

# TOWN OF NEWPORT

## Cannabis Establishments Ordinance

### **Section I. Title**

This ordinance shall be known and cited as the Town of Newport “Cannabis Establishments Ordinance” and will be referred to hereinafter as “this Ordinance”. This Ordinance allows all Adult Use and Medical Cannabis Establishments subject to the rules and regulations contained herein, as well as any zoning rules and regulations in the Town of Newport Land Use Ordinance or other ordinances that may apply.

### **Section II. Purpose**

The purpose of this Ordinance and related provisions of the Land Use Ordinance is to regulate Adult Use Cannabis and Medical Cannabis cultivation, processing, testing, manufacturing, storage, and distribution, including retail stores, in order to protect the public's health, safety, and welfare, while fostering a vibrant business climate.

### **Section 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.

### **Section IV. Applicability**

- A. 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 Cannabis Establishments. This Ordinance shall also apply to all Cannabis Establishments proposed, operated, modified, or constructed after the enactment of these provisions. Any proposal to establish a new or alter an existing Cannabis Establishment shall require approval by the permitting authority, even if the permitting authority was not required to grant the original local approval. Cannabis 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.
  
- B. The following establishments, uses, or persons do not require a permit or license under this Ordinance, but must comply with all state laws:
  - 1. Personal adult use and cultivation for personal adult use of cannabis and cannabis products pursuant to 28-B M.R.S. §§ 1501-1504.

2. Personal use of medical cannabis by a cardholder or qualifying patient or registered patient pursuant to 22 M.R.S. § 2421 *et seq.*
3. Caregivers that are not required to register with the Department of Administrative and Financial Services, Office of Cannabis Policy pursuant to 22 M.R.S. § 2423-A(3)(C).
4. Caregiver operations pursuant to 22 M.R.S. § 2423-A(2) that do not meet the definition under the Maine Medical Use of Cannabis Act or one of the cannabis establishments listed in Section VI of this Ordinance.

## Section V. Definitions

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

- A. “Adult Use Cultivation Facility” shall include the following types of cultivation facility licenses:
  1. Tier 1 cultivation facility license. A tier 1 cultivation facility license, which allows cultivation by a licensee of:
    - A. Not more than 30 mature cannabis plants and an unlimited number of immature cannabis plants and seedlings; or
    - B. Not more than 500 square feet of plant canopy.
 An applicant for a tier 1 cultivation facility license shall designate in its cultivation plan whether the license sought is a plant-count-based tier 1 cultivation facility license under paragraph A or a plant-canopy-based tier 1 cultivation facility license under paragraph B;
  2. Tier 2 cultivation facility license. A tier 2 cultivation facility license, which allows cultivation by a licensee of not more than 2,000 square feet of plant canopy;
  3. Tier 3 cultivation facility license. A tier 3 cultivation facility license, which allows cultivation by a licensee of not more than 7,000 square feet of plant canopy;
  4. Tier 4 cultivation facility license. A tier 4 cultivation facility license, which allows cultivation by a licensee of not more than 20,000 square feet of plant canopy, except as provided in section 304; or
  5. Nursery cultivation facility license. A nursery cultivation facility license, which allows cultivation by a licensee of not more than 1,000 square feet of plant canopy, subject to the requirements and restrictions of section 501, subsection 3.
- B. “Code Enforcement Officer” means the Town of Newport Code Enforcement Officer.
- C. “Cannabis Establishment” refers collectively to all uses listed in Section VI.
- D. “Cannabis Retail Store” (Adult Use and Medical Use) – Means the following:
  1. Adult Use - a facility licensed to sell adult use cannabis, adult use cannabis products, immature cannabis plants and seedlings to consumers. (28-B MRS § 102(34)).
  2. Medical Use - a medical caregiver retail store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public, and sales of goods or services

directly a consumer, and that is used by a registered caregiver to offer cannabis plants or harvested cannabis for sale to qualifying patients. (22 MRS § 2422(1-F)).

- E. “Medical Cannabis Cooperative” means two or more medical cannabis caregivers claiming a location as a primary residence in order to conduct medical cannabis home production. Medical Cannabis Cooperatives are considered Medical Cannabis Production Facilities.
- F. “Medical Cannabis Production Facility” means a facility used for cultivating, processing, and/or storing medical cannabis by a registered medical cannabis caregiver at a location which is not the primary year-round residence of the caregiver’s patient. Medical Cannabis Production Facility does not include a registered caregiver that engages in authorized conduct pursuant to 22 M.R.S. § 2423(A)(2) at their primary residence and pursuant to a Town of Newport Home Occupation permit and does not otherwise qualify as any of type of Cannabis Establishment under this Ordinance.
- G. “Land Use Ordinance” means the Land Use Ordinance of the Town of Newport, as the same may be amended.
- H. “Licenses and Permits Ordinance” means the Licenses and Permits Ordinance of the Town of Newport, as the same may be amended.
- I. “Operator” means the person licensed or registered by the Department of Administrative and Financial Services, Office of Cannabis Policy who is responsible for the operation of the cannabis establishment.
- J. “Planning Board” means the Town of Newport Planning Board.

## **Section VI. Permitted Cannabis Establishments**

Upon passage or amendment of this Ordinance, the Town shall have “opted in” to allow the following Cannabis Establishments, subject to the terms this Ordinance:

Medical Cannabis Manufacturing Facility
Medical Cannabis Testing Facility
Medical Cannabis Retail Store (aka Caregiver Retail Store)
Medical Cannabis Registered Dispensary
Medical Cannabis Production Facility
Adult Use Cannabis Cultivation Facility
Adult Use Cannabis Retail Store
Adult Use Cannabis Products Manufacturing Facility
Adult Use Cannabis Testing Facility

## **Section VII. License Required**

- A. No person may establish, operate or maintain a Cannabis Establishment without first obtaining a license pursuant to the terms and procedures of the Town of Newport Licenses and Permits Ordinance, as the same may be amended. If there is a conflict between this Ordinance and the Licenses and Permits Ordinance, this Ordinance shall control.

- B. No person may submit an application for a Cannabis Establishment License without first obtaining all necessary state approvals, including a Conditional License, if applicable.
- C. Licenses shall not be transferable.
  - 1. Licenses issued under this article are not transferable to a new owner.
  - 2. A state transfer license shall require a new local cannabis license.
  - 3. 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.
- D. 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 applications. 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.

## **Section VIII. Permit Required**

- A. Permits Required.
  - 1. No person may establish, operate, or maintain a Cannabis Establishment without first obtaining a permit pursuant to the provisions of the Land Use Ordinance. Specific application requirements, standards of review, and other requirements pertinent to Cannabis Establishments within this Ordinance shall be deemed added to the Application Requirements and Standards of Approval within the Land Use Ordinance. In case of a conflict, the stricter provision shall apply.
  - 2. The applicant must have all state approvals before submitting an application for a Cannabis Establishments Permit, including a Conditional License, if applicable.
  - 3. A Planning Board Permit is required prior to the establishment, expansion (including the addition of another type of cannabis establishment), relocation, or change of use of any Cannabis Establishment.
  - 4. Permits are subject to the Fee Schedule established by the Town of Newport Select Board.
- B. Public Notice Requirements. In addition to other public notification requirements, the Town shall notify the Town Fire Department, the Town Police Department, and the Maine Department of Administrative and Financial Services, Office of Cannabis Policy, and any other applicable state or local agency prior to any public hearing on any application.

## **Section IX. Permit Application Requirements**

- A. Application Required. All applications for a Cannabis Establishment shall be submitted to the Code Enforcement Officer, on forms provided, with application fee, who shall oversee the permitting process and record keeping. The Code Enforcement Officer or Planning Board may require submission of additional information deemed necessary to determine conformance with the provisions of this Ordinance. The application shall contain the following information.

1. Demonstration of possession or entitlement to possession of the proposed premises of the Cannabis Establishment pursuant to a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises.
2. Description of the Cannabis Establishment, which shall include:
  - i. A general description of the establishment including the type(s) of establishment(s) (e.g., use, dispensary, cultivation tier, manufacturing tier, store tier, etc.).
  - ii. A description of co-location of different types of establishments, and any establishments that will be on a residential lot and/or operated as a home occupation, as applicable.
  - iii. A description of all cannabis and cannabis-related products associated with the cannabis establishment.
  - iv. A list of all pesticides, fungicides, insecticides, fertilizers, solvents, chemicals, or potentially hazardous substances to be used.
3. Evidence of state and other required approvals, which shall include:
  - i. Copies of all applications and approvals for Conditional Licenses for all Adult Use cannabis establishments, as required in the rules adopted pursuant to 28-B M.R.S. §§ 101 *et seq.*.
  - ii. Copies of all applications and evidence of state approvals for all Medical Cannabis establishments, including copies of valid Individual Identification Cards and Registry Identification Cards as required in the rules adopted pursuant to 22 M.R.S. § 2421 *et seq.*.
    - a. Medical Cannabis Registered Caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S. § 2425-A(12) and the Maine Freedom of Access Act, 1 M.R.S. §§ 400 *et seq.*, shall mark such information as confidential. An individual who possesses a valid Maine medical cannabis registered caregiver registry identification card need not identify him/herself in an application for a permit. The medical cannabis cardholder must identify him/herself and provide the relevant cards to the Code Enforcement Officer for examination, but the identity of the cardholder shall not be a public record and the Code Enforcement Officer shall not share the identity of the cardholder, except as necessary by law in the performance of his/her duties. At the time of application, the cardholder may appoint a representative to appear before the Planning Board on his/her behalf. Advertisements for any public hearing shall contain the location of the proposed Cannabis Establishment and the identity of the owner of the real estate and the identity of the designated representative. The Code Enforcement Officer may certify to the Planning Board that the applicant meets the necessary legal requirements as a cardholder(s).
  - iii. Evidence that all state laws and regulations will be adhered to, including state and federal electrical codes.

4. Maps, drawn to scale with distances and dimensions labeled, as follows:
  - i. Location Map at a legible scale depicting the subject property lines and the property lines of other properties containing any: existing cannabis establishments; residences; athletic fields, parks, playgrounds, or recreational facilities; public libraries; juvenile or adult halfway houses; correctional facilities; Public or Private Schools; substance abuse rehabilitation treatment centers; or licensed day care facilities within 500 feet of the subject property. All property lines and main entrances within 500 feet of the proposed facility shall be displayed on the map.
  - ii. Site Plan(s) at a legible scale showing the configuration of the premises, including public road access and parking, location of ingress and egress to the facility, signage, indoor and outdoor areas of the facility, fencing, and building or structure footprints.
  - iii. Facility Layout Diagram(s) at a legible scale displaying the location and dimensions of all areas of the facility to include indoor and outdoor areas used for cannabis cultivation, processing, manufacturing, sales, storage, disposal, etc. These areas and the uses shall be labeled. Cultivation facilities must show the proposed size and layout of cultivation areas, and must depict the total square footage of plant canopy areas.
5. Operating Plans, for the following:
  - i. Wastewater and waste disposal, including disposal of cannabis and related byproducts.
  - ii. Water and water usage.
  - iii. Electrical and other utilities.
  - iv. Hours of operation, the text and graphics to be used on signage.
  - v. Control of odor emissions, as needed.
  - vi. Control of lighting associated with cannabis cultivation.
6. Security Plan. At a minimum, the security plan shall comply with the security requirements set out in 18-691 CMR, Chapter 1, § 3.3 (Security) and provide sufficient detail so that the Town may determine whether the following requirements are met:
  - i. Lighting adequately illuminates entry and exit points.
  - ii. All doors and windows are lockable.
  - iii. Fences (if present) meet height and other requirements.
  - iv. Alarm sensors are present on all entry points and windows and are remotely monitored.
  - v. Video cameras are present in all required locations.
  - vi. Video cameras and storage meet all required specifications.
  - vii. Points of passage between public access areas and age restricted areas (if any) or limited access areas are lockable and/or monitored whenever people may be present in public access areas.
  - viii. In age restricted retail areas (if any), lockable and secure display cases or counters of sufficient height to prevent the public from handling cannabis plants, cannabis, or cannabis products without direct supervision of a licensee or employee.

All permittees shall adhere to the security plan and submit in writing to the Code Enforcement Officer a revised security plan within 14 days any time a material change is made to security measures.

## **Section X. Performance Standards**

- A. Location. Subject to the requirements of this Ordinance and the Land Use Ordinance, Cannabis Establishments may be located and permitted to operate only in certain districts only as permitted pursuant to the Land Use Ordinance’s Schedule of Uses. Cannabis Establishments are prohibited uses in all other districts.
- B. Permanent Location. All Cannabis Establishments shall be operated from a permanent location and may not be permitted to operate from a moveable or mobile location.
- C. Proximity and Setbacks.
  - 1) All Cannabis Establishments must be located at least 500 feet from any of the following: a) a church, synagogue, or other house of religious worship; b) an athletic field, park, playground, or recreational facility; c) a public library; d) a juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation treatment center; or e) a licensed day care facility. The distance cited in this subsection shall be measured from the main entrance of the proposed cannabis establishment to the entrance of the preexisting uses listed above by the ordinary course of travel.
  - 2) All Tier 2 Manufacturing Facilities and Tier 4 Cultivation Facilities must be located at least 500 feet from the boundaries of any land use district where these uses are prohibited. The distance cited in this subsection shall be measured from the main entrance of the proposed cannabis establishment to the line of the preexisting zoning district.
  - 3) The property lines of all Cannabis Establishments shall be located at least 500 feet from the property line of a preexisting public or private school. For the purposes of this paragraph, “school” includes a public school, as defined in Title 20-A, section 1, subsection 24, a private school, as defined in Title 20-A, section 1, subsection 22, a public preschool program, as defined in Title 20-A, section 1, subsection 23-A or any other educational facility that serves children from prekindergarten to grade 12. The distances cited in this subsection shall be measured between the lot line of the proposed cannabis establishment and the lot lines of the preexisting uses listed above, at their closest points.
- D. Signage and Advertising.
  - 1) Signage or advertising associated with a Cannabis Establishment must be located at least 500 feet from the property line of a preexisting public or private School or licensed daycare facility, with the exception that signage and advertising for Tier 1 Cultivation Facilities must be located at least 500 feet from the property line of a preexisting public or private School, or licensed daycare facility.
  - 2) Within the Cannabis Establishment premises there shall be at least one legible sign stating that on premise use of cannabis is illegal, open and public consumption is illegal, no one under the age of 21 is allowed, and the use of cannabis may impair a person's ability to drive or operate machinery.
  - 3) There may be no display of cannabis and paraphernalia so as to be clearly visible

from the exterior of a Cannabis Establishment.

- 4) There may be no off-premise signs (permanent or temporary) advertising the Cannabis Establishment.
  - 5) No ads, coupons, signs, promotional materials, or similar shall target people under the age of 21 or non-Maine residents or visitors.
  - 6) Exterior signs must be in compliance the Land Use Ordinance.
- E. Security Measures. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing cannabis and the theft of cannabis must be provided at all times. At a minimum, security measures shall comply with the security requirements set out in 18-691 CMR, Chapter 1, § 3.3 (Security) and include the following the following:
- 1) All Cannabis Establishments shall have lockable doors and windows (where applicable) and shall have intrusion alarms with the audible and law enforcement notification components sending notification directly to or through a second party to the Newport Police Department.
  - 2) All outdoor Cultivation Facilities shall be enclosed with secure fencing that prevents unauthorized entrance.
  - 3) Cannabis Establishments shall have video surveillance capable of covering the exterior and interior of the establishment. The video shall be operated with continuous recording 24 hours per day, seven days per week, and such recordings shall be retained for a minimum duration of 45 days and be made available to law enforcement agencies when investigating a criminal complaint.
  - 4) The owner/operator of any Cannabis Establishment shall provide local law enforcement or its designee with the name and functioning telephone number of a 24- hour on-call staff person to whom the Town or local law enforcement may provide notice of any operating problems associated with the Cannabis Establishment.
- F. On-site Consumption Prohibited. The consumption, ingestion, or inhalation of cannabis on, or within the premises of a Cannabis Establishment is prohibited.
- G. Containment. In all areas where allowed, all activities of Cannabis Establishments, including, without limitation, cultivating, growing, processing, displaying, testing, selling, and storage, must be conducted in a secure, indoor or outdoor enclosed area.
- H. Control of Emissions.
- 1) Odor management. For all Cannabis Establishments, the odor of cannabis must not be perceptible at the exterior of the building at the premises or at any adjoining property line. Cannabis Cultivation Facilities must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. Cannabis Retail Stores, Cannabis Manufacturing Facilities, and Cannabis Testing Facilities are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the Town does not mandate any particular equipment specifications with regard to filtration, all Cannabis Establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating cannabis odor, such as air scrubbers and charcoal filtration systems.
  - 2) Noxious gases and fumes. Cannabis Manufacturing Facilities and Cannabis



Testing Facilities shall have appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.

- 3) Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a Cannabis Establishment must be provided at all times.
- I. Night-time Lighting for Cultivation. Cultivation establishments, such as those using greenhouses, shall prevent excessive light from illuminating beyond the subject property and into the night sky in accordance with Land Use Ordinance standards and by utilizing a blackout system.
- J. Extraction Using Inherently Hazardous Substances is Prohibited.
  - 1) Extraction with Inherently Hazardous Substances, as defined by state law, is prohibited in the Town of Newport.
- K. Disposal Plan. All Cannabis Establishments shall have in place an operational plan for proper disposal of cannabis and related byproducts in a safe, sanitary, and secure manner and in accordance with all applicable federal, state, and local laws and regulations.
- L. Health and Safety. No Cannabis Establishment shall adversely affect the health or safety associated with residences or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or create a hazardous condition due to activities associated with the cannabis.
- M. Sale of Edible Products. No food products shall be sold, prepared, produced, or assembled by any Cannabis Establishment except in compliance with all operating and other requirements of state and local law and regulation. Any goods containing cannabis for human consumption shall be stored in a secure area, and all cannabis must be labeled with a list of all chemical additives, such as non-organic pesticides, herbicides, and fertilizers used in the cultivation and production. Any goods containing cannabis for human consumption shall be stored in a secure area.
- N. Drive-Through and Home Delivery. Cannabis Retail Stores and Cannabis Dispensaries are prohibited from having drive-through pick-up facilities. Cannabis Stores are prohibited from providing home delivery services; provided, however, that Medical Cannabis Registered Caregivers may provide home delivery services.
- O. Mixed Uses. Cannabis Establishments may include more than one type of establishment (e.g., cultivation facility, manufacturing, and store) as allowed in state law, but in no case shall the combination of uses exceed the maximum floor area or canopy area allowed under state and local law and regulation on an individual parcel of land in the Land Use District where it is located. Circumvention of the intent of this provision is prohibited.
- P. Code Compliance. All Cannabis Establishments must be in compliance with all state codes applicable to municipalities, including, without limitation, National Electrical Code, Uniform Plumbing Code, and the National Fire Prevention Association (NFPA) Codes and Standards.

## **Section XI. Inspections**

- A. Every Cannabis Establishment shall allow Code Enforcement Officer and other municipal officials to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance.
- B. Adult Use and Medical Cannabis Cultivation and Manufacturing Establishments must comply with NFPA-1 Chapter 38 standards for Cannabis Growing, Processing, or Extraction Facilities, and these standards will be utilized by the Town of Newport or their designee during its inspections of these premises.

## **Section XII. 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 Cannabis 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/permittee 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 Cannabis Establishment.

## **Section XIII. State Law**

- A. 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 Cannabis or cannabis products, the additional or stricter regulation shall control the establishment or operation of any Adult Use or Medical Cannabis Establishment in the Town of Newport.
- B. Compliance with state laws or regulations shall be deemed an additional requirement for issuance or denial of any license or permit under this Ordinance, and noncompliance with any other applicable State law or regulation shall be grounds for revocation or suspension of any license or permit issued hereunder.

## **Section XIV. Enforcement & Appeals**

### **A. Violations**

1. This Ordinance shall be enforcement pursuant to Section VI(K) of the Land Use Ordinance. Any person including, but not limited to an Adult Use or Medical Cannabis Establishment 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 shall be subject to enforcement.
2. Any violation of this Ordinance, violation of state law, loss or suspension of a state license, or provision of knowingly false information in a license application, may result

in license suspension or revocation by the Select Board, after notice and hearing, pursuant to Section 109 of the Licenses and Permits Ordinance.

**B. Appeals**

1. An appeal of a decision to grant or deny an application for a license for a cannabis establishment shall be heard by the Board of Appeals in accordance with the Town of Newport Board of Appeals Ordinance.
2. An appeal of a decision to grant or deny a permit for a cannabis establishment required under the Land Use Ordinance shall be heard pursuant to the appeals provisions of the Town of Newport Land Use Ordinance and the Town of Newport Board of Appeals Ordinance.

**Section XV. Conflict and Severability**

- A. 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.
- B. 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.