

**TOWN OF SEARSPORT
MARIJUANA ESTABLISHMENT ORDINANCE**

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Marijuana Ordinance

Article I Title:

This ordinance shall be known and cited as the "Town of Searsport 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 and Authority:

WHEREAS, implementing a system for the regulation of Establishments for the cultivation, and testing for both Adult Use and Medical Marijuana, is a complex function with significant administrative demands on the Town of Searsport; and

WHEREAS, 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; and

WHEREAS, the Town of Searsport believes that any production, or testing, of Adult Use and 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 applicable laws and ordinances relating to Adult Use and Medical Marijuana throughout the Town of Searsport; and

NOW THEREFORE, this Ordinance is adopted pursuant to the Marijuana Legalization Act, Title 28-8 M.R.S. c. 1; Maine's Medical Marijuana laws and regulations; 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.

Article III Definitions:

The terms in this ordinance shall have the same definition as that contained in state statutes regulating medical and adult use marijuana, unless otherwise defined below.

Marijuana Establishment -A Marijuana Cultivation Facility, Marijuana Testing Facility or Caregiver Retail Store.

Marijuana Cultivation Facility - A facility used to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana to products manufacturing facilities, stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

Marijuana Testing Facility- Marijuana Testing Facility, A public or private laboratory that is authorized and accredited in accordance with state law for the research and analysis

of marijuana, marijuana products or other substances for contaminants. safety or potency.

Article IV Allowance of Marijuana Establishments; Permit/License Required:

Marijuana Cultivation Facilities and Marijuana Testing Facilities shall be allowed in the Town of Searsport subject to the zoning and licensing requirements set forth in this Ordinance and all other approval requirements set forth in the Town of Searsport Land Use Ordinance.

A Caregiver Retail Store may continue to operate in the Town of Searsport if it was lawfully existing as of the date of enactment of this Ordinance, subject to the licensing requirements set forth in this Ordinance. No new Caregiver Retail Stores shall be permitted in the Town of Searsport.

Article V Applicability

- A. No person may establish, operate or maintain a Marijuana Establishment without first obtaining a license from the Town's Board of Selectmen.

- B. Limitations on License Issuance
 - a. One (1)- Marijuana Testing Facility may be licensed for location in the General Industrial (I) zoning district.

 - b. One (1)- Marijuana Cultivation Facility may be licensed for location in the Rural Agricultural Residential (RAR) zoning district.

 - c. One (1) Marijuana Testing Facility and One (1) Marijuana Cultivation Facility may be licensed for location in the Mixed Residential (MR) zoning district.
 - i. Five hundred (500) feet of the property line of a public or preexisting private school (K-12) per 28-A M.R.S. §402.2.A and 20A M.R.S. § 1; or
 - ii. Five hundred (500) feet of the property line of a property used primarily for any of the following:
 - a. Religious worship and related religious activities; ii. A daycare licensed under 10-148 CMR c. 32;
 - b. Recreational areas designated for use by children up to eighteen (18) years in age; or
 - c. Areas designated as a municipal "safe zones" pursuant to 30-A M.R.S.A. § 3253.

Article VI Application Procedure:

A. All applications for licenses must be made on the form provided by the Town in order to determine whether the applicant meets the requirements of this Ordinance and shall be accompanied by a one-time, non-refundable \$500 application fee. Prior to application to the town, the applicant must first obtain conditional approval from the appropriate State agency.

B. Application and Annual License Fees

All applications must be submitted with the appropriate application fees and, if approved, the following annual license fees must be paid before the Town will issue a license:

1. Marijuana Testing Facility: License Fee: \$1,500
2. Caregiver Retail Store: License Fee: \$ 1,500
3. Adult Use Marijuana Cultivation:

Tier 1: Up to thirty (30) mature plants (and an unlimited number of immature plants and seedlings) or up to 500 SF of plant canopy:
License Fee: \$1,000

Tier 2: 501-2,000 SF of mature plant canopy: License Fee: \$1,500

Tier 3: 2,001-7,000 SF of mature plant canopy: License Fee: \$2,500

Tier 4: 7,001-20,000 SF of mature plant canopy: License Fee: \$5,000

Renewal applicants for Marijuana Cultivation Facility licenses may seek an increase to a higher tier if they comply with the requirements in this section.

Every two (2) years, Tier 4 renewal applicants that are already at 20,000 SF may seek a 7,000 SF plant canopy increase if in compliance with applicable state law. Each 2-year increase will require a \$2,000 license fee increase.

Applicants for Marijuana Cultivation Facility license may not hold more than three (3) such licenses or a total combined plant canopy in excess of 30,000 SF within the Town of Searsport.

C. All licenses for Marijuana Establishments shall expire on the date of expiration of the relevant state license or one year from the date of issuance, whichever is lesser.

D. Application Submission Requirements.

Each applicant for a Marijuana Establishment license shall complete and file an application on the form provided by the Town Clerk, together with the applicable license fee. If multiple types of Marijuana Establishments are to be conducted on a single premises, the applicant shall pay the application fee for each type of business. The following supporting materials shall also be provided with the application:

1. A copy of the Applicant's State License application and supporting documentation, as submitted to the State Licensing Authority, if a State License is required.
2. Evidence of all State approvals or conditional approvals required to operate the Marijuana Business, including, but not limited to, a state license, caregiver registration, a state retail certificate, or a state health license.
3. If not included in the Applicant's state license application, attested copies of any articles of incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern the entity that will own and/or operate the Marijuana Establishment.
4. If not included in the Applicant's State License application, an affidavit that identifies all owners, officers, members, managers or partners of the Applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three (3) years. Supporting documents, including but not limited to motor vehicle operator's license, motor vehicle registration, voter registration or utility bills shall be provided.
5. A release for each Applicant and for each officer, owner, member, manager or partner of the Applicant seeking a license allowing the Town of Searsport or its officials to obtain criminal records and other background information related to the individual.
6. Evidence of all land use approvals or conditional land use approvals required to operate the Marijuana Business, including, but not limited to building permit, conditional use approval, site plan review approval, and/or a change of use permit. For Caregiver Retail Stores, evidence of submission of a site plan review application is sufficient, but any license issued shall be conditioned upon site plan approval.
7. Evidence of all other local approvals or conditional approvals required to operate the Marijuana Business, including any applicable food or victualer's license.
8. A description of the premises for which the license is sought, including a plan of the premises.

If the Town Clerk determines that a submitted application is not complete, he or she shall notify the applicant within ten (10) business days of the additional information required to process the application. If such additional information is not submitted within thirty (30) days of the Clerk's request, the application may be denied.

E. Licensing Authority

Marijuana Establishment licenses are issued by the Searsport Board of Selectmen.

F. License Issuance

1. Starting on the effective date, applicants for Marijuana Establishment licenses may submit applications to the Town Clerk.

2. Applications will be processed upon receipt to determine whether the application is complete and whether the requirements of this Ordinance are met. If additional documents or information are needed, the Clerk will contact the applicant to inform him or her of the deficiency. If the application does not meet the requirements of this Ordinance, it shall be denied.
 3. Initial licenses will be awarded on the 30th day following enactment of this Ordinance. If more than one compliant application has been received for the particular type of Marijuana Establishment in the particular zone, the license shall be chosen by random lottery.
 4. If an Applicant elects not to accept a license that is awarded to it by lottery, the Board of Selectmen shall hold another lottery to choose from the remaining applications.
 5. Applications that are not awarded a license during the lottery for that business type, or that are submitted following the lottery, will be kept on hold. If a license for the requested business type becomes available, the Board of Selectmen shall award the license using the process outlined above within thirty (30) to sixty (60) days. The Clerk shall notify each Applicant at the address shown on the application that of the meeting at which the applications will be considered, and that the Applicant must submit any updated application materials prior to the meeting in order for the application to be considered.
- G. In the event of the proposed sale of a Marijuana Establishment, the tentative purchaser may apply for a new license to replace the seller's license within thirty (30) days following the date of the sale, but shall not operate the establishment until a license is obtained. If a purchaser does not apply for a new license within said thirty (30) day period, the license will be considered forfeited. This preference shall not apply if any use other than for the licensed Marijuana Establishment has been made of the Licensed Premises prior to or within the thirty (30) days following the sale.
- H. A Marijuana Establishment license shall be forfeited if the Licensee:
1. Fails to apply for a new license within thirty (30) days of expiration of an existing license;
 2. Makes any other active use of the Licensed Premises other than for the licensed Marijuana Establishment; or
 3. Does not make an active use of the licensed Marijuana Establishment for a period exceeding six (6) consecutive months, except that the [Licensing Authority] may, upon written request from the Licensee, allow for a suspension of use of up to one year if the suspension in use is caused by damage to the Licensed Premises, renovation, repair, active attempts to sell the Licensed Premises, or other bona fide circumstances out of the Licensee's control.

Article VII standards for Permit/License;

- a. Marijuana Establishment may not be located within:
 - i. Five hundred (500) feet of the property line of a public or preexisting private school (K-12) per 28-A M.R.S. §402.2.A and 20A M.R.S. § 1; or
 - ii. Five hundred (500) feet of the property line of a property used primarily for any of the following:
 - a. Religious worship and related religious activities; ii. A daycare licensed under 10-148 CMR c. 32;
 - b. Recreational areas designated for use by children up to eighteen (18) years in age; orAreas designated as a municipal "safe zones" pursuant to 30-A **M.R.S.** 3253
- b. Required Setbacks under a. & b. above shall be measured as the most direct, level, shortest, straight-line distance between property lines of a property containing a building or structure used as the premises where a Marijuana Establishment is conducted, to the nearest property line of the premises of a use listed in subsection A (5) shown above.
- c. Security measures at all Marijuana Establishment premises shall include, at a minimum, the following:
 1. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with ten (10) 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;
 2. Door and window combination video and motion detector intrusion system with audible alarm, maintained in good working condition;
 3. 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;
 4. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and complies with applicable provisions of the lighting performance standards in the Town of Searsport Land Use Ordinance;
 5. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks; and
 6. 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.

d. Ventilation

All Marijuana Establishments shall comply with any odor nuisance control standard in the Town's Land Use Ordinance. Marijuana cultivation facilities shall have odor mitigation systems sufficient to ensure against the odor of marijuana being detectable at any property line.

e. Operating Plan

Marijuana Cultivation and Testing Facilities shall submit and comply with an operation plan that at minimum addresses the following:

1. Wastewater disposal
2. Disposal of solid waste

f. 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:

1. Adult Use: *"On-site consumption or use 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"*
2. Medical Use: *"On site consumption or use 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"*.

g. Signs

All signs used by and all marketing and advertising conducted by or on behalf of the Marijuana Establishment 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.

All signage shall meet the requirements for signs under the Town of Searsport Land Use Ordinance.

h. Right of Access/Background Check/Inspection

- a. Every Adult Use and Medical Marijuana Establishment shall allow code enforcement officers to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and municipal ordinances, including this Ordinance.

- b. Due to fire, explosion, and other hazards inherent in Marijuana Cultivation and Testing 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 annually by the Searsport Fire Department.
- c. Marijuana Cultivation and Testing Facilities must comply with NFPA-1 Chapter 38 standards for *Marijuana Growing, Processing, or Extraction Facilities*, and these standards will be utilized by the Searsport Fire Department during its inspections of these premises.

i. 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 Marijuana Establishment owners, operators, employees, clients, or customers for a violation of local, 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 Marijuana Establishment.

j. 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 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 Searsport.

Compliance with all State laws and regulations pertaining to marijuana, and any other applicable State laws or regulations shall be deemed an additional requirement for issuance and maintenance of any license under this Ordinance, and noncompliance with any applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

VIII Enforcement

A. Violations

1. Any person including, but not limited to an Adult Use or Medical Marijuana business owner, owner of a property owner where such business is located, or any agent or contractor for the same, who orders or conducts any activity in violation of this ordinance shall be subject to a minimum civil penalty of \$100 and a maximum civil penalty of \$500. Each day a violation continues shall constitute a separate offense.
2. In addition to the civil penalty, the Town is entitled to injunctiverelief.
3. In any successful prosecution the Town shall be rewarded its reasonable attorney fees and costs of prosecution.
4. The Town is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.
5. Actions for the violation of this Ordinance may be initiated by the Code Enforcement Officer or Town Attorney.

B. Code Enforcement Officer (CEO)

1. The primary enforcement person for the town shall be the Code Enforcement Officer. 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 maintained as a permanent record.

C. 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 and conditions attached to license approvals and shall investigate all complaints of alleged violations of the Ordinance.

Article IX 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.

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.

This ordinance was submitted to the voters of Searsport and adopted at a regular Town Meeting held on the 7th day of March 2020.

This is a true and attested copy by: 
Deborah Plourde, Town Clerk