant means a natural person or business entity that submits an application for a license under this ordinance for review that the town has not yet approved or denied.

F. License: License means a document issued by the town officially authorizing an applicant to operate an adult use cultivation or manufacturing facility.

G. Licensee: Licensee means a natural person or business entity licensed pursuant to this ordinance to operate a cultivation or manufacturing facility.

H. Loitering: Means to stand or wait around idly or without apparent purpose.

I. Outdoor Marijuana Cultivation Facility: A cultivation facility in which no mature marijuana plants are raised or kept indoors and in which sunlight is the primary source of light during the plants flowering phase.

J. Inherently Hazardous Substances (IHS): means a liquid chemical, compressed gas or commercial product that has a flash point at or lower than 38 degrees Celsius or 100 degrees Fahrenheit, including, but not limited to, butane, propane and diethyl ether. “Inherently hazardous substance” does not include any form of alcohol or ethanol.

K. Generally Safe Extraction Methods (GSEM): Mechanical extraction, infusion in food grade fats or synthetic food additives or the use of 99% or greater purity of ethanol, including solutions of ethanol and potable water.

BUSINESS LICENSE APPLICATION

No person may establish, operate or maintain an adult use manufacturing or cultivation facility without first obtaining a License from the Mercer Municipal Officers.

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- A. An application shall be submitted to the municipal officers for site i.e. setback and distance requirement and business approval. An application shall be submitted for initial approval, annual renewal, change of use, and any change in ownership. (A person seeking to assume an ownership interest in a license pursuant to this section must demonstrate to the town compliance with all applicable requirements for licensure under this ordinance.)
- B. Before final approval is given on any license, the applicant must present their conditional license from the State of Maine and, if so requested, any paperwork related to obtaining the conditional license from the State of Maine.
- C. Pursuant to 28-B M.R.S. §402, an unlimited number of Tier 1, Tier 2 and Nursery cultivation facilities are allowed to operate in Mercer. Initially, a total of two (2) Tier 3 facilities shall be allowed to operate at one time. A Tier 2 licensee may seek, upon renewal and to be reviewed and approved by the municipal officers, an upgrade to a Tier 3 facility even if the initial cap of two (2) has been met. In this way, the cap on Tier 3 facilities may be breached incrementally by licensees who are in good standing and compliance with all applicable requirements. No applications for Tier 4 facilities will be accepted, however a Tier 3 licensee may seek an upgrade to a Tier 4 facility at the time of their renewal, and after review and approval by the municipal officers. A total of two (2) products manufacturing facilities which utilize Inherently Hazardous Substances (IHS) shall be allowed to operate at one time. There is no cap on products manufacturing facilities which utilize Generally Safe Extraction Methods (GSEM). Whenever a Tier 3 cultivation license or an IHS products manufacturing license expires, is not renewed or the town declines to renew a license and the initial cap of two (2) has not been met, then other applications may be reviewed. The initial caps must be maintained or incrementally increased as described in this section. The town will not issue more than four (4) new cultivation facility licenses in a given calendar year. The town will not issue more than four (4) renewal applications seeking an increase to a higher tier in a given calendar year. Any waiver to these requirements in order to maintain reasonable business operations by an applicant or licensee must be acquired by an article or amendment adopted and approved at a special town meeting.
- D. Each cultivation or manufacturing facility shall, at the least, meet the minimum state standards in effect at the time of the initial and each renewal application, including state approved odor control measures.
- E. No cultivation or manufacturing facility shall be located within one thousand (1,000) feet of the Town Office property at 1015 Beech Hill Road (Tax Map 7, Lot 33) nor shall they be allowed within one thousand (1,000) feet of any established public or private school, property used primarily for religious worship and related religious activities, or state licensed day care facility.
- F. No loitering is allowed anywhere on the property of a cultivation or manufacturing facility.
- G. All new principal and accessory structures, and expansions of existing structures, must be set back a minimum of fifty (50) feet from the side and rear property lines.

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H. The cultivation or manufacturing facility premises shall be in complete compliance with all municipal and state codes and regulations.

I. Signage: All signage shall meet the requirements of the State of Maine and shall not be excessively attractive to children. Only one (1) free standing outside sign and one (1) sign on the exterior of the building are allowed on the property. 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 application to the Municipal Officers and are subject to their approval.

J. Security, safety, and odor control shall meet all the requirements of the pertinent state rules and regulations relating to a cultivation or manufacturing facility.

APPLICATION AND ANNUAL LICENSE FEES

A. All applications must be accompanied by 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.

B. All applications must be accompanied by a copy of the Town Tax Map depicting the subject property lines.

C. Applications shall be accepted in person only and during normal business hours. All applications must be submitted with a \$500 nonrefundable initial application fee.

D. The applicant is responsible for all costs associated with holding a public hearing on their application and must pay those fees prior to holding that public hearing. In addition, the applicant may be subject to not more than two hours of legal consultation fees.

E. If an application is approved, the appropriate license fees must be paid before the town will issue a license.

F. Adult use marijuana products manufacturing facility annual fee:

Inherently Hazardous Substance (IHS) Products Manufacturing Facility: \$1,500

Generally Safe Extraction Methods (GSEM) Products Manufacturing Facility: \$500

G. Adult use marijuana cultivation facility annual license fee:

Indoor and indoor/outdoor cultivation facility:

Tier 1: 0-500 square foot plant canopy: \$500

Tier 2: 501-2,000 square foot mature plant canopy: \$1,500

Tier 3: 2,001-7,000 square foot mature plant canopy: \$2,500

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Tier 4: 7,001-20,000 square foot mature plant canopy: \$5,000

Outdoor cultivation facility:

Tier 1: 0-500 square foot plant canopy: \$250

Tier 2: 501-2,000 square foot mature plant canopy: \$750

Tier 3: 2,001-7,000 square foot mature plant canopy: \$1,250

Tier 4: 7,001-20,000 square foot mature plant canopy: \$2,500

Nursery: \$250

Licensees may obtain multiple licenses of any license type, as long as having multiple licenses does not result in the applicant having a direct or indirect financial interest in more than three cultivation facilities, or more than 30,000 square feet of plant canopy (although licensees can exceed this canopy cap through approved increases in plant canopy, authorized for tier 4 cultivation licenses). Until January 2022, licensees are also limited from having direct or indirect financial interest in more than 4 marijuana stores. Testing facility licensees can obtain multiple testing facility licenses, but are prohibited from being caregivers, or having any interest in medical dispensaries, cultivation facilities, products manufacturing facilities, and marijuana stores. 28-B M.R.S. § 205(2).

The nursery cultivation facility license is the one exception to this general rule. A nursery cultivation licensee is authorized to operate a storefront in the same location as its cultivation facility for the purpose of selling seeds, seedlings, immature plants, and other gardening supplies related to marijuana cultivation directly to consumers. 28-B M.R.S. § 501(3).

Renewal applicants for marijuana cultivation licenses may seek an increase to the next tier if they comply with the requirements of this section.

Renewal applicants for Tier 4 cultivation facility licenses may seek an approved increase of 7,000 square feet. For each approved increase of 7,000 SF, the additional fee is \$1,000 for outdoor cultivation, and \$2,000 for indoor or indoor/outdoor cultivation.

Renewal applications shall be submitted at least 90 days before the expiration date of their current license.

H. Each license is valid for one (1) year from date of issue.

ISSUANCE RULES

A. Applications will be reviewed in the order the completed applications are received. An application shall be considered complete when it contains the information and/or other items required on the

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application, accompanied by the nonrefundable initial application fee. Once the approved limit of facilities in a category have been awarded, no more applications will be approved in that category.

When there are more than one (1) application under review simultaneously, the town will give first priority to applicants who for the two (2) year period immediately preceding the date of application have been cultivating as a Medical Marijuana Caregiver within the town in compliance with applicable state law and regulations for same.

B. The municipal officers shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this ordinance 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.

C. No license shall be granted by the municipal officers until the fire chief and the code enforcement officer have made their recommendation upon the applicant's ability to comply with this ordinance. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the town authorized to make the inspection at any reasonable time that admission is requested.

D. Upon the filing of a completed application and successfully passing the required inspection, the municipal officers shall schedule a public hearing on the application within a reasonable timeframe not to exceed 45 days. The municipal officers shall provide written notice of the public hearing to the applicant within seven days of receipt by municipal officers of a completed application.

E. At the public hearing on the application, the municipal officers shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a license.

F. The municipal officers shall issue to the applicant written notice of its decision to grant or deny the license. If the municipal officers deny the license, the written notice shall set forth their reasons for the denial. The municipal officers shall grant a 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:

1. An applicant is less than 21 years of age.
2. An applicant has failed to provide information required by this ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
3. The establishment is in a location where a cultivation or manufacturing facility is not permitted.
4. The number of establishments for the specific category has already been met.

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5. Any establishment in which an applicant has had an ownership interest, that has in the previous five years and at a time during which the applicant had the ownership interest:

a. Been declared by a court of law to be a nuisance; or been subject to an order of closure.

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

6. A licensee or member, manager, director, officer of a licensee who has had a license for an adult use marijuana establishment revoked by a town or by the state.

7. An applicant who has not acquired all necessary state approvals and licenses and other required approvals prior to the issuance of a license.

G. The town may suspend or revoke a license for any violation of this ordinance or any other applicable building and life safety code requirements.

H. The town may suspend or revoke a license if the licensee has a state license for any adult use and/or medical marijuana establishment suspended or revoked by the state.

I. The licensee shall be entitled to notice and a hearing prior to any suspension or revocation.

J. The license, if granted, shall state on its face the name of the person, persons or entity 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.

K. Every licensee shall submit emergency contact information to the municipal officers who will share it with other appropriate officials and agencies.

L. A 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. The renewal application must be received by the municipal officers 30 days prior to the expiration date the current license. As part of the renewal process, the municipal officers 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.

M. Licenses issued under this ordinance are nontransferable to different licensees.

RIGHT OF ACCESS/BACKGROUND CHECKS/INSPECTION

Every cultivation or manufacturing facility shall allow municipal officers, fire chief or his appointed inspector, State Fire Marshall official, code enforcement, and law enforcement officers to enter the premises at reasonable times for the purpose of checking compliance with all applicable state laws and this ordinance.

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INDEMNIFICATION

A. By accepting a license issued pursuant to this ordinance, the 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 licensees, operators, employees, clients, or customers for a violation of State or federal laws, rules, or regulations.

B. By accepting a license issued pursuant to this ordinance, the 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 licensed cultivation or manufacturing facility.

STATE LAW

A. In the event the State of Maine adopts any additional or stricter law or regulation governing adult use marijuana, the additional or stricter regulation shall control the establishment or operation of any cultivation facility or manufacturing facility in Mercer.

B. Compliance with 28-B M.R.S. §101 et seq. and any other applicable state laws or regulations shall be deemed an additional requirement for issuance or denial of any license under this ordinance, and noncompliance with 28-B M.R.S. §101 et seq. and any other applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

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.

2. Each day of violation constitutes a separate offense.

3. Operating any cultivation or manufacturing facility without a town 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. Upon such notification, the Town can pursue fines and/or penalties under 30-A M.R.S. §4452 and report it to the proper authorities.

B. Code Enforcement Officer (CEO)

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1. If the CEO finds that any provision of this Ordinance is being violated, the CEO 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 municipal officers shall keep a complete record of all essential transactions, including applications submitted, licenses granted or denied, revocation actions, revocation of licenses, appeals, court actions, violations investigated, violations found and fees collected.

C. Law Enforcement Officers. Law enforcement officers may at any reasonable time conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to license approvals, and shall investigate all complaints of alleged violations of the ordinance.

D. 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 cultivation or manufacturing facility, 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, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.

E. Penalties/Fines

1. Any person, including but not limited to a manufacturing or cultivation facility 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 fails to comply with any of its requirements, shall be penalized in accordance with 30-A M.R.S. §4452.

2. There shall be a fine of up to \$500 per day for each day that the violation continues.

AMENDMENTS

This ordinance may be amended at any time after a public hearing and a majority vote at a Town Meeting on the proposed amendment.