

# Town of Cherryfield Marijuana Establishments Ordinance

## Article I: Title

This ordinance shall be known and cited as the Town of Cherryfield Marijuana Ordinance and will be referred to hereinafter as this ordinance. This Ordinance limits all Adult Use, and Medical Marijuana Establishments to the zoning rules and regulations contained herein and to the districts specified.

## Article II: Purpose

The purposes of this Ordinance are to implement a system for the regulation of Establishments for the sale, cultivation, manufacturing, and testing for both Adult Use and Medical Marijuana, which is a complex function with significant administrative demands on the Town of Cherryfield; to ensure that possession and use of Adult Use and Medical Marijuana is limited to persons who are 21 years of age or older, except in the case of minors in possession of a Medical Marijuana Patient Card; provide for the safe and fair production, testing, processing, or selling of Adult Use and Medical Marijuana for the health, safety and welfare of the community, which includes complying with provisions of all applicable laws and ordinances relating to Adult Use and Medical Marijuana throughout the Town of Cherryfield.

## Article III: Authority

This Ordinance is enacted pursuant to Article VIII, Part 2, § 1 of the Maine Constitution, 30-A M.R.S. § 3001, 30-A M.R.S. §§ 4312 et seq., 28-B M.R.S. § 402, and 22 MRS § 2429-D.

## Article IV: Definitions

Unless otherwise provided herein, the terms used in this Ordinance that are not otherwise defined in this Article shall have the same definition as contained in 22 M.R.S. § 2422, pertaining to medical marijuana, and 28-B M.R.S. § 102, pertaining to adult use marijuana, as the same may be amended, regardless of whether the terms used herein are capitalized or singular or plural. All other terms shall have their customary meanings.

**Appeal:** apply to a higher court for the reversal of the decision of a lower court.

**Applicant:** person that submits an application for a license under this Ordinance.

**Adult Use Marijuana:** means marijuana cultivated, manufactured, distributed, or sold by a marijuana establishment for non-medical purposes.

**Authority:** Board of Selectpersons.

**Board of Selectpersons:** Board of elected officials as chief administrative authority of the Town.

**Caregiver:** a person who can pick up medical marijuana at a dispensary on a patient's behalf.

**Conditional License:** a license issued by the State that authorizes a licensee to seek local authorization. The conditional license does not authorize possession, transfer, cultivation, testing, manufacturing, or sale of marijuana or marijuana products.

**Cultivation (Cultivate):** means the planting, propagation, growing, harvesting, drying, curing, grading, trimming, or other processing of marijuana for use or sale. “Cultivation” or “cultivate” does not include manufacturing, testing or marijuana extraction.

**Cultivation Facility:** means 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 products manufacturing facilities; to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seed to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores. A cultivation facility includes a nursery cultivation facility. Licensees that cultivate marijuana in a nursery cultivation facility may sell an unlimited number of marijuana seeds and a sum total of 12 seedlings and immature plants to a consumer 21 years of age or older.

**Delivery:** means an authorized transport made to a licensed marijuana establishment.

**Dispensary:** local Government regulated physical locations typically inside a retail storefront in which a person can purchase cannabis or cannabis related items for medical or recreational use.

**Edible Marijuana Product:** means a marijuana product intended to be consumed orally, including, but not limited to, any type of food, drink or pill containing marijuana or marijuana concentrate.

**Exempt:** free from an obligation imposed on others.

**Hearing:** an official meeting where members of the public hear facts about a planned proposal for Town business and are allowed to voice their opinion.

**Immature Marijuana Plant:** means a marijuana plant that is not a mature plant or seedling.

**Indemnification:** Security against legal liability for one’s actions.

**Manufacturing/manufacture:** the production, blending, infusing, compounding or other preparation of marijuana 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.

**Marijuana:** Means leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. Includes marijuana concentrate but does not include industrial hemp.

**Marijuana Plant:** means all species of the plant genus cannabis, including, but not limited to, a mother plant, a mature marijuana plant, and immature marijuana plant or a seedling.

**Medical Marijuana:** marijuana as recommended by a doctor in the treatment of a medical condition.

**Merit-Based Criteria:** the process of qualification based on ability and experience to perform a job or duty, rather than political.

**Odor Nuisance Control:** disbursement and unreasonable interference of odors contained with deodorizers etc.

**Planning Board:** a body of citizens appointed to administer a plan for growth and development of the Town.

**Person:** a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. “Person” does not include any government organization.

**Resident:** means a natural person, who is domicile in this State and maintains a permanent place of abode in this State, and spends in the aggregate more than 183 days of the taxable year in this State.

**Retail Marijuana:** cannabis that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

**Retail Marijuana Establishment:** retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

**Retail Marijuana Product:** concentrate retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

**Retail Store:** an entity licensed to purchase retail marijuana from a cultivation facility and to purchase retail marijuana products from a manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

**Testing Facility:** a facility licensed to develop, research and test marijuana, marijuana products and other substances.

**Ventilation:** the provision of fresh air to a room, as circulation of air through a closed space.

## **Article V: Applicability; License Required**

1. Notwithstanding the provisions of 1 M.R.S § 302, this Ordinance is applicable, as of its effective date, and to the maximum extent permitted by law and subject to the severability clause below, to all proceedings, applications, and petitions that have been submitted and not finally acted on for all Marijuana Establishments. This Ordinance shall also apply to all Marijuana Establishments proposed, operated, modified, or constructed after the enactment of these provisions. Any proposal to establish a new or alter an existing Marijuana Establishment shall require approval by the permitting authority, even if the permitting authority was not required to grant the original local approval. Marijuana Establishments in operation with municipal approval prior to the effective date of this Ordinance shall obtain a permit within one year of the effective date of this Ordinance, except that said establishments shall be allowed to continue in their present locations notwithstanding noncompliance with any provisions of this Ordinance concerning setbacks from property lines or the schedule of uses of the Land Use Ordinance.
2. No person may establish, operate, or maintain as Adult Use or Medical Marijuana Establishment without first obtaining a license from the Town Clerk and all necessary state approvals, if applicable.
3. All Medical Caregiver facilities will obtain a confidential license with the Town Clerk.
4. All Adult Use and Medical Marijuana Stores must be operated from permanent locations, which may utilize telephone orders.
5. Pursuant to 28-B M.R.S. § 504(2)(C), Adult Use and Medical Marijuana Stores may not use vending machines, a drive-through window, an internet-based sales platform, or a delivery service for sales of Adult Use Marijuana, Adult Use Marijuana Products, or marijuana plants; provided, however, that Registered Caregivers may provide home delivery services pursuant to 22 M.R.S. § 2423-A(2).
6. All licenses shall expire one year from the date of issuance and must be renewed annually.

7. Application for renewal of licenses shall be made no later than 90 days prior to the expiration of the existing license. The renewal license shall be issued in the same manner as for the original application under this Ordinance.
8. The following is exempt from licensing but must comply with all other local and state laws: A person who cultivates marijuana exclusively for personal use pursuant to 28-B M.R.S. §§ 1501-1504.
9. Licenses shall not be transferable.
  - A. Licenses issued under this article are not transferable to a new owner.
  - B. A state transfer license shall require a new local marijuana license.
  - C. Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A licensee who seeks to operate in a new location shall acquire a new local license for that location.
10. If there is any change to the name, status, or ownership of a corporate entity holding the license under this Ordinance, the licensee shall promptly notify the Town and provide all pertinent documentation related to the change in entity. The Town shall evaluate the new information using the same process and standards applicable to new license application. For the purposes of this paragraph, a change in ownership is defined as a change to the person(s) or company(ies) holding at least 50% ownership of the licensed business.

## **Article VI: Permitted Marijuana Establishments**

Upon passage or amendment of this Ordinance, the Town of Cherryfield shall have “opted in” to allow the following Marijuana Establishments, subject to the limitations below and the terms of this Ordinance:

1. Marijuana Adult Use Retail Store: Limit 1 (one) Facility
2. Marijuana Adult Use Products Manufacturing Facility: No limit
3. Marijuana Adult Use Testing Facility: No limit
4. Marijuana Adult Use Cultivation Facility: No limit
5. Marijuana Medical Dispensary: Limit 1 (one) Facility
6. Marijuana Medical Manufacturing Facility: No limit
7. Marijuana Medical Testing Facility: No limit

## **Article VII: Application Procedure & Fees**

### 1. Initial Open Period

Following the adoption of this Ordinance, the Authority shall set an initial application period of at least 60 days and not more than 90 days for applications to be submitted before reviewing or issuing any license under this Ordinance. After the initial open period, all applications for available licenses will be reviewed by the Authority as they are received.

### 2. Review The Selection;

The applications reviewed under this article may be awarded by the Authority according to the Merit Based Criteria contained herein. Applications received within the initial open period that meet license and applications requirements will be ranked using Merit Based Criteria. If there are more than two applicants, the top two highest scoring applicants will be considered first. In the event of a tie for any individual license after calculating the Merit Based Criteria then a lottery drawing will determine which applicants will be considered first.

### 3. Merit Based Criteria Process;

The Merit Based Points System is applied to select the best qualified candidates for the limited number of licenses made available under this Ordinance. The points system was carefully selected to ensure the Town of Cherryfield, its residents, and the surrounding communities will best benefit from the applicants selected for License consideration by the Authority. The Authority shall make the determination of points awarded according to the following Merit Based Criteria.

- A. Marijuana Education (Proof of any State-approved classes) = 1/2 Point Per Class
- B. Display of Previous Business Experience = 2 Points
  - a. Add 1 Point if the Business experience is relevant to license being acquired.
- C. Proof of Financial or Business Statement = 2 Points
- D. No outstanding Liens or Taxes Due to Town of Cherryfield = 1 Point

### 4. Application;

#### A. The application shall include:

- 1) The name, mailing address, and phone number of the applicant;
  - 2) The name, mailing address and phone number of the property owners of the property to be used, if other than the applicant;
  - 3) A notarized signed statement from the property owner stating that the applicant is entitled to possession of the property in which the Marijuana Establishment is to operate and has permission to utilize the premises for a Marijuana Establishment.
- B. The applicant shall submit 4 copies of the application and all other related and required information to the Town Clerk. Upon receipt, the Town Clerk will forward copies of the application to the Board of Selectpersons, Code Enforcement Officer,

and Planning Board for review and comment.

5. Application and License Fees;

All applications must be submitted with the appropriate application fees and if approved, the licenses and fees must be paid to the Town before a license will be issued.

(See Current Fee and License Schedule from Town Clerk)

6. Disbursement of Fees and License Money;

All fees collected from fees under this Ordinance shall be deposited into the Town of Cherryfield General Fund.

**Article VIII: Hearing and Awarding of License**

1. Notice and Hearing;

The Authority shall hold a public hearing to review applications selected in advance from the Merit Based Criteria process. Notice of this hearing shall be posted at the locations customarily used for the posting of warrants. Notice shall also appear in the local weekly newspaper at least two (2) weeks prior to the hearing. Notice shall also be provided to all abutting properties via first-class mail to the address currently on file with the Town's Tax Assessor. All cost associated with the notices shall be paid by the applicant to the Town before the hearing.

2. Awarding of License;

After the public hearing, the Authority may award a local license conditioned on site plan review and approval according to the standards contained in this Ordinance and any other applicable ordinances in effect at the time by the Town of Cherryfield Planning Board. Complete application for Planning Board Review under Article IX shall be made within ninety (90) days of local licensing approval. The Authority may revoke the local license if complete application to the Planning Board is not made within the time allotted.

3. Appeals;

A. Any appeal of a decision of the Board of Selectpersons shall be to the Superior Court in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

B. Any appeal of a decision of the Planning Board under the provisions of this Ordinance shall be made to the Board of Appeals. The Board of Appeals shall conduct a de novo hearing in which it will hear evidence on the application and make its own findings of fact and conclusions of law on the issue of whether the application meets the requirements of this Ordinance. Any appeal of a decision of the Board of Appeals shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

## Article IX: Standards for Permit/License

1. General;
  - A. No licenses for any type of Marijuana Facility shall be granted in the Historical District.
  - B. The Planning Board for the Town of Cherryfield shall be the review authority under Article IX of this Ordinance. A Marijuana Establishment that is awarded a license under Article VIII shall not operate until it is reviewed by and receives site plan approval from the Planning Board upon a showing that it will meet the standards contained in this Article. The Planning Board may conduct this review in conjunction with any other required reviews.
2. Setbacks;
  - A. Adult Use and Medical Marijuana Establishments shall not be operated on property located within:
    - 1) One thousand (1000) feet of the property line of a preexisting public or private school pursuant to 28-B M.R.S. § 402(2)(A); and/or
    - 2) One thousand (1000) feet of the property line of a property used primarily for religious worship and related religious activities; property used for preexisting licensed daycare use under 10-148 C.M.R. ch. 32; or recreational areas designated for use by children up to eighteen (18) years in age; and/or
    - 3) Four hundred (400) feet of the property line of areas designated as municipal “safe zones” pursuant to 30-A M.R.S § 3253.
  - B. Required setbacks (B)above shall be measured as the most direct, level, shortest, straight line distance between property lines of property containing a building or structure used as the premises where and Adult-Use or Medical Marijuana establishment is conducted, to the nearest property line of the premises of a use listed above.
3. In addition to the security measures required by 18-691 C.M.R. ch. 1, § 3.3.1, security measures at all Adult Use and Medical Marijuana Establishments premises shall include, at a minimum, the following:
  - A. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with at least forty-five (45) day video storage, 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; and

- B. Door and window combination video and motion detector intrusion system with an audible alarm, maintained in good working condition; and
- C. A locking safe affixed to the premises that is suitable for storage of all marijuana, marijuana products and cash stored overnight on the licensed premises; and
- D. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk till dawn, that is either constantly on or activated by motion detectors; and
- E. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks; and
- F. For adult use facilities: methods to ensure that no person under the age of twenty-one (21) shall have access to marijuana and marijuana products.

4. Ventilation;

All Adult Use and Medical Marijuana businesses are required to provide adequate ventilation and Odor Nuisance Control. For all Marijuana Establishments, the odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining property line. 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.

5. Refuse/Product Waste Disposal:

- A. Marijuana product waste must be made unusable and unrecognizable prior to leaving the premises.
- B. Solid, liquid, and hazardous wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable federal, state, and local laws and regulations.

6. Required Notices;

There shall be posted in a conspicuous location inside each Adult Use and Medical Marijuana Establishment, at least one legible sign containing the following information:

- A. Adult Use: “Adult use of or on-site consumption of marijuana is illegal; open and public consumption of marijuana in the State of Maine is illegal; the use of marijuana or marijuana products may impair a person’s ability to drive a car or operate machinery; no one under the age of twenty- one (21) allowed; loitering prohibited.”
- B. Medical Use: “Use of or on-site consumption of marijuana is illegal; open and public



consumption of marijuana in the State of Maine is illegal; the use of marijuana or marijuana products may impair a person's ability to drive a car or operate machinery; no one under the age of twenty-one (21) allowed, except a minor with a medical marijuana card between the ages of eighteen (18) and twenty-one (21), or a minor under eighteen (18) years of age accompanied by a legal guardian; loitering prohibited.

7. Indemnification;

- A. By accepting a license or permit issued pursuant to this Ordinance, the licensee/permittee 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 Marijuana Establishment owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.
- B. By accepting a licensed issued pursuant to this Ordinance, the licensee agrees to indemnify, defend, and hold harmless the Town of Cherryfield, 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 Adult Use or Medical Marijuana Establishment.

8. State Law;

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacturing, distribution, or testing of Adult Use or Medical Marijuana or marijuana products, the additional or stricter regulation shall control the establishment or operation of any Adult Use or Medical Marijuana Establishment, Cultivation Facility, Manufacturing Facility, or Testing Facility in Cherryfield. Compliance with State laws or regulations shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with any other applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

**Article X: Enforcement; Penalties**

1. Violations;

The primary enforcement person for the Town shall be the Code Enforcement Officer. The CEO may, at any reasonable time, enter upon any structure or premises used by a licensee for an authorized Marijuana Establishment to ascertain how business is conducted and to examine all articles and inventory to determine compliance with this Ordinance. 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, structures, or work being done, removal of illegal buildings or structures, and abatement or mitigation of violations. A copy of such notices shall be maintained as a permanent record.

2. Law Enforcement Officers;

Law enforcement officers may at any reasonable time conduct on-site inspections of adult-use establishments to ensure compliance with all applicable laws.

3. Penalties;

Whoever violates any of the provisions of this Ordinance shall be punished by a fine of not more than \$500.00 for the first offense, for each day the violation continues after receipt of written notice of the violation, and up to \$1000.00 for each subsequent offense, for each day the violation continues after receipt of written notice of the violation, to be recovered on complaint, to the use of the Town of Cherryfield.

**Article XI: Conflict with Other Ordinances; Severability**

1. Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or any other ordinance, regulation, or standard, the more restrictive provision shall apply.
2. 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.

**Article XII: Confidentiality**

To the extent required by 22 M.R.S. § 2425-A, all applications submitted by Registered Caregivers under this Ordinance shall be confidential and only provided to the Town of Cherryfield Staff for the performance of their duties.

**Article XIII: Effective Date**

The effective date of this Ordinance shall be the date of adoption by majority vote at a duly-called town meeting or secret ballot referendum.