

ARTICLE 2: Shall an ordinance entitled, “July 2020 Proposed Amendments to the Town of Bowdoinham Land Use Ordinance Relating to the Review and Licensing of Marijuana Establishments” be enacted?

July 2020 Proposed Amendments to the Town of Bowdoinham Land Use Ordinance Relating to the Review and Licensing of Marijuana Establishments

NOTE: Proposed additions to existing Code sections are underlined.
Proposed deletions of existing Code sections are ~~crossed out~~.
Other sections of the Ordinance are unchanged.

ARTICLE 2: DEFINITIONS

Marijuana: The leaves, stems, flowers and seed of a marijuana plant, whether growing or not. Marijuana includes marijuana concentrate but does not include marijuana product or hemp as defined in Title 7, section 2231.

Marijuana Concentrate: The resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. Marijuana concentrate does not include resin extracted from hemp as defined by the State of Maine Statute Title 7, Section 2231.

Marijuana Extraction: The process of extracting marijuana concentrate from marijuana using water, lipids, gases, solvents or other chemicals or chemical processes. Marijuana extraction does not include the process of extracting concentrate from hemp as defined by the State of Maine Statute Title 7, Section 2231.

Marijuana 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 Manufacturing Facility—A registered tier 1 or tier 2 manufacturing facility or a person or entity authorized to engage in marijuana extraction by the State of Maine.~~

Marijuana Product: A product composed of marijuana or marijuana concentrate and other ingredients that is intended for ~~medical~~ use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include marijuana concentrate or a product containing hemp as defined by the State of Maine Statute Title 7, Section 2231.

~~Marijuana Testing Facility: A public or private laboratory that:~~

~~A. Is authorized in accordance with section 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.~~

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~~Retail Marijuana Cultivation Facility: An entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs. An individual or entity licensed to operate a cultivation facility under Title 28-B, section 301; and any individual or entity primarily engaged in the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale. A Marijuana Cultivation Facility shall include the “cultivation area” of a Registered Dispensary and/or Medical Marijuana Registered Caregiver as defined in 22 M.R.S. § 2422, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.~~

~~Retail Marijuana Establishment: A retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility. Any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the municipality. This definition shall include a Marijuana Manufacturing Facility, Marijuana Store, and a Marijuana Testing Facility, as well as a Medical Marijuana Registered Caregiver that is not considered a Marijuana Cultivation Facility under this ordinance.~~

~~Retail Marijuana Products Manufacturing Facility: An individual or entity licensed required to be licensed or registered by the State under Title 28-B or Title 22, as applicable, to purchase retail marijuana; manufacture, prepare label and package retail marijuana and marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, and to retail marijuana stores and retail marijuana social clubs.~~

~~Retail Marijuana Social Club: An individual or entity licensed required to be licensed or registered by the State under Title 28-B or Title 22, as applicable, to sell retail-marijuana and retail-marijuana products to consumers for consumption on the licensed premises.~~

~~Retail Marijuana Store: An individual or entity licensed required to be licensed or registered by the State under Title 28-B or Title 22, as applicable, to purchase retail marijuana, from a retail marijuana immature marijuana plants and seedlings from a cultivation facility and to purchase marijuana and retail marijuana products from a retail-marijuana products manufacturing facility and to sell retail marijuana, and retail marijuana products, immature marijuana plants and seedlings to consumers. A Marijuana Store includes a Caregiver Retail Store as defined by the State of Maine and a Registered Dispensary.~~

~~Retail Marijuana Testing Facility: An individual or entity licensed and certified required to be licensed or registered by the State under Title 28-B or Title 22, as applicable, to analyze and certify the safety and potency of retail-marijuana and retail marijuana products.~~

~~Medical Marijuana Registered Caregiver: A person or an assistant of that person that provides care for a qualifying patient and is required to be registered in accordance with Maine Medical Use of Marijuana Act.~~

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TABLE 5.1 – LAND USES PERMITTED IN ZONING DISTRICTS

KEY

District-

R/A– Residential/Agricultural District

VDI – Village I District

VDII – Village II District

Reviewing Authority

A – Allowed without a permit

RC– Permitted with permit from Road Commissioner

CEO – Permitted with permit from Code Enforcement Officer

LPI – Local Plumbing Inspector

PB – Permitted with permit from Planning Board

SPR – Site Plan Review permit

SB – License from Select Board Required - SB^A - Annual License and SB^M – 5-year license

P – Permit Required

NP – Not permitted

See Footnotes at end of Table. All uses are subject to the general performance standards of Article 4

Land Uses	Districts		
	R/A	VDI	VDII
Agricultural & Resource Uses-			
Medical Marijuana Caregiver (Unregistered)	A	A	A
Medical Marijuana Caregiver (Registered)	SPR	SPR	SPR
Retail Marijuana Cultivation Facility	SPR & SB ^A	SPR & SB ^A	SPR & SB ^A
Industrial Uses-			
Automobile graveyard	SPR & SB ^A	SPR & SB ^A	SPR & SB ^A
Automobile Recycling Business	SPR & SB ^M	SPR & SB ^M	SPR & SB ^M
Junkyard	SPR & SB ^A	SPR & SB ^A	SPR & SB ^A
Commercial Uses-			
Medical Marijuana Establishment	SPR	SPR	SPR
Retail Marijuana Establishment	SPR & SB ^A	SPR & SB ^A	SPR & SB ^A
Retail Marijuana Social Club	NP	NP	NP

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ARTICLE 10: SITE PLAN REVIEW

B) Site Plan Application Review Procedures

2) Classification of Projects.

b) Tier I projects shall include the following projects:

- (i) Home-Based Business that does not meet the Performance Standard in Article 4.E.
- (ii) An increase in the floor area of less than 1,000 sq ft. This provision may only be used once in a five year period.
- (iii) A Home Daycare.
- (iv) Boarding House.
- (v) Riding Arena/Boarding Stable.
- (vi) Home Occupation that does not meet the Performance Standards of Article 4.D.
- (vii) Projects involving only the installation of impervious surfaces less than 20,000 sq ft.
- (viii) Private Air Strips.
- (ix) Farm Stands.
- (x) A change of use that is within the same classification (i.e. commercial, industrial, institutional)

c) Tier II projects shall include the following projects:

- (i) Smaller scale, less complex projects for which a less complex review process is adequate to protect the Town's interest.
- (ii) Projects involving the construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area.
- (iii) Projects involving only the creation of twenty thousand (20,000) to eighty thousand (80,000) square feet of impervious surfaces.
- (iv) Projects involving the conversion of existing buildings or structures from one use to another without enlargement of the gross floor area.

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(v) ~~Home Based Business that does not meet the Performance Standard in Article 10.E.14.~~ All marijuana uses requiring a Site Plan Review Permit, unless meets the requirements of a Tier III application in subsection d below.

(vi) Any project which involves drilling for or excavating natural resources, including mineral extraction, on land or under water where the area affected is between 5,000 and 30,000 square feet.

(vii) A change of use that is not within the same classification (i.e. commercial, industrial, institutional)

d) Tier III projects shall include the following projects:

(i) Larger, more complex projects for which a more detailed review process and additional information are necessary.

(ii) Projects involving the construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area.

(iii) Any project which involves drilling for or excavating natural resources, including mineral extraction, on land or under water where the area affected is in excess of 30,000 square feet.

(iv) Projects involving the creation of more than eighty thousand (80,000) square feet or more of impervious area.

(v) Projects requiring review which are not classified as a Tier II development.

E) Use-Specific Performance Standards

21) ~~Retail Marijuana Establishments & Medical Marijuana Establishments~~

a) ~~The establishment shall have and implement an odor management and remediation plan to ensure that no undue odors impact neighbors or the public.~~ The establishment shall have and implement an odor mitigation plan that is sufficient to eliminate the smell of marijuana so that it is not be detectable offsite, i.e., must not be detected at premises that are not under the custody or control of the establishment.

b) Buffering or other measures may be required to address the establishment’s impact on abutters and the public.

c) All marijuana and marijuana products shall be in a secured facility- that meets state requirements for the registered or licensed premises under Title 22, Chapter 558-C or Title 28-B, as applicable. Any outdoor area approved for marijuana cultivation under this ordinance must be enclosed and equipped with locks or other security devices that permit access only by a person authorized to have access to the area. The municipality shall keep confidential any security plans that are submitted as part of the application process.

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- d) The establishment may not be located within 500ft of a school.
- e) The signage for the establishment may not contain any graphics of marijuana or marijuana accessories.
- f) No drive up/through service shall be allowed.

Article 11: Administration, Enforcement, & Penalties

A) Administering Agencies

7) Select Board

The Select Board shall be responsible for reviewing and acting upon municipal licenses as set forth in this Ordinance. The purpose of the license is to ensure that the applicant is operating within their Planning Board approval and meeting the applicable performance standards within the Land Use Ordinance.

C) Permit Application Review Procedure

6) Select Board. The procedure for administering a license shall be as follows:

a) Submission of Permit Application

(i) Determination of complete application. Within 30 days of the date of receiving a written application the Select Board or their designee shall review the application for completeness. If the application is incomplete the Select Board or his/her designee shall notify the applicant in writing and specify the additional material that is needed to make the application complete. Failure to submit the additional information within six months shall be deemed an abandonment of the application.

(ii) After the Select Board has determined that a complete application has been filed, it shall begin its substantive review of the application.

(iii) The Select Board may hold an on-site inspection of the site in their review of the application. The Board may decide not to hold an on-site inspection when the site is snow covered.

(a) If a review is pending during a period when there is more than one foot of snow cover, the deadline by which the Select Board shall take final action may be extended. This extension shall not exceed thirty (30) days after the site is clear of snow and Board is able to conduct an on-site inspection.

(iv) The Select Board shall hold a public hearing within 30 days of the filing of the completed application. The Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and all abutting property owners by first-class mail. The determination of the names and owners shall be based upon the records of the local Assessor's Office.

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~~(ii)~~(v) Action on complete application. Within forty-five (45) working days of the date of receipt of a complete application the Select Board or their designee shall act to deny, to approve, or to approve the application with conditions as are deemed advisable to assure compliance with the Ordinance. The reasons as well as conditions shall be stated in writing.

(vi) All time limits provided for in this section may be extended by mutual agreement of the applicant and Select Board.

b. License Approval, Revocation or Suspension

(i) An applicant’s license application shall be approved if the applicant meets all the performance standards set forth in the Land Use Ordinance and/or the conditions of approval set forth in their Site Plan permit.

(ii) The Select Board has the right to deny a license renewal if any of the performance standards set forth in the Land Use Ordinance and/or the conditions of approval set forth in their Site Plan permit are not being met, or if the business has a history of noncompliance with said standards and/or conditions.

(iii) The Select Board has the right to revoke or suspend a license if a business fails to remedy a violation within 30 days of said violation notice.

(iv) The Select Board has the right to revoke or suspend a license without warning if the business is found to be acting in an unsafe or illegal manner

b) Submission Requirements

(i) Site Plan Review Permit from the Planning Board.

(ii) All applicable State licenses/registrations and permits.

- a. If State licenses/registrations and/or permits have been filed but not yet granted, then the applicant must provide a copy of said application(s).
- b. If the applicant’s application is approved by the Select Board, their approval will be contingent upon their State approvals, a copy of which must be given to the Town Clerk before business can commence.

~~(i)~~(iii) Burden of proof. The applicant shall have the burden of proving that the proposed project, development or land use activity is in conformity with the purposes and provisions of this Ordinance and any applicable State laws and rules.

~~(ii)~~(iv) The applicant shall submit seven (7) copies of the application and all supporting documentation.

D) Permit Application Submission Requirements

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1) Written application. Every applicant for a permit shall submit a written application on a form provided by the municipality. The following items, when appropriate, shall be included with the application.

- a) A scaled site plan showing
 - (i) The shape, size and location of the lot to be built upon and structure(s) to be erected, altered or removed.
 - (ii) Any structure(s) already on the lot.
 - (iii) Depth of front yards of structure(s) and adjoining lots.
- b) Statement of intended use.
- c) Statement of how use meets performance standards.
- c) Documentation that the applicant has right, title or interest in the property.
- d) Any other information needed by the Code Enforcement Officer, Road Commissioner, Planning Board, Select Board or the Board of Appeals to determine compliance with the provisions of this Ordinance and/or any other information required by this Ordinance.
- e) Signature. All applications shall be signed by the owner of the property or the owner’s legal agent, certifying that the information on it is complete and accurate. If the person signing the application is not the owner or lessee of the property, then that person shall submit a letter of authorization from the owner or lessee.
- f) Application to be dated. All applications shall be dated, and the date and time of its receipt shall be noted upon each application.

2) Fees.

- g) Select Board. License fees shall be as follows, plus any and all advertising costs:
 - (i) Graveyard or Junkyard License – fifty (\$50) dollars for each license.
 - (ii) Automobile Recycling Business – two-hundred-fifty (\$250) dollars for a five-year license.
 - (iii) Marijuana License – The license fee shall be based on the level of the business’s Site Plan Permit:
 - Tier II Permit – five hundred (\$500) dollars
 - Tier III Permit – one thousand (\$1,000) dollars.