

Proposed Ordinance – For discussion at the 02/06/24 Town Council Public Hearing
All proposed new text is shown with an underline.

Chapter 66
Town of Freeport
Cannabis Establishment Licensing Ordinance

§1. Title.

This ordinance shall be known and cited as the “Town of Freeport Cannabis Establishment Licensing Ordinance” and will be referred to hereinafter as "this Ordinance." This Ordinance provides for licensing and regulation of Cannabis Establishments, and, together with the Town of Freeport Zoning Ordinance, prescribes definitions and standards for the operation of Cannabis Establishments.

§2. Authority.

This Ordinance is enacted pursuant to authority granted by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S Chapter 1 and the Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended; and the Town's 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.

§3. Purpose.

It is the purpose of this Ordinance, in conjunction with certain sections of the Freeport Zoning Ordinance, to provide for and regulate the issuance of local licenses for Cannabis Establishments as defined in this Ordinance and to require their renewal annually in order to promote the health, safety, and general welfare of the residents of Freeport and to regulate the location, density and type of land use activity involving Cannabis, all in accordance with the Marijuana Legalization Act and the Maine Medical Use of Marijuana Act, as may be amended.

§4. Conflict with other ordinances; Severability.

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 control.

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

§5. Effective Date.

The effective date of this Ordinance, and any amendments to this Ordinance, shall be their date of adoption by the Town Council.

§6. Definitions.

As used in this Ordinance, unless the context otherwise indicates, the following terms are defined below, and unless the context otherwise indicates, shall be construed in a manner that is consistent with the corresponding definitions in the State of Maine Medical Use of Cannabis Program Rule, 18-691 C.M.R. Chapter 2 and in the State of Maine Adult Use Cannabis Program Rule, 18-691 C.M.R. Chapter 1, provided that the term “Marijuana” as used in this Ordinance shall have the same meaning as “Cannabis” as used in the Adult Use Program Rule:

Adult Use Cannabis Cultivation Facility: A “cultivation facility” as that term is defined in 28-B M.R.S. § 102(13).

Adult Use Cannabis Retail Store: A “marijuana store” as that term is defined in 28-B M.R.S. § 102(34).

Adult Use Cannabis Testing Facility: A “testing facility” as that term is defined in 28-B M.R.S. § 102(54).

Cannabis: “Marijuana” as that term is defined in 28-B M.R.S. § 102 (27), as may be amended.

Cannabis Cultivation Facility: An Adult Use Cannabis Cultivation Facility or a Medical Cannabis Cultivation Facility.

Cannabis Establishment: A Cannabis Cultivation Facility or a Cannabis Manufacturing and Processing Facility. Unless a general definition (including, but not limited to, agriculture, manufacturing/processing, retail trade, business and professional offices, home occupation, or accessory use) expressly includes a Cannabis Establishment, the general definition does not include a Cannabis Establishment. A Cannabis Establishment does not include an Adult Use Cannabis Retail Store, a Medical Cannabis Caregiver Retail Store, an Adult Use Cannabis Testing Facility or Medical Cannabis Testing Facility, which are not permitted in the Town of Freeport.

Cannabis Extraction: The process of extracting cannabis concentrate from cannabis using water, lipids, gases, solvents or other chemicals or chemical processes, as defined in 28-B M.R.S. §101(30), as may be amended. Cannabis Extraction does not include extraction processes that use inherently hazardous substances.

Cannabis Home Cultivation: The cultivation of (i) cannabis for personal adult use by persons twenty-one (21) years of age or older in accordance with the provisions of 28-B M.R.S. § 1502; or (ii) medical cannabis by an Exempt Caregiver or a Qualifying Patient.

Cannabis Manufacturing: The production, blending, infusing, compounding or other preparation of cannabis concentrate and cannabis products, including, but not limited to, Cannabis Extraction or preparation by means of chemical synthesis.

Cannabis Manufacturing and Processing Facility: A “products manufacturing facility” as that term is defined in 28-B M.R.S. § 102(43) as amended, or a “manufacturing facility” as that term is defined in 22 M.R.S. § 2422(4-R) as amended.

Exempt Caregiver: A natural person who cultivates cannabis for no more than two (2) family members or members of the caregiver's household, is exempt from registration by the State pursuant to 22 M.R.S § 2423-A(3)(C-1) and may not possess more than eight (8) pounds of cannabis.

Inherently Hazardous Substances: Means a liquid chemical, compressed gas or commercial product that has a flash point at or lower than thirty-eight (38) degrees Celsius or one hundred (100) degrees Fahrenheit, including, but not limited to, butane, propane and diethyl ether. Inherently Hazardous Substance does not include any form of alcohol or ethanol.

Licensee: A person or entity licensed to operate a Cannabis Establishment pursuant to this Ordinance.

Marijuana: See Cannabis.

Medical Cannabis Cultivation Area: A “cultivation area” as that term is defined in 22 M.R.S. § 2422(3).

Medical Cannabis Cultivation Facility: An indoor Medical Cannabis Cultivation Area located anywhere other than a Medical Cannabis Registered Caregiver’s residential dwelling or accessory structure.

Medical Cannabis Caregiver Retail Store: A “caregiver retail store” as that term is defined in 22 M.R.S. § 2422(1-F) as may be amended.

Medical Cannabis Registered Caregiver: A “caregiver” as that term is defined in 22 M.R.S. § 2422(8-A), as may be amended, who is registered by the State pursuant to 22 M.R.S. § 2425-A.

Medical Cannabis Small-Scale Caregiver Operation: A commercial or noncommercial use by a Medical Cannabis Registered Caregiver who sells or dispenses cannabis solely out of the Caregiver’s residential dwelling or accessory structure; does not process or manufacture cannabis using chemicals or solvents; and cultivates no more than thirty (30) mature cannabis plants. Medical Cannabis Small-Scale Caregiver Operation is considered a home occupation and is subject to the performance standards of Section 503 of the Freeport Zoning Ordinance.

Medical Cannabis Testing Facility: A “marijuana testing facility” as that term is defined in 22 M.R.S. § 2422(5-C) as may be amended.

Qualifying Patient: A “qualifying patient” as that term is defined in 22 M.R.S. § 2422(9) as may be amended.

§7. Establishments allowed; licenses required; license exemptions.

Pursuant to 28-B M.R.S. Chapter 1 or 22 M.R.S. Chapter 558-C, the operation of Cannabis Establishments is allowed, subject to the requirements of this Ordinance, the Town of Freeport Zoning Ordinance, and other applicable state and local laws and regulations.

No person shall operate a Cannabis Establishment, nor shall any property owner permit the use of their premises to be operated as a Cannabis Establishment, without a valid license issued by the Town. A separate Town and State license must be obtained for each Cannabis Establishment located on the same premises.

The Licensee for a Cannabis Cultivation Facility may operate either a Medical Cannabis Cultivation Facility or an Adult Use Cannabis Cultivation Facility and may change from one to the other without requiring a new license from the Town, provided that the Licensee must comply with any and all State licensing requirements at all times for its operations on the premises.

The Licensee for a Cannabis Manufacturing and Processing Facility may operate either a medical or adult use Cannabis Manufacturing and Processing Facility and may change from one to the other without requiring a new license from the Town, provided that the Licensee must comply with any and all State licensing requirements at all times for its operations on the premises.

Whenever a Cannabis Establishment license expires and is not timely renewed, and whenever the Town declines to renew a Cannabis Establishment license, other applications for a Cannabis Establishment license may be reviewed by the Town. The cap on Cannabis Establishment licenses for each category shall be maintained.

Exempt Caregivers, Qualifying Patients, and individuals engaged in Cannabis Home Cultivation and/or operating a Medical Cannabis Small-Scale Caregiver Operation, as defined by this Ordinance, are not required to obtain a Cannabis Establishment license from the Town.

§8. Submission of initial license applications; initial application period.

A. Initial application acceptance period.

On the tenth (10th) business day following the effective date of this Ordinance, the Town shall post a notice on the Town’s website and in a newspaper of general circulation within the Town of the categories of Cannabis Establishment licenses available (including the number available in each category) and shall provide for an initial application acceptance period of at least thirty (30) days for the Town’s receipt of completed initial application submissions.

Initial license applications for Cannabis Cultivation Facilities submitted by the owners of lawfully existing Medical Cannabis Cultivation Facilities located in a building previously approved for commercial use as of February 6, 2024, within districts where Cannabis Establishments are allowed under the Zoning Ordinance shall be given priority over applications submitted for licensing of new Cannabis Cultivation Facilities.

Initial license applications for Cannabis Manufacturing and Processing Facilities submitted by the owners of lawfully existing Cannabis Establishments located in a building previously approved for commercial use as of February 6, 2024 within districts where Cannabis Establishments are allowed under the Zoning Ordinance shall be given priority over applications for new Cannabis Manufacturing and Processing facilities.

Each party seeking to apply for a Town License shall submit to the Town an initial application along with an application fee pursuant to a municipal fee schedule established by the Town Council and shall be classified as either an existing or new establishment and assigned a number on a form provided by the Town containing the information described in subsection (B) below. No more than one initial application may be filed by the same applicant or group of applicants for each Cannabis Establishment type operating under a specific business name on the same property. Once a number has been assigned to an applicant, it shall not be available to other parties requesting an application for the same license or license type.

If the number of priority applications in either category of license exceeds the number of available licenses in that category, a drawing will be held in accordance with subsection 9(b) below to determine those priority applicants who will be eligible to continue on with the licensing process. If the number of available licenses in each category exceeds the number of priority applications and if the number of non-priority applicants exceeds the number of licenses available to non-priority applicants, a drawing will be held in accordance with subsection 9(b) below to determine those non-priority applicants who will be eligible to continue on with the licensing process. The Town will notify applicants in writing of their eligibility status to continue on to the final application process. Only priority applicants and randomly selected non-priority applicants will be permitted to submit a final application to the Town.

B. *Content of initial application; submission requirements.*

An initial application for a license shall be submitted on a form provided by the Town. All applicants shall be qualified according to the provisions of this Ordinance. The initial application for a Cannabis Establishment license shall contain the following information:

1. The applicant's full legal name, including the names of all partners, members, officers, directors, shareholders and owners.
2. The applicant's business name, mailing address, email address, and phone number.
3. Written proof that the applicants are at least twenty-one (21) years of age.
4. The type of Cannabis Establishment for which the applicant is seeking a license and a general description of the business.

5. A description of the premises for which the license is sought, including street address, tax map and lot number and zoning district.
6. A copy of a map depicting all approximate property boundary lines and land uses on each property located within 1,000 feet of the approximate property boundary lines where the premises to be licensed are located.
7. Sufficient documentation demonstrating the applicant's entitlement to possession of the premises pursuant to a rental agreement, lease, purchase and sale agreement, option, deed or other entitlement to possession and/or ownership of the premises.
8. Evidence of any existing State authorizations, including evidence of a Caregiver registration in good standing, a conditional license pursuant to Title 28-B, and a copy of the applicant's State license application and supporting documentation, as submitted to the State licensing authority, where applicable.
9. If the applicant holds any other licenses under this Ordinance the applicant shall provide the names and locations of such other licensed/permitted businesses, including the current status of the license or permit.
10. If the Town Manager or their designee determines that a submitted initial application is not complete, they shall notify the applicant in writing within ten (10) business days of the additional information required to process the application. If such additional information is not submitted within thirty (30) calendar days of the Town Manager's or their designee's request, the initial application may be denied and excluded from any drawing that may be held pursuant to Section 9(b).

C. *Application fees.*

The initial license application submission must be accompanied by an application fee pursuant to a municipal fee schedule established by the Town Council. The Town shall return the application fees submitted by the applicant(s) who are not selected for submission of a final application. Application fees paid by the applicant(s) who are selected for submission of a final application shall be non-refundable unless a selected applicant notifies the Town Manager or their designee in writing, no later than ten (10) business days after receiving written notice from the Town of having been selected, of the applicant's withdrawal from the final application process.

D. *Future availability of licenses.*

If, after the expiration of the initial round of licensing under subsection (A), one or more Cannabis Establishment licenses becomes available due to final termination or abandonment of an existing license, a change in the maximum number of licenses available in this Ordinance, or otherwise, the Town shall post a notice on the Town's website and in a newspaper of general circulation within the Town of the category or categories of license available. The notice shall include dates during which initial license application submissions will be accepted for the license(s) available, and shall otherwise follow the same process described in subsection (A) above for determining the applicants

who will be eligible to submit a final license application in the category or categories available.

§9. Maximum number of licenses; drawing.

- (a) For each type of Cannabis Establishment, the maximum number of local licenses that are authorized at any one time is as follows:
 - (1) Cannabis Cultivation Facility: ~~four~~six (46).
 - (2) Cannabis Manufacturing and Processing Facility: four (4).
- (b) *Drawing*. The Town Manager or their designee will determine when a drawing may be required in order to select priority and/or non-priority applicants who are eligible to submit a final license application in a license category or categories available. The Town Manager or their designee shall select the manner of drawing to be conducted, such as by a drawing of lots or similar process of random selection; provide notice of time, place and manner of the drawing to all non-priority applicants whose applications will be part of the drawing; and oversee the drawing process.

§10. Final Application.

Applicants authorized under Section 8 above, as applicable, shall complete and file a final application on a form provided by the Town including the following supporting materials:

- a) Evidence of conditional license approval by the Maine Department of Administrative and Financial Services Office of Cannabis Policy (“OCP”), where applicable, or evidence that the applicant is a registered caregiver who, at the time of submission of a final application, possesses a valid, active registry identification card from the State pursuant to 22 M.R.S. § 2425-A, where applicable;
- b) Evidence of Site Plan Review and approval by the Project Review Board, in accordance with Section 535(B)(3) of the Freeport Zoning Ordinance; and
- c) Evidence that the applicant remains in compliance with the requirements of Section 8(B), including an attested statement by the applicant that the information provided in the applicant’s initial application under subsection 8(B)(9) remain unchanged.

Applicants shall have one (1) year to complete and submit their final application to the Town of Freeport. Calculation of said year begins on the date of the issuance of a written notice from the Town of Freeport confirming their eligibility to continue on to the final application process. If an applicant fails to submit a completed application within one (1) year as described above, the application will be considered abandoned. If an application is abandoned, the Town will make that authorized license available to other applicants in accordance with Section 8, where applicable.

If the Town Manager or their designee determines that a final application submitted is not complete, the Town Manager or their designee shall notify the applicant of the additional information required to process the application. If such additional information is not submitted within thirty (30) calendar days of the Town’s request, the application may be denied by the Council, or by the Council’s designee.

§11. Action on final application; issuance of Town License.

- (a) *Public hearing.* The Town Manager or their designee, upon receipt of a complete final application, shall schedule a public hearing at a regular or special meeting of the Town Council and shall arrange for public notice of the public hearing to appear in a newspaper of general circulation within the Town of Freeport at least seven (7) days prior to the date of the scheduled public hearing.
- (b) *Council Action.* The Town Council, after notice and public hearing, shall determine whether the applicant complies with the requirements of Sections 10(a) – (c) of this Ordinance. Upon such a determination by the Council, the Council shall grant local authorization to the applicant for State licensing purposes. The Council shall issue a final Town License to the applicant upon receipt of the following: (a) evidence of final approval or authorization by the State, where applicable; (b) payment of the non-refundable final application fee pursuant to a municipal fee schedule established by the Town Council; and (c) a finding by the Council or designee that the application and the proposed facility are in compliance with the terms of this Ordinance, state law and any other Town ordinances and regulations.
- (c) *Responsibilities and review authority.*
 - 1. The Town Council shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this Ordinance and any other Town ordinances or regulations and to address concerns about operations that may be resolved through such conditions. The failure to comply with such conditions shall be a violation of the license.
 - 2. No Town License for a Cannabis Establishment shall be granted until the Police Chief, the Fire/Rescue Chief, the Codes Enforcement Officer, and if applicable, the Health Inspector, have all made the determination that the applicant complies with this and all other local ordinances and state laws and each individual provides a written recommendation regarding such compliance.
 - 3. The Town Council may adjust the time period for renewal of a Town license to a period that is shorter or longer than a calendar year in order to align the Town’s license renewal date with the State’s license renewal date, where applicable. In that event, the applicant’s license renewal fee shall be prorated based on the number of days that the renewed Town license will remain in effect.

§12. Display of licenses.

State and local licenses and registrations shall be displayed in a conspicuous location within the Cannabis Establishment for which the licenses are issued visible to employees of the Cannabis Establishment.

§13. Duty to update information.

Licensees under this Ordinance shall have the duty to provide the Town with updated and accurate information regarding all of the information provided pursuant to the application process within ten (10) business days of any change. Failure to provide updated current and accurate information to the Town is grounds for suspension, revocation or non-renewal of the license.

§14. Standards for approval, denial, revocation.

The standards for approval of a local authorization and a final Town license are set forth in Section 10. An application for a Cannabis Establishment license shall be denied by the Town Council if the applicant fails to meet the location, buffering and setback requirements of the Zoning Ordinance, fails to pay all fees due under this Ordinance (as specified in a municipal fee schedule established by the Town Council), or fails to obtain and maintain in effect any required State approval or authorization for the same premises. An existing license may be suspended or revoked by the Town Council after notice and hearing, if the applicant, or any owner of the applicant or Licensee:

- a) Fails to meet the requirements of this Ordinance, or any other applicable statute, ordinance or regulation, including any applicable Town location, setback, building and life safety code requirements;
- b) Fails to meet the conditions placed by the Town Council on a license and/or the conditions placed on the Site Plan Approval granted for the property by the Project Review Board, if any;
- c) Has provided false or misleading information in connection with the license application;
- d) Has failed to update information as required in Section 13;
- e) Has failed to obtain or maintain in effect State approval, authorization or registration; or
- f) Fails to pay any applicable Town license fee.

In suspending, revoking, or refusing to renew a license for a Cannabis Establishment, the Council may take into consideration:

- a) The nature and/or number of formal written complaints the Codes Enforcement Officer or law enforcement officials have received and/or investigated;
- b) Failure to correct or abate a violation that the Town is authorized to enforce; and
- c) Failure to correct or abate any violation of this Ordinance, any other applicable

Town ordinance, or any State cannabis rule or regulation.

§15. Transferability of licenses.

No license issued for a Cannabis Establishment may be assigned to another individual or entity without prior approval by the Town Council. A Cannabis Establishment Licensee, including a sole proprietor, may transfer ownership and ownership interests, including partial ownership interests, in a Town License only after the corresponding change in ownership of its State license has been approved by the Office of Cannabis Policy (“OCP”), where applicable.

A Cannabis Establishment Licensee may transfer ownership in a local license only after the Licensee provides the following to the Town:

- a. Documentation that the Licensee is current in the payment of all related license fees and fines owed to the Town; and
- b. Documentation that the Licensee is in compliance with the terms of its existing license, this Ordinance and any other applicable Town ordinances;
- c. Documentation that the proposed transferee is a registered caregiver who possesses a valid, active registry identification card satisfactory to OCP, where applicable.

Upon receipt of the above documentation, the Town shall provisionally approve the transfer of the license to the proposed transferee, conditioned upon the proposed transferee receiving any and all applicable State approvals or authorizations. Upon a finding by the Town Council or designee that the proposed transferee has complied with all of the terms of this Ordinance and any other applicable Town ordinances and regulations, and has received final authorization or approval by the State to operate pursuant to the license to be transferred, where applicable, the Town Council shall grant final approval of the license transfer. Unless specifically authorized by the Town Council, no transferee of a Cannabis Establishment license may conduct activities pursuant to that license until the Town Council has granted final approval of the license transfer.

Licenses are limited to the premises for which they are issued and are not transferable to another location unless the Town Council, after notice and hearing in accordance with the procedures of Section 11(a), finds that the change in location will comply with the requirements of this Ordinance, the new location has received site plan review and approval and any other local approvals, if required, and the change in location will not adversely affect neighboring properties or other licensees.

§16. Term of license; Renewals.

- A. *Term of license.*

Except as provided in Section 11, the term of any license shall end one year from the date of issuance.

B. Renewals.

Renewals shall be subject to the same submission and review standards as contained in Sections 8 and 10 herein, provided that license renewals shall not require a new site plan review.

All applications and renewals require notice and a public hearing, in accordance with the procedures in Section 11(a), and approval of the Town Council. As part of the application/renewal process, the Town Council shall consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate, or limit past problems.

Licenses shall be renewed by appropriate application on forms provided by the Town and payment of the applicable license renewal fee (pursuant to a municipal fee schedule established by the Town Council) within sixty (60) days prior to the expiration date of the license. Any person failing to renew any annual license required by the provisions of this Ordinance within thirty (30) days after the expiration ~~or renewal~~ date and continuing to operate are in violation of this Ordinance. Failure to renew any annual license required by the provisions of this Ordinance within thirty (30) days after the expiration ~~or renewal~~ date will result in loss of said license, and an application for the renewal of an expired license submitted beyond that date shall be treated as a new license application.

§17. Right of access; Inspections

Every Cannabis Establishment shall allow the Police Department, Fire/Rescue Department, Codes Enforcement Officer, Health Inspector and/or any other town officers authorized by the Town Manager, to enter the premises at reasonable times for the purpose of checking compliance with all applicable state laws and local ordinances and regulations, including this Ordinance. All Cannabis Establishments shall be subject to inspection at least annually by the Fire/Rescue Department and Codes Enforcement Office to ensure compliance.

Cannabis Establishments are responsible for providing any isolation/protective gear needed to allow inspectors to access any of the business's facilities. Failure to have such gear available or refusing to allow an inspector to access any part of a Cannabis Establishment is a violation of this Ordinance and grounds for suspension or revocation of a license.

§18. Violations; Penalties.

In addition to revocation or suspension of a Cannabis Establishment license as provided in this Ordinance, any person, including but not limited to, a 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, or fails to comply with any of its requirements, shall be penalized in accordance with 30-A M.R.S. §4452.

Commencement of any Cannabis Establishment business operation 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 Codes Enforcement Officer. Upon such notification, the Town may pursue fines and/or penalties under 30-A M.R.S. §4452.

Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this Ordinance. All fines and penalties, together with costs of prosecution of violations, which shall include the Town's cost and attorneys' fees, shall inure to the benefit of the Town. This section shall be enforced by the Codes Enforcement Officer or other designee of the Town Council.

§19. 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 Cannabis Establishment 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 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 licensed Cannabis Establishment.

§20. Appeals.

An aggrieved party may appeal any final licensing, denial, suspension, revocation or non-renewal decision of the Town Council under this Ordinance to Superior Court in accordance with 30-A M.R.S. § 4482-A and the provisions of Rule 80B of the Maine Rules of Civil Procedure.