

**TOWN OF POWNAL
MARIJUANA ESTABLISHMENT ORDINANCE**

**ROUGH
DRAFT #4**

SECTION 1. Purpose and Authority

The purpose of this Ordinance is to implement and set forth procedures and standards for the issuance of local licenses for Marijuana Establishments in order to protect public health, safety and welfare of the residents of Pownal by prescribing the manner in which the cultivation, testing and products manufacturing of Marijuana can be conducted in the Town.

This Ordinance is enacted pursuant to authority granted under 30-A M.R.S. §3001, 22 M.R.S. §2423-A (14) and 28-B M.R.S. §402.

Marijuana social clubs and retail stores in the Town are prohibited.

SECTION 2. Definitions

As used in this Ordinance, the terms below shall be defined as indicated. All other terms used in this Ordinance, if not defined below, shall have the same definition as set forth in the Town of Pownal Land Use Ordinances as well as the definition in 28-B M.R.S. §102 or 22 M.R.S. § 2422, as may be applicable.

Applicant: Shall mean a person or owner that has submitted an application for a license as a Marijuana Establishment pursuant to this Ordinance.

Cultivate or cultivation: Shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. It does not include manufacturing, testing or marijuana extraction.

Drug Free Safe Zone: Shall mean all public athletic fields, public parks, playgrounds and recreational facilities under the jurisdiction of the Town that are designated as “Drug Free Safe Zones” in accordance with 17-A M.R.S. 1101(23) to also include Schools & any Municipal Properties.

Licensed Premises: Shall mean the premises specified in an application for a State or Local license pursuant to this Ordinance that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture or test adult use marijuana or adult use marijuana products in accordance with the provisions of this Ordinance and the requirements of State law and regulations.

Licensee: Shall mean a person licensed pursuant to this Ordinance. Also see Applicant.

Local Licensing Authority: Shall mean the Code Enforcement Officer (CEO) or, ~~if~~ referral to the Pownal Planning Board is required pursuant to this Ordinance, the Planning Board.

Loiter: Shall mean to stand or wait around idly or without apparent purpose.

Manufacture or manufacturing: Shall mean the production, blending, infusing, compounding or other preparation of marijuana products, including, but not limited to: hashish, marijuana extraction ~~or preparation by means of chemical synthesis~~. It does not include cultivation.

Marijuana Cultivation Facility: Shall mean a “cultivation facility” as that term is defined in 28-B M.R.S.A. §102(13), as may be amended. A Marijuana Cultivation facility is an entity licensed to cultivate, prepare and package adult use marijuana.

Marijuana Establishment: Shall mean a Cultivation Facility, Products Manufacturing Facility or Testing Facility, all as defined in 28-B M.R.S. §102 as well as medical marijuana cultivation, medical marijuana manufacturing and medical marijuana testing facilities. "Marijuana Establishment" does not include Marijuana stores, registered caregiver retail stores or social clubs.

Marijuana Products Manufacturing Facility: Shall mean a "products manufacturing facility" as that term is defined in 28-B M.R.S.A. §102(42), as may be amended. A Marijuana Products Manufacturing facility is an entity licensed 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.

Marijuana Testing Facility: Shall mean a "testing facility" as that term is defined in 28-B M.R.S.A. §102(53), as may be amended. A Marijuana testing facility is licensed to develop, research and test marijuana, marijuana products and other substances.

Medical Marijuana Cultivation Facility: Shall mean a medical marijuana cultivation area used or occupied by one or more medical marijuana registered caregivers. A medical marijuana cultivation facility is only authorized as a principal use, and not as an accessory use. A medical marijuana cultivation facility is prohibited from selling medical marijuana to medical marijuana qualifying patients, medical marijuana caregivers or medical marijuana registered caregivers on premises. A medical marijuana cultivation facility shall not be used or occupied by a "collective" as that term is defined in 22 MRSA §2422 (1-A), as may be amended. Medical Cultivation Facilities do not include dispensaries or registered dispensaries as defined in 22 M.R.S. §2242(6).

Medical Marijuana Products Manufacturing Facility: Shall mean a "medical manufacturing facility" as that term is defined in 22 M.R.S.A. §2422(4-H), as may be amended. A medical marijuana products manufacturing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Medical Marijuana Testing Facility: Shall mean a "medical testing facility" as that term is defined in 22 M.R.S.A. §2422(5-C), as may be amended. A medical marijuana testing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Owner: Shall mean a person whose beneficial interest in a Marijuana Establishment is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a Marijuana Establishment and/or has a controlling interest in a Marijuana Establishment.

Person: Shall mean a natural person, partnership, association, company, corporation, Limited Liability Company or organization, or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

Premises: Shall mean the physical location at which a Marijuana Establishment is to conduct its business.

Resident: Shall mean an individual 21 years of age or older who has been domiciled in this state for a minimum of thirty (30) days and possesses or has made application for a motor vehicle operator's license or identification card issued by the State of Maine.

State License: Shall mean any license issued by the State Licensing Authority.

State Licensing Authority: Shall mean the authority created or designated by the State for the purpose of regulating and controlling licensing for Marijuana Establishments.

Town: Shall mean the Town of Pownal.

SECTION 3. Effective Date

For the purposes of licensing Marijuana Establishments; product manufacturing, cultivation facilities & testing facilities, this Ordinance when voted in the affirmative at Town Meeting, shall be effective starting July 1, 2019.

SECTION 4. Review Procedures

The review procedures described below shall be the same for initial license applications as well as renewals. In reviewing license applications, the Code Enforcement Officer and any consulting Town officials may consider the approval standards under this Ordinance as well as other applicable local, state or federal laws.

1. The Code Enforcement Officer shall be responsible for the initial investigating of the application to ensure compliance with the requirements of this Article and to obtain recommendations from other Town Officials as required.
2. All Marijuana Establishments will be subject to Site Plan Review for approval.
3. The Planning Board shall have the authority to impose any conditions on a license that may be reasonably necessary to insure compliance with the requirements of this Ordinance or to address concerns about operations, or public safety. Failure of any Licensee to comply with such conditions shall be considered a violation of the license and of this Ordinance.
4. No permit shall be granted by the Code Enforcement Officer until all portions of this Ordinance is met and the Local Licensing authority has granted approval.
5. Licenses shall be approved only for the type(s) of Marijuana Establishment(s) identified in the application. A Licensee who intends to expand or convert the licensed Premises to a type of Marijuana Establishment that is not specifically approved in a license must obtain a new license for that use.
6. Any municipal official with authority to grant licenses or enforce this or other municipal ordinances regarding Marijuana Establishments shall have authority to enter the premises of an Applicant or Licensee with notice to make any inspection reasonably necessary to ensure compliance. Every Marijuana Establishment shall allow law enforcement officers to enter the premises at reasonable times for the purpose of investigating compliance with this Ordinance and 28-B M.R.S. §512.

SECTION 5. Application Submission Requirements

Each applicant for a Marijuana Establishment license shall complete and file an application on the form provided by the Code Enforcement Officer, together with the applicable license fee as well as the following supporting materials:

1. A copy of the Applicant's State License application and supporting documentation, as submitted to the State Licensing Authority.
2. Evidence of all State approvals or conditional approvals required to operate a Marijuana Establishment, including, but not limited to, a State License as defined by this Ordinance, or a State health license.
3. 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. Supporting documents, including but not limited to motor vehicle operator's license, motor vehicle registration, voter registration or utility bills shall be provided.
4. A release for each Applicant and for each officer, owner, member, manager or partner of the Applicant seeking a license allowing the Town of Pownal or its officials to obtain criminal records and other background information related to the individual.

- A. Marijuana Establishments shall not employ a person who is convicted of any state or federal controlled substance law, or is under indictment or charged with any state or federal controlled substance law violation, while employed by the Marijuana Establishment. If an officer, owner, member, manager or partner or any other individual named on the application is convicted of any state or federal controlled substance law while they are affiliated with this application the Marijuana Establishment shall immediately be considered in violation of this Ordinance.
5. Evidence of all land use approvals or conditional land use approvals required to operate the Marijuana Establishment, including, but not limited to building permit, conditional or special use approval, change of use permit and/or certificate of occupancy.
 - A. No certificate of occupancy shall be granted for a marijuana establishment unless the premises concerned is in complete compliance with all municipal and State codes and regulations.
 6. Evidence of all other local approvals or conditional approvals required to operate the marijuana establishment, including any applicable food or victualer's license.
 7. A description of the premises for which the license is sought, including a plan of the premises.

If the CEO 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 CEO's request, the application may be denied.

SECTION 6. License Term and Renewal

Each license issued under this Ordinance shall be valid for the term of license granted by the State License Authority ("the license year"). Any Licensee who fails to submit a renewal application shall not have authority to operate until a license is granted.

SECTION 7. Denial, Suspension or Revocation of a License

A license application for a Marijuana Establishment shall be denied by the Local Licensing Authority, and an existing license may be suspended or revoked by the Board of Selectmen after notice and hearing, if the applicant, or any Owner of the applicant Licensee, or employee of applicant/owner/licensee:

1. Fails to meet the requirements of this Ordinance.
2. Is not at least twenty-one years of age.
3. Is not a resident of the State of Maine.
4. Has had a license for a Marijuana Establishment revoked by any municipality or by the State.
5. Has not acquired all necessary *final* state and local approvals prior to issuance of the license.
6. Has been convicted of a criminal violation arising out of operation of a Marijuana Establishment.
7. Has provided false or misleading application in connection with the license application.

SECTION 8. Approval and Operating Requirements

In order to obtain a license pursuant to this Ordinance, the Licensee shall demonstrate to the CEO and all reviewing officials that the following requirements will be met. The Licensee shall comply with all of these requirements during the term of the license:

1. All Marijuana Establishments must be a registered business with the Town.
2. All Marijuana Establishments shall be limited to one (1) license to one (1) applicant.

3. ~~Licensees must be a registered Pownal resident.~~
4. ~~Licensees must be the property owner as recorded at the Cumberland County Registry of Deeds.~~
5. Licensed Premises shall meet all requirements set forth by the Town's Zoning Ordinance, Site Plan Review Ordinance and any and all special exception standards and are subject to special exception review & Site Plan Review.
6. ~~Marijuana Establishments shall not exceed 30 mature plants and 60 immature 108 plants total.~~
7. Marijuana Establishments shall meet the following standards:
 - A. ~~A Marijuana Establishment shall not cover more than 5,000 square feet of floor space or ground area.~~
 - B. All Marijuana Establishments shall meet the requirements listed by Tier 2 Licensing set by State law.
 - C. The design of the structure shall be compatible with the predominantly residential nature of the district.
 - D. All parking shall be located off street and shall not be located in the required front yard and subject to site plan review.
 - E. A natural buffer of 75 feet shall be maintained from front, side and rear setbacks.
 - F. There shall ~~have~~ be a minimum lot size of 90,000 square feet.
 - G. ~~Objectionable circumstances shall be subject to Site Plan Review.~~
8. Marijuana Establishments must comply with the State of Maine's Subsurface Wastewater Disposal Rules (10-144A CMR 241).
9. Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.
10. All licensed Premises shall be fixed, permanent locations. Licensees shall not be permitted to operate Marijuana Establishments ~~in~~ other than on the licensed Premises, ~~such as at farmer's markets, farm stands or kiosks.~~
11. Security.
 - A. The licensed Premises shall have lockable doors and windows and shall meet the applicable security requirements of State law and regulation. In addition to those requirements, they shall be served by a monitored alarm system which includes automatic notification to the Cumberland County Sheriff's Office and fire dispatch center. All premises shall be required to install a "Knox" lock box, and provide building keys to be placed in said "Knox Box".
 - B. The licensed Premises shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording twenty-four hours per day, seven days per week and video shall be retained for a minimum duration of thirty (30) days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.
12. Lighting

The licensed Premises shall have exterior security lights with motion sensors covering the entrances and exits of the facility.

 - A. The proposed premises must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated.

- B. The permitting authority (CEO, Planning Board) may require street lighting along streets, parking areas, at intersections and crosswalks and where various types of circulation systems merge, intersect or split.
- C. All Marijuana Establishments shall be illuminated by LED lights in accordance with the Maine Uniform Building and Energy Code authorized by 10 M.S.R.A section 9724(1-A).
- D. Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways.
- E. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. Direct or indirect illumination must not exceed 0.5 foot- candles at the lot line or upon abutting residential properties.
- F. Blinking lights are prohibited, unless they are necessary for safety reasons.
- G. The maximum height of freestanding lighting shall be the same as the principal building or not exceed 35 feet.
- H. Spot light type fixtures attached to buildings shall be prohibited unless there is a demonstrated safety or security need for them.

13. Ventilation

- A. The licensed Premises shall comply with all odor and air pollution standards established by this ordinance.
- B. All Marijuana Establishments shall have an odor mitigation system installed that has been approved by a Maine licensed engineer, indicating that they system will provide odor control sufficient to ensure that no odors are perceptible off the Premises.

14. Loitering

The facility owner/ operator shall make adequate provisions to prevent patrons or other persons from loitering on the Premises. It shall be the Licensee's obligation to ensure that anyone found to be loitering or using marijuana or marijuana products in the parking lot or other outdoor areas of a licensed Premises is ordered to leave.

15. Odor Management – For indoor Marijuana Establishment facilities only.

For all Marijuana Establishments the odor of marijuana must not be detected offsite, i.e., must not be detected at premises that are not under the custody or control of the establishment. To prevent and control marijuana odors, and odor control plan shall be submitted as part of the application. This plan shall describe the odor(s) originating or anticipated to originate at the premises and the control technologies to be used to prevent such odor(s) from leaving the premises. The odor control plan shall at minimum, include the following:

- A. A facility floor plan that identifies the locations of all odor-emitting activities and sources. The plan shall also identify the location of doors, windows, vents HVAC systems, odor control systems, and other relevant information.
- B. A list of specific odor-emitting activities and sources, and a description of the processes that will take place at the facility, including but not limited to, vegetative flowering, processing, and storage.

- C. For each odor- emitting activity or source, a description of the administrative procedures as well as the engineering processes, technologies, and equipment the facility will use.
- i. Administrative controls shall include, at a minimum; management practices to isolate odor activities and sources, use of standard operating procedures, employee training, regular equipment inspections and maintenance of inspection logs.
 - ii. Engineering controls shall include at a minimum, building design features; use of equipment and technology to address each specific odor-emitting activity or source; a systems and equipment maintenance and replacement schedule; and evidence that proposed equipment and technology are sufficiently capable and appropriately sized consistent with marijuana industry best practices for control technologies designed to effectively mitigate odors.
 Marijuana cultivation facilities must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. Marijuana Establishments 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 Marijuana Establishments are strongly encouraged to adopt best management practices with regard to implementing state of the art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.
 - iii. Noxious gases and fumes. Marijuana Establishments shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.

16. License Fee

License fees are non-refundable and due upon receipt of the completed application. License fees are to be collected on an annual basis. The fees are as follow:

Type of Establishment	Initial License Fee	Renewal License Fee
Products Manufacturing or Medical Marijuana Products Manufacturing	\$2,500.00	\$2,500.00
Cultivation Facility or Medical Marijuana Cultivation Facility	\$2,500.00	\$2,500.00
Testing Facility or Medical Marijuana Testing Facility	\$2,500.00	\$2,500.00

17. A Marijuana Establishment shall meet all operating and other requirements of state and local law. To the extent the State of Maine has adopted or adopts in the future any law or regulation governing Marijuana Establishments that conflicts in any way with the provisions of this Ordinance, the more restrictive shall control.

SECTION 9. Transfer of Ownership or Change of Location

Licenses issued under this Ordinance are not transferable to a new owner. Any change in ownership shall require a new license. 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 license for that location.

SECTION 10. Appeals

The following appeals may be decided by the Board of Selectmen upon a *de novo* hearing in which it will hear evidence on the application and make its own findings of fact and conclusions of law:

- A. Appeal of the Code Enforcement Officer’s (CEO) denial of an application for lack of completeness.
- B. Appeal by any aggrieved party having legal standing of any decision by the CEO to grant a license under this Ordinance.

C. Appeal by the applicant of any permit granted by the CEO with conditions to which the applicant/Licensee objects.

Appeals regarding licensing must be filed with the Board of Selectmen within forty-five (45) days of the date of the decision subject to appeal. The Board of Selectmen shall hold the hearing on the appeal and render a decision within forty-five (45) days of the date of the appeal, unless all parties consent to a delay.

Appeals regarding land use must be filed with the Zoning Board of Appeals within forty-five (45) days of the date of the decision subject to appeal. The Zoning Board of Appeals shall hold the hearing on the appeal and render a decision in accordance with the provisions of Section 11(C) of the Zoning Ordinance.

Appeals regarding licensing of final determinations issued by the Board of Selectmen pursuant to this Ordinance shall be made to the Cumberland County Superior Court within forty-five (45) days of the date of the vote on the decision being appealed, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

Appeals regarding land use decision issued by the Zoning Board of Appeals pursuant to this Ordinance shall be made to the Cumberland County Superior Court within the time periods established by 3-A M.R.S. §2691.

SECTION 11. Enforcement and Penalties

The operation of any Marijuana Establishment without the required license or in violation of the requirements of this Ordinance shall be a violation of this Ordinance. The Pownal Board of Selectmen or its designee shall enforce the provisions of this subsection. Failure to comply with any requirements of this ordinance shall be construed as grounds for initiating legal proceedings to enjoin construction of any specific activity violating the conditions of approval, or applying a fine in accordance with the provisions of 30-A M.R.S.A. Section 4452. A violation of any provision of this subsection shall be a civil violation, and a civil penalty in accordance with 30-A M.R.S.A. Section 4452. The Pownal Board of Selectmen or its designee may also seek injunctive relief, where appropriate, and shall be awarded attorney fees and costs for prosecution of violations of this section. The Pownal Board of Selectmen may also revoke or suspend the permit after notice and hearing.

SECTION 12. Severability

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

SECTION 13. Other Laws

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Marijuana Legalization Act, 28-B M.R.S. Chapter 1, as may be amended, and the requirements of the Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended. In the event of a conflict between the provisions of this Ordinance and the provisions of said Act or any other applicable state or local law or regulation, the more restrictive provision shall control.

SECTION 14. Indemnification

1. 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.
2. By accepting a license issued pursuant to this Ordinance, all Licensees, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents and insurers against liability, claims and demands on account of any injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sicknesses, 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.