

## CHAPTER 135

### MARIJUANA CULTIVATION AND DISTRIBUTION

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#### § 135-1. Title.

This chapter shall be known as the "Marijuana Cultivation and Distribution Ordinance".

#### § 135-2. Findings; Purpose.

The State of Maine has recently enacted laws allowing greater cultivation, handling, storing, packaging, processing and distribution of marijuana plants and products. In addition, the citizens of the State in a recent referendum have voted to allow for and decriminalize personal or so called recreational use of marijuana. Additional State laws and regulations are anticipated regarding recreational marijuana. These are not policy decisions of the City, but the City has become aware of certain adverse effects from these recent legislative undertakings, and it proposes to address potential issues that have arisen.

Specifically, the City has learned through its Code Enforcement Office, through its Electrical Inspector, as well as through other public officials including its police and fire departments, that individuals are rapidly installing throughout the City cultivation facilities without City knowledge, without proper City inspection and review and in some cases in areas not zoned for such use. Of particular concern is the installation of energy intensive lighting that can pose significant risk of injury, death and of fires within residential structures. The City Council has received information regarding structure fires in other communities caused by heat intensive lighting used for cultivation and growing equipment.

The Council is also aware that not all states have decriminalized marijuana, and this community's easy highway access and close proximity to the border, may make Saco an attractive location for those who intend to traffic marijuana as part of a criminal enterprise.

It is evident that businesses and citizens desire to commercialize and otherwise avail themselves of opportunities presented by these new laws. However, doing so in an unregulated, and in some cases surreptitious fashion, poses substantial risk of criminal activity, physical harm, even death. These conditions have created an emergency for the community.

This emergency ordinance, enacted pursuant to City Charter Provision 2.10, seeks to assure the safety of Saco citizens while allowing properly reviewed and regulated use as permitted under

State Law. It is enacted pursuant to Home Rule Authority under both Maine's Constitution and 30-A MRS Section 3001, et seq.

**§ 135-3. License Required.**

- A. All persons and parties who grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana, or any marijuana product, or material or medication derived thereon ("marijuana products"), from or within the City of Saco, must register with the City and must secure and maintain a valid license at all times. A license is not required for personal use of any marijuana within one's own premises provided there is no associated growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products
- B. All businesses, commercial enterprises, as well as any not for profit entity, that grows, cultivates, harvests, manages, processes, transfers, exchanges or distributes marijuana, or any marijuana products, from or within the City of Saco, must register with the City of Saco and must secure and maintain a valid license at all times.
- C. To register means to complete and submit to the City Clerk of Saco the forms created by that office, and to pay the fees set forth herein. No registration shall be approved, and no license granted, until the required fees have been paid, and all applicable reviews and inspections have been completed.
- D. Once all applicable reviews have been fully and properly completed, and the applicant has been found qualified, the Clerk shall thereupon issue a license to the Applicant.
- E. All licenses shall run for one year (365 Days), and may be renewed as set forth herein. No license shall be issued, denied, or revoked by the City Clerk except as expressly provided in this Ordinance.
- F. In the absence of the City Clerk, the City Administrator will assume all authority and responsibility of the Clerk as designated herein.

**§ 135-4. Permitted locations.**

- A. A resident of a single family structure who holds a license may grow, cultivate and harvest marijuana for their own personal use, and for the personal use of a resident family member, regardless of the Zone the structure is located.
- B. The limit as to the number of permitted marijuana plants and ounces of harvested marijuana for each person in single family structure shall be set by State Law.
- C. In no event may any person owning or residing in a single family structure increase their home electrical service beyond 200 amps.
- D. In no event may a person renting, owning or occupying a single family structure grow, cultivate, distribute, harvest, manage, process, transfer, exchange, or distribute any amount of marijuana or marijuana products for a third party, except for a resident family member living in the same structure as permitted in Subsection A above.
- E. All parties who grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products for any other third party may do so provided they operate

from a structure or premises found within the City of Saco's I-1 Zone or I-2 Zone. No growing, cultivation, harvesting, managing, processing, transferring, exchanging or distribution of marijuana or marijuana products shall be allowed outside the boundaries of these two zones of the City. Such activity shall be a violation of this Ordinance.

- F. No other properties outside of the I-1 and I-2 Zones may be used or licensed for growing, cultivation, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products for any party's personal use except for personal use as permitted in subsection A above.
- G. No license issued by the City may be transferred, sold or assigned by the license holder to any other person or entity.

**§ 135-5. Violations.**

- A. No person or entity shall grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products without having registered with the Clerk and without having obtained a valid, in force and effect, license as required herein.
- B. Every license holder shall exhibit their license in a conspicuous place on the premises, visible to the public. The failure to display the issued license at all times is a violation of this Ordinance. Upon discovering that a person, party or entity has not displayed its license, the City shall deliver a written warning. The failure to display a license after written warning shall constitute a violation of this Ordinance.
- C. No person, party or entity may sell, transfer or assign their license. Any attempt to sell, transfer or assign will confer no rights, and will render the license immediately void. The sale, assignment or transfer of a license is a violation of this Ordinance.
- D. It is violation of this Ordinance to grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana, or any marijuana product, in any structure or zone not otherwise allowed as set out in Section 135-4 (A) and (E).
- E. It is a violation of this Ordinance for any third party, including but not limited to contractors, plumbers, carpenters, electricians, tradesmen to assist, aid, abet, promote or otherwise suffer any person, applicant or license holder to violate any provision of this Ordinance. It shall be a violation for any person, party or entity to provide assistance, advice, skills, work effort or cooperate, with the installation of facilities, equipment or materials, or otherwise provide service, education or support, that aids or advances the unlicensed growing, cultivation, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products.
- F. It is a violation of this Ordinance for any license holder to traffic, transport, mail, distribute, transfer, or otherwise assist in the trafficking, transporting, mailing, distribution or transfer of marijuana or marijuana products outside the boundaries of this State. It is a violation of this Ordinance for any agent, employee or officer of the license holder to do the same.

**§ 135-6. Applications.**

- A. All registrations for personal use shall be made in writing on a form provided by the Clerk. Each registration shall state the applicant's name, address, telephone number, and e-mail, and

such additional information as deemed necessary by the Clerk, including the map and lot number property where the license will be posted.

B. All registrations to grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products for any third parties shall be made in writing on forms provided by the Clerk. Each registration shall state the applicant's name, address, telephone number and email. In addition; applicant shall:

1. Identify its estimated yearly production of marijuana;
2. Whether it will ship or distribute any marijuana outside of the State of Maine;
3. Identify all individuals and entities to whom it will contract for delivery of marijuana and include the amounts expected to be delivered monthly and annually.
4. If a caregiver, the names of all patients, as well as a copy of all applicable State licenses.

C. All registrations submitted by an entity applicant shall contain the information set out above in Subsection A or B (as applicable) and shall also include the following:

1. Federal Tax ID #
2. Type and State of Organization
3. Names, addresses and date of birth of all principal officers, owners and managers
4. Whether the entity is for profit or non-profit entity, and confirmation thereof
5. Proof of Insurance upon the proposed premises in the name of the license holder
6. Name and address of Clerk or Registered Agent for Service of Process

D. If the applicant is seeking a license for family use, the applicant shall list separately the names and the address of each family member for which the license holder will grow, cultivate, harvest, manage or distribute such marijuana or marijuana products.

E. No employee, officer, or appointed or elected official of the City of Saco shall have any beneficial interest in an issued license, or license holder.

F. Copies of all registrations and materials shall, upon completion, be transmitted to the Code Enforcement Officer, Electrical Inspector, and the City of Saco Fire and Police Departments for the following purposes:

1. Review compliance: that the applicant license holder is permitted to operate in each and every location (map and lot number) where specified; and
2. To record such information into any existing Code Enforcement Officer management program ("Code Enforcement Pro") for use and review; and
3. To perform a Criminal Background Check including "NCIC" Review; and

4. Site inspection by Code Officer, Electrical Inspector and Fire Department at any and all applicable location(s) used for growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products; and
  5. To allow inspection of plan drawings detailing nature of site, location of utilities and how utilities such as electrical power will be used; and such other factors deemed necessary or advisable by City staff; and
  6. For a follow-up inspection between 30-60 days after issuance of license to inspect any facilities related to marijuana growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products.
  7. To determine if the applicant needs or has a duly issued State license for the state use/undertaking, and to determine that applicant is in compliance with all State of Maine requirements.
- G. The City of Saco will treat all licenses and registration materials collected, under all circumstances, as public records under Maine law.

**§ 135-7. Fees.**

- A. The fee for an initial application/registration for personal use shall be \$500.00. This fee is non-refundable in all circumstances.
- B. The fee to renew a license for personal use shall be \$250.00. This fee is non-refundable under all circumstances.
- C. The fee for an initial application/registration for any premises in the I-1 or I-2 Zones, where cultivation, growing, handling, storage, cultivation, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products shall be on a larger scale and for third parties, the initial registration fee is \$1,000.00 due to the significant time and effort involved in life-safety review by the Code Office, Electrical Inspector, Fire and Police Departments.
- D. The fee to renew a license for applicant/license holders in the I-1 and I-2 Zone is \$500.00.

**§ 135-8. Investigations.**

- A. Registration. The Clerk shall accept and maintain an applicant's registration forms and all supporting material. The Clerk shall submit all registration materials to City staff for review as set out in Section 135-6 (F). All findings and conclusions of City staff shall be reported to the Clerk within 30 days.
- B. Licenses. Upon receipt of an application for renewal of license, the Clerk shall inquire of City Officials, whether a license may be renewed in compliance with the provisions of this Ordinance. City staff shall have 30 days to complete their investigation.
- C. Only upon satisfaction of the Clerk, and after review by all appropriate departments, and only upon full compliance with all conditions set forth in this Ordinance, shall the Clerk issue a license.

- E. The Clerk shall complete his or her review promptly and grant or deny a license or license renewal subject to the additional terms found in Section 135-13.

**§ 135-9. Decision; Standards for Denial.**

- A. Notice. The Clerk shall issue all decisions in writing, and subject to the same time period set out in Section 135-13.

- B. Grounds. A license, and the renewal of a license may be denied, or revoked, upon a one or more of the following grounds:

1. Failure to fully complete the application forms; knowingly making a false or incorrect statement of a material nature on such form; failure to supply any requested information reasonably necessary to determine whether such license may be issued; or failure to pay any fee required hereunder;
2. The person or party applicant or license holder has caused a significant breach of the peace; has been convicted of more than one misdemeanor, or has been convicted of any felony;
3. There is a clear danger to the public if the license is issued, including significant risk of injury or fire;
4. The parties or persons patronizing the license holder will adversely affect the peace and quiet of the neighborhood, whether or not residential;
5. The person, party or entity has violated a provision of this Ordinance or other ordinance of the City of Saco, including its Zoning Ordinance;
6. The occurrence of any event subsequent to issuance of the license, which event would have been a basis for denial of the license, shall be grounds for revocation thereof;
7. Real or personal property taxes or legal judgments that are due and owing to the City and are determined to be in arrears as of the date of the license request or license renewal;
8. The licensee has received more than one public complaint filed with the Clerk; or
9. Such other acts or conduct found to be detrimental to the citizens or community, including but not limited to suffering a fire or significant injury arising from growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products after the issuance of a license;
10. A principal, officer or manager of the license holder is convicted of, or found to have a criminal conviction of any kind, or is known to associate with others convicted of criminal offenses.

- C. Hearings.

1. Except as expressly provided in this chapter, no license may be revoked without prior notice to the person, party or entity, and only after a hearing.
  2. In the case of the revocation of a license, a hearing shall be given to the individual or entity and a generalized statement of the nature of the complaint constituting the basis for the proposed action shall be included in the notice of hearing. Failure of the person, party or entity to appear at the hearing shall be deemed a waiver of the rights to said hearing.
  3. All revocations shall be upon substantial evidence, and all hearings shall be conducted with substantial fairness. Rules of evidence shall not apply in such hearing.
- D. Fairness. The Clerk shall not arbitrarily deny any registration or license renewal but must base their decision upon substantial and credible evidence of one or more of the grounds described above.
- E. Complaints. Any citizen or public official of the City can file and/or initiate a complaint against a license holder. Complaints will be kept and maintained by the City Clerk and may be considered when and if a licensee seeks a renewal of their license in any succeeding year.

**§ 135-10. Appeals.**

- A. Procedure. An appeal of the Clerk's decision to the City Council may be taken by any person aggrieved by the denial, or revocation of a license by filing a notice of appeal within thirty (30) days of the decision with the City Administrator. Every appeal should be in writing and shall state the basis for the appeal. The City Council shall hear the appeal within thirty (30) days after the filing of the appeal and may affirm, reverse or modify the decision appealed from.
- B. Scope of review. On appeal, the City Council shall review the decision of the Clerk and determine whether the decision was based upon substantial evidence and in compliance with the standards of the ordinance. The Council may take additional evidence with respect to such decision or action and, if additional testimony or evidence is taken, it shall determine the appeal upon all of the evidence.
- C. Status or operations pending municipal appeal. During the pendency of an appeal to the City Council, the person, business or entity aggrieved by the decision of the City Clerk may operate without risk of fine if they have an existing license and the Clerk has revoked or denied a renewal of the license. However, if the person, business or entity has been denied its initial license, then any operation prior to a decision by the City Council will be subject to the civil penalties set forth herein.
- D. Appeal to the Superior Court. Any person aggrieved by the decision of the City Council may appeal to the Superior Court in accordance with the provisions of Maine Rule of Civil Procedure 80B.

**§ 135-11. Notices of hearing.**

- A. Content. Whenever a hearing is required, the Clerk shall give written notice of the time and place of the hearing, to the license holder, and the City Administrator. Notice shall also be posted in two prominent public locations.

- B. Service. Except as expressly provided, whenever notice by mail is required, such notice shall be mailed by regular United States mail at least five days in advance of the hearing date.

**§ 135-12. Reserved**

**§ 135-13. Renewal.**

- A. Each year, a license holder must submit a renewal application on the forms provided by the Clerk. The required fee set out in Section 135-7 must be provided or the Clerk will stay review.
- B. The Clerk shall submit to City staff the current license and registration materials in the Applicant's file, as well as copies of any complaints and letters received by the Clerk regarding the renewal applicant.
- C. City staff shall conduct those reviews set out in Section 135-6 (F) and Section 135-8 except City staff may use their discretion to reduce the scope and depth of investigation if circumstances of the renewal warrant.
- D. The Clerk shall issue their decision within 30 days unless City staff are unable, in good faith, to finalize their investigation and review, but in no event shall the license renewal decision take more than 60 days.
- E. License holders who do not submit their renewal applications at least 30 days before expiration of their license, are at risk if the event the Clerk is unable to complete their review within 30 days and in such case, if the license expires during such review without a renewal having been yet granted, the license holder must cease growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products.

**§ 135-14. Retroactivity.**

The City Council, due to the importance of life-safety to all, and because a number of individuals are surreptitiously growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products within its boundaries, expressly intends that this Ordinance be applied retroactively to January 1, 2016. Any party who commenced growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products after January 1, 2016 but prior to the date of the enactment of this Ordinance must register for a license but fees for their first license will be waived if the party can substantially establish that they were engaged in growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products prior to enactment of this ordinance.

**§ 135-15. Enforcement and Penalties.**

- A. Lack of License. Any person or entity that grows, cultivates, harvests, manages, processes, transfers, exchanges or distributes marijuana or marijuana products without a valid license shall be subject to the following fines:

\$2,500            First violation



\$5,000      Second violation

\$10,000      Each subsequent violation

- B. The failure to publically display a license shall be \$500.00 per offense.
- C. The fine for selling, transferring or assigning a license in violation of Section 135-5 (C) shall be \$5,000.00.
- D. The fine for violating Section 135-5 (D) shall be \$2,500.00 for the first offense and \$5,000.00 for each occurrence thereafter.
- E. The fine for parties violating Section 135-5 (E) shall be \$5,000.00 per offense.
- F. Violation of Section 135-5 (F) (Transporting or Trafficking) shall result in permanent loss of license.

**§ 135-16. Severability.**

If any portion of this Ordinance is held to be invalid, the remainder of the Ordinance shall remain in full force and effect, it being the City Council's intention that these provisions be severable to the greatest extend allowed by law.