

**Marijuana Ordinance
for the Municipality of Winthrop**

DRAFT

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ARTICLE I -General

1. Purpose.

It is the purpose of this Ordinance to: regulate Adult Use and Medical Marijuana Businesses in order to promote the health, safety, and general welfare of the citizens of Winthrop; implement a system for the regulation of stores, dispensaries, cultivation, manufacturing, and testing for the production and sale of marijuana; and establish reasonable and uniform regulations for the appropriate location of Adult Use and Medical Marijuana Businesses in Winthrop.

2. Authority.

This Ordinance is adopted pursuant to Home Rule authority under Article VIII, Part 2, Section 1 of the Maine Constitution 30-A M.R.S. §3001 et seq., and 30-A M.R.S. §4301 et seq. and in accordance with the Marijuana Legalization Act, 28-B M.R.S. §101 et seq.; the Maine Medical Use of Marijuana Act, 22 M.R.S. §2421 et seq. and shall be known and may be cited as the "Marijuana Ordinance for the Municipality of Winthrop", and will be referred to herein as "this Ordinance".

3. Applicability.

Persons or entities wishing to establish an Adult Use or a Medical Marijuana Business within the Municipality of Winthrop shall first obtain a license from the Winthrop Town Council (hereinafter the Town Council”) and shall be subject to the provisions of this Ordinance. This Ordinance may not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Use of Marijuana Act.

4. Effective Date of Ordinance.

The effective date of this Ordinance, and the business licensing thereunder, shall be _____, the date of adoption by the Town Council.

5. Availability.

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. The Ordinance shall be published on the Winthrop web portal. A physical copy shall be made available to the public at reasonable cost at the expense of the person making the request.

6. Severability.

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

7. Conflict with Other Ordinances.

Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or of any other ordinance, regulation or standard, the more restrictive provision shall apply. Nothing herein is intended to conflict with State law; whenever a provision of this Ordinance conflicts with State law the more restrictive provision shall apply. All applicants and licensees shall comply with all applicable State laws.

ARTICLE II – Administration

8. License Required.

No person may establish, operate or maintain a Marijuana Business without first obtaining a license from the Town Council.

It is a violation of this Ordinance for any person to operate a Marijuana Business without a valid Marijuana Business license issued by the Municipality of Winthrop pursuant to this Ordinance.

Pursuant to 28-B M.R.S. § 402, an applicant seeking to operate an Adult Use Marijuana Business may not submit an application for a license unless the applicant has been issued a conditional license by the State of Maine to operate the Adult Use Marijuana Business.

Marijuana Business Licenses shall be administered on a first come, first served basis based upon the date the application is deemed complete.

Small-scale Registered Caregivers and Registered Caregivers who cultivate medical marijuana only for themselves and/or members of their household are exempt from this requirement and are not required to obtain a permit or license.

The cultivation, manufacturing, testing or sale of adult use marijuana from a residence is prohibited, unless it is for personal use in accordance with 28-A M.R.S. § 1502.

9. Application Procedure.

A. An application for a license must be made on a form provided by the Municipality of Winthrop.

B. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

C. Application to establish a Marijuana Business

1. If the applicant who wishes to operate a Marijuana Business is a single individual, this person must sign the application for a license. If the applicant who wishes to operate a Marijuana Business is more than one individual, each person who has an interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

2. The completed application for a Marijuana Business license shall contain the following information and shall be accompanied by the following documents:

- a. If the applicant is an individual: The individual shall state their legal name and any aliases, and submit proof that they are at least twenty- one (21) years of age.
- b. If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.

- c. If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.
- d. If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.
- e. If the applicant intends to operate the Marijuana Business under a name other than that of the applicant, they must state the Marijuana Business' name and submit the required registration documents.
- f. If the applicant, an officer, member or employee has been convicted of criminal activity under State and/or federal law, they must list the specified criminal activity involved, and the date, place, and jurisdiction of each conviction.
- g. If the applicant has had a previous license under this Ordinance or other similar Marijuana Business license applications in another town, city or state denied, suspended or revoked, they must list the name and location of the Marijuana Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the Marijuana Business for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.
- h. If the applicant holds any other permits/licenses under this Ordinance or other similar Marijuana Business license from another town, city, or state the applicant shall provide the names and locations of such other permitted/licensed businesses.
- i. The type of Marijuana Business for which the applicant is seeking a license.
- j. The location of the proposed Marijuana Business, including a legal description of the property, street address, and telephone number.
- k. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Marijuana Business pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.
- l. The applicant's mailing address and residential address.
- m. Recent passport-style photograph(s) of the applicant(s).
- n. The applicant's valid state ID.

- o. A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.
 - p. A copy of a Town Tax Map depicting: the subject property lines and the property lines of other properties containing any existing Marijuana Businesses within one thousand (1,000) feet of the subject property; and the property lines of any public or preexisting private school within seven hundred and fifty (750) feet of the subject property.
 - q. Evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.
3. That portion of an application for a Marijuana Business License that relates to personal history or otherwise confidential personal identifying information shall be kept confidential by the Town.
- E. Application and License Fees - all applications must be submitted with a non-refundable \$_____ application fee. If an application is approved, the following license fees must be paid annually before the Town will issue a license:

Adult Use or Medical Marijuana Caregiver Store: Annual License Fee: \$ _____

Adult Use or Medical Marijuana Manufacturing Facility: Annual License Fee: \$ _____

Adult Use or Medical Marijuana Testing Facility: Annual License Fee: \$ _____

Adult Use Marijuana Cultivation:

Tier 1: Up to 500 SF of plant canopy: Annual License Fee: \$ _____

Tier 2: Up to 2,000 SF of plant canopy: Annual License Fee: \$ _____

Tier 3: Up to 7,000 SF of plant canopy: Annual License Fee: \$ _____

Tier 4: Up to 20,000 SF of plant canopy: Annual License Fee: \$ _____

Medical Marijuana Cultivation: Annual License Fee: \$ _____

Medical Marijuana Multiple Registered Caregiver Facility: Annual License Fee: \$ _____

Medical Marijuana Registered Dispensary: Annual License Fee: \$ _____

Adult Use Marijuana Nursery Cultivation: Annual License Fee: \$ _____

(Plant canopies of individual Nursery Cultivations are permanently capped at 1,000 SF.)

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

Applicants for Adult Use Marijuana Cultivation licenses may not hold more than three (3) such licenses or a total combined plant canopy in excess of 30,000 SF.

10. Standards for License.

A. General

1. All Marijuana Businesses shall comply with applicable state and local laws and regulations.
2. Marijuana Businesses shall only be located within the zoning districts permitted in the Winthrop Zoning Ordinance.
3. Marijuana Businesses may not be located on property within seven hundred and fifty (750) feet of the property line of a preexisting public or private school (K-12). For the purposes of this Ordinance, "school" includes a public or private school (K-12), or public preschool program as defined in 20-A M.R.S. §1.

Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Marijuana Business is located. Presence of a town, city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

4. Marijuana Businesses may not be located on property within one thousand (1,000) feet of the property line of a parcel containing one or more Marijuana Businesses. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the property lines of the parcels of land on which the Marijuana Businesses are located. Presence of a town, city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

Notwithstanding the foregoing, more than one Marijuana Businesses may be located on the same parcel, provided all state and local requirements are met.

Adult Use and Medical Marijuana Cultivation Facilities and Adult Use and Medical Marijuana Manufacturing Facilities operating within the industrial zoning district are exempt from this setback requirement.

5. No outside cultivation or storage of marijuana, marijuana products, or related supplies is permitted, except that outdoor cultivation of marijuana in the Rural Zone is permitted.
6. Pursuant to 22 M.R.S. §2429-D(3), Caregiver Retail Stores, Registered Dispensaries, Medical Marijuana Testing Facilities, and Medical Marijuana Manufacturing Facilities that were operating legally prior to December 13, 2018, are grandfathered in their current location and current use and shall be treated as legally non-conforming uses if their location or use is not in conformance with this ordinance or applicable zoning ordinances, provided, however, that said Marijuana Businesses shall apply for and obtain a license.

The holder of a State License for a Caregiver Retail Store that complies with all applicable provisions of this Ordinance and the Winthrop Zoning Ordinance may exchange their license for an Adult Use Marijuana Store license in the same location, provided they meet all requirements and standards to operate an Adult Use Marijuana Store. Said holder must file an application and pay a \$ _____ fee.

7. All Adult Use Marijuana Stores and Caregiver Retail Stores must be operated from permanent locations, which may utilize telephone and internet orders as long as the buyer pays for and picks up such orders in the store on the day the order is made, an exception is made for

Caregiver Retail Stores whereas it may be a necessity for the business to deliver medical marijuana to a patient. These deliveries shall be made by an employee of said business. Deliveries by contracted/paid delivery service are not authorized. Delivery must be made directly to the Qualified Patient and proper identification is verified.

8. Adult Use Marijuana Stores and Caregiver Retail Stores may not use vending machines for sales, may not have "drive-through" or "drive-up" window- serviced sales, and may not have internet-based sales with credit/debit card payment and delivery by USPS, UPS, FedEx, DHL, or any other global or local delivery service or courier.
9. Security measures at all Marijuana Business 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 thirty (30) 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 audible alarm and smart phone monitoring, maintained in good working condition; and
 - c. A locking safe permanently 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 to dawn, that is either constantly on or activated by motion detectors.
 - e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars; and
 - f. Methods to ensure that no person under the age of twenty-one (21) shall have access to marijuana and marijuana products.

10. Ventilation

All Marijuana Businesses are required to be in compliance with the Nuisance Conditions Standards in the Town's Zoning Ordinance, and all Marijuana Cultivation facilities shall have an odor mitigation system plan in place.

11. Operating Plan

Marijuana Businesses which cultivate, test, and/or manufacture are required to submit an operation plan that addresses odor and noise as well as disposal of wastewater, solid waste and hazardous waste.

12. Required Notices

There shall be posted in a conspicuous location inside each Marijuana Store, at least one legible sign containing the following information:

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) may purchase marijuana or marijuana products, except a minor with medical marijuana card; Loitering prohibited.

13. Signs

All signs used by and all marketing and advertising conducted by or on behalf of the marijuana business 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 Town's Sign Ordinance and may use an image or images of the marijuana plant or plants, or parts thereof, as long as they do not exceed 20% of the sign face, but there shall be no pictorial representations of other marijuana products, by-products, or paraphernalia associated with the use or distribution of retail marijuana.

B. Right of Access/Background Check/Inspection

Every Marijuana Business shall allow the Winthrop Code Enforcement Officer ("CEO") to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance. Every owner and employee of a Marijuana Business applying for a license, shall contact the Winthrop Police Department for the purposes of fingerprinting and criminal background checking, and all premises managers for Marijuana Businesses shall submit emergency contact information to the Winthrop 911 Communication Center.

Due to fire, explosion, and other hazards inherent in Marijuana Cultivation, Testing, and Manufacturing 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 Winthrop Fire Department and have an approved key-enabled entry system installed at the structure's exterior entrance for emergency access. Such key-enabled entry system shall be approved by, obtained and installed in coordination with the Winthrop Fire Department.

C. Indemnification

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 Business owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.

By accepting a license issued pursuant to this Ordinance, the permittee/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 permitted/licensed Marijuana Business.

D. 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 Marijuana or Marijuana products, the additional or stricter regulation shall control the establishment or operation of any Marijuana Business in Winthrop.

Compliance with all applicable State laws and regulation shall be deemed an additional

requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.

11. Enforcement.

A. Violations

1. Any violation of this Ordinance, including failure to comply with any condition, may be enforced in accordance with 30-A M.R.S. §4452. Every day a violation exists constitutes a separate violation.
2. Commencement of any Marijuana Business without a Town license for same shall be a violation of this Ordinance. Any party committing such a violation shall immediately cease operations, whether of a construction, renovation, or business nature, upon notification by the Code Enforcement Officer (CEO). Upon such CEO notification, the Town can pursue fines and/or penalties under 30-A M.R.S. §4452.

B. The CEO may at any reasonable time conduct on-site inspections to insure compliance with all applicable laws and conditions attached to license approvals, and shall investigate all complaints of alleged violations of the Ordinance.

1. If the CEO finds that any provision of this Ordinance is being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including but not limited to, discontinuance of illegal use of land, buildings, or structures, or work being done, removal of illegal buildings or structures, and abatement or mitigation of violations. A copy of such notices shall be submitted to the Town Council and be maintained as a permanent record.
2. The CEO shall keep a complete record of all essential transactions including Marijuana license applications submitted, permits/licenses granted or denied, training certifications, revocation actions, revocation of permits/licenses, appeals, court actions, violations investigated, violations found, and fees collected.

C. Legal Actions

When the above notification and/or inspection actions do not result in the voluntary correction or abatement of the violation by the subject Marijuana Business, the Town Council, upon receiving written notification from the CEO, may institute any and all actions and proceedings, either legal or equitable, including injunctions of violations and the impositions of penalties and/or fines in order to enforce the provisions of this Ordinance.

The Town Council, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action when the Council determines the consent agreement is in the public interest.

D. Penalties/Fines

Any person, including but not limited to, a Marijuana Business owner, a property owner where such business is located, or any agent or contractor for same, who orders or conducts any activity in violation of this Ordinance, or fails to comply with any of its requirements, shall be penalized in accordance with 30-A M.R.S. §4452.

ARTICLE III - Definitions

15. Definitions

Adult Use Cultivation facility - a facility licensed under this ordinance to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to Adult Use Products Manufacturing Facilities, to Adult Use Marijuana Stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to Adult Use Marijuana Stores.

Adult Use Marijuana Nursery Cultivation Facility - a facility licensed under this ordinance to cultivate not more than 1,000 SF of plant canopy pursuant to 28-B M.R.S. §301(5).

Adult Use Marijuana Store - a facility licensed under this ordinance to purchase adult use marijuana, immature marijuana plants and seedlings from an Adult Use Cultivation Facility, to purchase adult use marijuana and adult use marijuana products from an Adult Use Products Manufacturing Facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Adult Use Marijuana Testing Facility - a facility licensed under this ordinance to develop, research and test adult use marijuana, adult use marijuana products and other substances.

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

Caregiver Retail Store - a 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 and services directly to the consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

Cultivation or Cultivate - 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.

Harvested Marijuana - the plant material harvested from a mature marijuana plant, except the stalks, leaves and roots of the plant that are not used for a qualifying patient's medical use. "Harvested marijuana" includes marijuana concentrate and marijuana products.

Immature marijuana plant - a marijuana plant that is not a mature marijuana plant or a seedling.

Manufacture or Manufacturing - the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis.

Marijuana - the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not.

Marijuana Business - Medical Marijuana Cultivation Facility, Medical Marijuana Manufacturing Facility, Medical Marijuana Testing Facility, Registered Dispensary, Caregiver Retail Store, Adult Use Marijuana Cultivation Facility, Adult Use Marijuana Products Manufacturing Facility, Adult Use Testing Facility, or Adult Use Marijuana Store licensed under this Ordinance.

Medical Marijuana Cultivation Facility - a facility licensed under this ordinance to cultivate, prepare and package medical marijuana at a location that is not the residence of the Registered Caregiver or Qualifying Patient.

Medical Marijuana Manufacturing Facility - a registered tier 1 or tier 2 manufacturing facility or a person authorized to engage in marijuana extraction under 22 M.R.S. §2423-F.

Medical Marijuana Multiple Registered Caregiver Facility – a building or facility housing more than one (1) Medical Marijuana Registered Caregiver.

Medical Marijuana Testing Facility - a public or private laboratory that:

- A. Is authorized in accordance with 22 M.R.S. §2423-A, subsection 10 to analyze contaminants in and the potency and cannabinoid profile of samples; and
- B. Is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the State of Maine.

Medical Use - the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's medical diagnosis or symptoms for which a medical provider has provided the qualifying patient a written certification under state law.

Plant Canopy - the total surface area within the licensed premises of an Adult Use Marijuana Cultivation Facility that is authorized for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of non-contiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants.

Qualifying patient - a person who has been a resident of the State for at least 30 days and who possesses a valid written certification regarding medical use of marijuana in accordance with state law.

Registered caregiver - a person or an assistant of that person that provides care for a qualifying patient and who is registered by the State of Maine pursuant to 22 M.R.S. §2425-A.

Registered Dispensary - an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.

Small-scale Caregiver Operation – a commercial or non-commercial use by a Medical Marijuana Registered Caregiver who sells or dispenses marijuana solely out of the caregiver's residential dwelling or accessory structure to no more than five registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than 30 mature marijuana plants.

Testing or test - the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency. Testing or test includes the collection of samples of marijuana and marijuana products for testing purposes but does not include cultivation or manufacturing.

In addition, any term used in this ordinance that is not defined in this Article, but is defined in 22 M.R.S. §2422 or 28-B M.R.S. §102, shall have the meaning set forth in those statutes as applicable.