

Chapter 128

MARIJUANA BUSINESSES

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[HISTORY: Adopted by the Town Council of the Town of Windham 5-26-2020 (Ch. 160 of the 1991 Code); amended 2-9-2021; 7-13-2021; 12-14-2021. Subsequent amendments noted where applicable.]

§ 128-1. Purpose and authority. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

This chapter is enacted pursuant to authority granted under 30-A M.R.S.A. § 3001, 22 M.R.S.A. § 2429-D and 28-B M.R.S.A. § 402. The purpose of this chapter is to set forth procedures and standards for the issuance of local licenses for marijuana businesses in order to protect public health, safety and welfare.

§ 128-2. Definitions.

As used in this chapter, the terms below shall be defined as indicated. All other terms used in this chapter, if not defined below, shall have the same definition as set forth in § 120-301 of Chapter 120, Land Use.

APPLICANT — A person who has submitted an application for licensure as a marijuana business pursuant to this chapter.

LICENSED PREMISES — The premises specified in an application for a license pursuant to this chapter or within a license issued pursuant to this chapter.

LICENSEE — A person licensed pursuant to this chapter.

LICENSING AUTHORITY — The Town Clerk or, if referral to the Town Council is required pursuant to this chapter, the Town Council.

MARIJUANA BUSINESS — An adult use marijuana store, medical marijuana caregiver retail store, medical marijuana registered caregiver, medical marijuana registered caregiver (home occupation), marijuana cultivation facility, marijuana manufacturing facility, marijuana

registered dispensary, or marijuana testing facility, all as defined in Chapter 120, Land Use. [Amended 4-12-2022 by Order No. 22-062]

OWNER — A person whose beneficial interest in a marijuana business 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 business and/or has a controlling interest in a marijuana business.

PERSON — 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 business is to conduct its business.

STATE LICENSE — Any license issued by the State Licensing Authority.

STATE LICENSING AUTHORITY — The authority created or designated by the state for the purpose of regulating and controlling licensing for marijuana businesses.

§ 128-3. License requirement.

Effective 30 days following enactment of this chapter ("the effective date"), a marijuana business shall not begin or continue operations unless it has received and is in possession of a license issued pursuant to this chapter. Marijuana businesses that hold an approved land use permit and/or are operating as of the effective date shall submit a completed application within 30 days of the effective date but shall have a grace period of 60 days after the effective date to receive a license, which may be extended by order of the Council if justified due to the anticipated time line of the review process.

§ 128-4. Licensing authority.

All medical marijuana registered caregiver and medical marijuana registered caregiver (home occupation) license applications, whether new or renewal, shall be reviewed and may be approved by the Town Clerk. All other new license applications shall be reviewed and may be approved by the Town Council after public hearing. Application shall be made in writing using a form prepared by the Town for the purpose and must include all information required by this chapter and by the form. The Clerk shall give notice of any public hearing held by the Town Council by publication in a newspaper of general circulation in the Town of Windham at least seven days prior to action.

§ 128-5. Review procedures.

The review procedures described below shall be the same for initial license applications as well as renewals, unless otherwise indicated. In reviewing license applications, the licensing authority and any consulting Town officials may consider the approval standards under this chapter as well as other applicable local, state or federal laws and, for license renewals, the licensee's record of compliance with the same.

- A. The Town Clerk shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this chapter and to obtain recommendations from other Town officials as required.
- B. The licensing authority shall have the authority to impose any conditions on a license that may be reasonably necessary to ensure compliance with the requirements of this chapter or to address concerns about operations. Failure of any licensee to comply with such

conditions shall be considered a violation of the license and of this chapter.

- C. No license shall be granted by the licensing authority until the Police Chief, Fire-Rescue Chief, Health Officer and Code Enforcement Officer have all made positive recommendations regarding the applicant's ability to comply with this chapter or any other applicable Town ordinance or state or federal law enforced by such officials. The Town Clerk shall provide a copy of the license application to each official along with a form upon which the official shall note his or her findings and conclusions, as well as any recommended conditions of approval. The Town Clerk shall automatically include any conditions of approval recommended by the officials on an issued license for which the Clerk is the licensing authority. The Council shall have discretion to attach any conditions it deems necessary to any license it awards.
- D. For renewal licenses, the application, review process and reviewing authority shall be the same as for initial licenses. If any official consulted by the Town Clerk finds that a renewal license application should not be approved, or if the Town Council so orders, the application shall be forwarded to the Town Council for further review. In such case, the Town Council shall, upon review of all staff recommendations and applicable laws, make the final determination as to whether the renewal license should be issued and/or any conditions to be attached. All renewal applications for adult use marijuana stores, medical marijuana registered dispensaries or medical marijuana caregiver retail stores shall be reviewed by the Town Council, which shall issue a renewal license only upon a finding that the store or dispensary has in the past license term been operating in accordance with this chapter as well as with the store's or dispensary's previously submitted operations plan. **[Amended 4-12-2022 by Order No. 22-062; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- E. Licenses shall be approved only for the type(s) of marijuana business(es) identified in the application. A licensee who intends to expand or convert the licensed premises to a type of marijuana business that is not specifically approved in a license must obtain a new license for that use.
- F. Any licensee that is required to obtain approval from the State of Maine shall provide the Code Enforcement Officer and Town Clerk copies of all necessary approvals prior to operating the licensed business.
- G. Any licensee other than a medical marijuana registered caregiver (home occupation) shall, prior to operating the licensed business, contact the Code Enforcement Department to request an inspection by the Code Enforcement Officer and the Town Manager or his/her designee to determine the marijuana business's compliance, as-built, with the requirements of this chapter as well as the submitted operations plan (if applicable).
- H. Any municipal official with authority to make recommendations, grant licenses or enforce this or other municipal ordinances regarding marijuana businesses shall have authority to enter the premises of an applicant or licensee without notice to make any inspection reasonably necessary to ensure compliance.

§ 128-6. Application submission requirements.

- A. Each applicant for a marijuana business license shall complete and file an application on the form provided by the Town Clerk, together with the applicable license fee. The

applicant shall also pay an education fee in an amount set by the Council. The current schedule of fees set by the Town Council is on file with the Town Clerk. Said amount shall be deposited into a designated Town account and granted at the Council's discretion to educational institutions or nonprofit agencies for support of initiatives aimed at educating Windham youth regarding marijuana and other drugs. The application fee and education fee are nonrefundable. If multiple types of marijuana businesses are to be conducted on a single premises, the applicant shall pay the application fee and education fee for each type of business. Two paper copies and one electronic copy of the application as well as the following supporting materials shall also be provided with the application as marked exhibits, presented in an organized fashion: **[Amended 4-12-2022 by Order 22-062; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- (1) A copy of the applicant's state license application and supporting documentation, as submitted to the state licensing authority, if a state license is required.
- (2) Evidence of all state approvals or conditional approvals required to operate the marijuana business, including, but not limited to, a state license as defined by this chapter, caregiver registration, a state retail certificate, or a state health license. If an application for such approval is pending as of the application date, the applicant shall submit a copy of the application.
- (3) If not included in the applicant's state license application, attested copies of any Articles of Incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern the entity that will own and/or operate the marijuana business.
- (4) 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 and for the immediately preceding three years. Supporting documents, including but not limited to motor vehicle operator's license, motor vehicle registration, voter registration or utility bills, shall be provided.
- (5) A release for each applicant and for each officer, owner, member, manager or partner of the applicant seeking a license allowing the Town of Windham or its officials to obtain criminal records and other background information related to the individual.
- (6) Evidence of all land use approvals or conditional land use approvals required to operate the marijuana business, including, but not limited to, building permit, conditional use approval, site plan review approval, and/or a change of use permit. For adult use marijuana stores, marijuana registered dispensaries and medical marijuana caregiver retail stores, evidence of submission of a site plan review application is sufficient, but any license issued shall be conditioned upon site plan approval.
- (7) Evidence of all other local approvals or conditional approvals required to operate the marijuana business, including any applicable food or victualer's license.
- (8) A description of the premises for which the license is sought, including a plan of the premises.
- (9) A copy of any state or municipal license held for any other marijuana business owned

or operated by the applicant or by any officer, owner, subsidiary, member, manager or partner of the applicant, as well as any notices of violation received from the state or municipality for such marijuana business and proof that any violation has been resolved.

- (10) For adult use marijuana stores, marijuana registered dispensaries and medical marijuana caregiver retail stores, an operations plan, describing the applicant's:
- (a) Security plan;
 - (b) Provisions to ensure against loitering and using marijuana and marijuana products on or near the premises;
 - (c) Protocols for hiring and training employees;
 - (d) Experience and training in Maine's seed-to-sale tracking system;
 - (e) Protocols for odor control and disposal of waste marijuana or marijuana products; and
 - (f) Protocols for ensuring the safety and security of product.
- B. If the Town Clerk determines that a submitted application is not complete, he or she shall notify the applicant of the additional information required to process the application. If such additional information is not submitted within 30 days of the Clerk's request, the application may be denied.

§ 128-7. License issuance and renewal; limit on retail stores and registered marijuana dispensaries.

- A. Each license issued under this chapter shall be valid for the term of license granted by the state license authority ("the license year"), or otherwise for one year from the date of issuance. Applications for renewal licenses shall be submitted between 60 days and 90 days prior to expiration of the existing term to allow for timely processing. Any marijuana caregiver retail store, marijuana registered dispensary or adult use marijuana store which fails to obtain a renewal license prior to expiration of the existing term shall forfeit its license, unless the applicant timely submitted the application and the delay is due to circumstances not within the applicant's control. Any other marijuana business licensee which fails to obtain a renewal license prior to expiration of the existing term shall not have authority to operate until a license is granted. **[Amended 4-12-2022 by Order 22-062]**
- B. Total licenses; conversion of licenses. **[Amended 4-12-2022 by Order 22-062]**
- (1) There shall be no more than two total issued licenses for adult use marijuana stores. There shall be no more than four total issued licenses in the aggregate for medical marijuana caregiver retail stores or marijuana registered dispensaries, except that any medical marijuana caregiver retail store that holds an approved land use permit or is operating as of the effective date may receive a license, provided it submits an application within 30 days of the effective date, as described in Subsection F of this section, and otherwise meets the provisions of this chapter.
 - (2) A licensed medical marijuana caregiver retail store may be converted to a marijuana registered dispensary, and a licensed marijuana registered dispensary may be

converted to a medical marijuana caregiver retail store, without loss of grandfathered status under Subsection B(1), provided an application is submitted to the Licensing Authority containing any updated submission materials pursuant to § 128-6, together with the full license fee for the requested use.

- C. Starting on the effective date, applicants for marijuana business licenses may submit applications to the Town Clerk. A single applicant may submit applications for both a medical marijuana caregiver retail store and an adult use marijuana store for the same business premises; however, only one of these types of license may be issued for a single premises.
- D. Applications for medical marijuana registered caregiver, medical marijuana registered caregiver (home occupation), marijuana cultivation facility, marijuana manufacturing facility, marijuana registered dispensary or marijuana testing facility will be processed as received and, if applicable for renewals (see § 128-5D), forwarded to the Council for action. If additional documents or information are needed, the Clerk will contact the applicant to inform him or her of the deficiency. **[Amended 4-12-2022 by Order 22-062]**
- E. Applications for medical marijuana caregiver retail stores, marijuana registered dispensaries and adult use marijuana stores will be processed upon receipt to determine whether the application is complete. If additional documents or information are needed, the Clerk will contact the applicant to inform him or her of the deficiency. **[Amended 4-12-2022 by Order 22-062]**
- F. Applications for medical marijuana caregiver retail stores, marijuana registered dispensaries and adult use marijuana stores will be held until the 30th day following the effective date or publication of license availability. On that date, the Clerk shall forward all completed applications for such stores to the Town Council for further action. **[Amended 4-12-2022 by Order 22-062]**
- G. The Council shall award initial licenses to medical marijuana caregiver retail stores or marijuana registered dispensaries as follows: **[Amended 4-12-2022 by Order 22-062]**
 - (1) Licenses will first be awarded to medical marijuana caregiver retail stores which held an approved land use permit for that use or were operating as of the effective date, which submitted a completed application on or before the 30th following the effective date, and which meet the criteria of this chapter.
 - (2) If fewer than four licenses are issued to existing medical marijuana caregiver retail stores as set forth in Subsection G(1), the Council shall assign priority points to each application which otherwise meets the criteria of this chapter as follows:
 - (a) Zero to 12 points awarded based upon the completeness and content of the applicant's operations plan. This number shall be determined by assigning zero to two points for each required component of the operations plan (zero for "does not meet," one for "meets," and two for "exceeds").
 - (b) One to three points if the applicant has demonstrated that it, or its owner or manager, has operated a marijuana business in the Town of Windham without any record of violations. Points shall be awarded relative to the number and type of marijuana businesses operated and duration of operation.

- (c) One point if the applicant has demonstrated that it, or its owner or manager, has operated a retail marijuana business or marijuana registered dispensary in the State of Maine, outside of Windham, without any record of violations.
 - (d) One point if the applicant has an existing lease or ownership interest in the premises for which the license is sought.
- (3) For each point category that allows for a range, each Councilor present and voting will assign a point value for that category to the application, and those numbers will be averaged to produce the final points assigned to the application for that category.
- (4) Licenses shall be awarded to the applicant(s) that have been assigned the most priority points. If necessary, random lotteries shall be held among applicants receiving the same number of priority points, in descending order, until all available licenses have been issued.
- H. The Council shall award initial licenses to adult use marijuana stores as follows:
- (1) Zero to 12 points awarded based upon the completeness and content of the applicant's operations plan.
 - (2) One to three points if the applicant has demonstrated that it, or its owner or manager, has operated a marijuana business in the Town of Windham without any record of violations. Points shall be awarded relative to number and type of marijuana businesses operated and duration of operation.
 - (3) One point if the applicant has demonstrated that it, or its owner or manager, has operated a retail marijuana business in the State of Maine, outside of Windham, without any record of violations.
 - (4) One point if the applicant has an existing lease or ownership interest in the premises for which the license is sought.
 - (5) For each point category that allows for a range, each Councilor present and voting will assign a point value for that category to the application, and those numbers will be averaged to produce the final points assigned to the application for that category.
 - (6) Licenses shall be awarded to the applicant(s) that have been assigned the most priority points. If necessary, random lotteries shall be held among applicants receiving the same number of priority points, in descending order, until all available licenses have been issued.
- I. If an applicant elects not to accept a license that is awarded to it, and licenses remain for that license type, the Council shall award the license(s) from the remaining application(s) based upon the points awarded. Applications that are not awarded a license during the selection process for that business type, or that are submitted following the lottery, will be kept on hold for one year from the close of the initial selection process. If a license for the requested business type becomes available, the Council shall award the license from among previously and newly submitted applications using the process outlined in Subsections G and H above within 30 to 60 days of posting the availability of the license. The Clerk shall notify each applicant at the address shown on the application that of the meeting at which the applications will be considered, and that the applicant must submit any updated application materials prior to the meeting in order for the application to be considered. No

new application fee shall be required within one year of initial submission.

- J. In the event of the proposed sale of an adult use marijuana store, marijuana registered dispensary or medical marijuana caregiver retail store, the tentative purchaser may apply for a new license to replace the seller's license within 30 days following the date of the sale but shall not operate the store or dispensary until a license is obtained. If a purchaser does not apply for a new license within said thirty-day period, the license will be considered forfeited. This preference shall not apply if any use other than for the licensed adult use or medical marijuana caregiver retail store or marijuana registered dispensary has been made of the licensed premises prior to or within the 30 days following the sale. **[Amended 4-12-2022 by Order 22-062]**
- K. A marijuana business license shall be forfeited if the licensee:
- (1) Fails to obtain a new license prior to expiration of an existing license;
 - (2) Makes any other active use of the Licensed premises other than for the licensed marijuana business; or
 - (3) Does not make an active use of the licensed marijuana business for a period exceeding six consecutive months, except that the licensing authority may, in its discretion and upon request from the licensee, allow for reasonable extension(s) of this provision for up to two years total if the suspension in use is caused by delays in permitting or buildout, damage to the licensed premises, renovation, repair, active attempts to sell the licensed premises as a turnkey marijuana business, or other bona fide circumstances out of the licensee's control.
 - (4) Notwithstanding 1 M.R.S.A. § 302, this amendment shall be retroactive to September 22, 2020, the date upon which initial licenses were first awarded to applicants.
- L. A license for an adult use marijuana store, marijuana registered dispensary or medical marijuana caregiver retail store that is forfeited or revoked pursuant to the provisions of this chapter shall not be made available to any other applicant unless the number of remaining issued licenses for that business type is lesser than the limit set forth in § 128-7B. **[Amended 4-12-2022 by Order 22-062]**

§ 128-8. Denial, suspension or revocation of license.

A license application for a marijuana business shall be denied by the licensing authority, and 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 chapter.
- B. Is not at least 21 years of age.
- C. Has had a license required for the marijuana business suspended or revoked by the Town, by a municipality in the State of Maine, or by the state.
- D. Is in violation of this or any other ordinance or has unpaid penalties assessed by a court related to the marijuana business.
- E. Has not acquired all necessary state and local approvals (other than final state approval)

prior to issuance of the license.

- F. Fails to meet zoning or other requirements of Chapter 120, Land Use, or Chapter 185, Shoreland Zoning.
- G. Has been convicted of a criminal violation arising out of operation of a marijuana business.
- H. Has, within 10 years prior to the date of the application, been convicted of selling or furnishing marijuana, alcohol, or any scheduled drug to a minor, or of allowing a minor under that person's control or in a place under that person's control to consume any of these substances.
- I. Has provided false or misleading information in connection with the license application.

§ 128-9. Approval and operating requirements.

In order to obtain and retain a license pursuant to this chapter, the applicant/licensee shall demonstrate to the Town Clerk and all reviewing officials that the following requirements are met. The licensee shall comply with each of these requirements during the term of the license:

- A. Display of license. The current license shall be displayed at all times in a conspicuous location within the premises.
- B. All licensed premises shall be fixed, permanent locations. Licensees shall not be permitted to operate marijuana businesses in other than the licensed premises, such as at farmer's markets, farm stands or kiosks.
- C. Security.
 - (1) The licensed premises shall have lockable doors and windows and shall be served by an alarm system which includes automatic notification to the Windham Police Department.
 - (2) 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 24 hours per day, seven days per week, and video shall be retained for a minimum duration of 30 days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.
 - (3) The licensed premises shall have exterior spotlights with motion sensors covering the full perimeter of the building(s).
 - (4) Medical marijuana registered caregiver (home occupation) uses shall not be required to meet Subsection C(2) and (3).
- D. Ventilation.
 - (1) The licensed premises shall comply with all odor and air pollution standards established by ordinance.
 - (2) All marijuana businesses, other than medical marijuana registered caregiver (home occupation), shall have an odor mitigation system installed that will provide odor control sufficient to ensure that no odors are perceptible off the premises.

- E. 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.
- F. A marijuana business 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 businesses that conflicts in any way with the provisions of this chapter, the more restrictive shall control.
- G. Marijuana businesses shall operate in accordance with all material representations made in the approved license application and operations plan (if applicable). If the licensee is required to notify the state of a change related to the marijuana business, the licensee shall promptly provide the Town Clerk with a copy of such notification and the Town Clerk shall forward it to the Police Chief, Fire-Rescue Chief, Health Officer and Code Enforcement Officer for their review. If any of these officials determines that the change is not in accordance with the requirements of this chapter, or requires additional conditions of approval, the change shall be forwarded to the Town Council for consideration.

§ 128-10. Transfer of ownership or change of location.

- A. Change of premises. Licenses issued under this chapter shall not be transferable to a different premises, unless the new premises is located on the same lot or parcel as the originally licensed premises. Requests for a change of premises within the same lot or parcel shall be submitted to the Town Clerk along with relevant documentation regarding the new premises as required by § 128-6A(6), (8) and (10). The request for change of premises shall be reviewed in accordance with § 128-5, as relevant, and submitted to the licensing authority for approval.
- B. Change of ownership. There shall be no change in ownership, including partial ownership, of a marijuana business without advance approval by the Town. In the event of any change in ownership of a marijuana business, the licensee shall submit an updated ownership affidavit and background check authorization(s) to the Town Clerk. The Town Clerk may approve any requests for change in ownership upon a finding of compliance with § 128-8, except that any change in majority ownership of a marijuana business for which the Town Council is the licensing authority shall be forwarded to the Town Council for approval, after public hearing.

§ 128-11. Appeals.

- A. The following appeals may be decided by the Town Council 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:
 - (1) Appeal of the Town Clerk's denial of an application.
 - (2) Appeal by any aggrieved party having legal standing of any decision by the Town Clerk to grant a license under this chapter.
 - (3) Appeal by the applicant of any license granted by the Town Clerk with conditions to which the applicant/licensee objects. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- B. Appeals must be filed with the Town Clerk within 30 days of the date of the decision subject to appeal. The Town Council shall hold the hearing on the appeal and render a decision within 30 days of the date of the appeal, unless all parties consent to a delay.
- C. Appeals of final determinations issued by the Town Council pursuant to this chapter shall be made to the Cumberland County Superior Court within 30 days of the date of the decision being appealed.

§ 128-12. Enforcement; violations and penalties. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The operation of any marijuana business without the required license or in violation of the requirements of this chapter shall be a violation of this chapter. The Windham Town Council or its designee shall enforce the provisions of this chapter. A violation of any provision of this chapter shall be a civil violation, and a civil penalty in accordance with 30-A M.R.S.A. § 4452 shall apply. Current penalties include fines of not less than \$100 nor more than \$2,500 per violation for each day that the violation continues. The penalty for operating a marijuana business without a valid license shall be \$500 per day for each day that the violation continues. The Windham Town Council may also revoke or suspend the license after notice and hearing.

§ 128-13. Severability.

The provisions of this chapter 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.

§ 128-14. Conflict with other provisions.

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