

TOWN OF WINDHAM MARIJUANA
BUSINESS LICENSING ORDINANCE

As Adopted, May 26, 2020

Chapter 160 of the Code of the Town of Windham, known as the Marijuana Business Licensing Ordinance, is hereby enacted.

Marijuana Businesses

§ 160-1. Purpose and Authority

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. The purpose of this Ordinance 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.

§ 160-2. 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 Section 300 of the Town of Windham Land Use Ordinance.

Applicant shall mean a person who has submitted an application for licensure as a Marijuana Business pursuant to this Ordinance.

Licensed Premises shall mean the premises specified in an application for a license pursuant to this Ordinance or within a license issued pursuant to this Ordinance.

Licensee shall mean a person licensed pursuant to this Ordinance.

Licensing Authority shall mean the Town Clerk or, if referral to the Town Council is required pursuant to this Ordinance, the Town Council.

Marijuana Business shall mean an Adult Use Marijuana Store, Medical Marijuana Caregiver Retail Store, Medical Marijuana Caregiver, Medical Marijuana Caregiver (home occupation), Marijuana Cultivation Facility, Marijuana Manufacturing Facility or Marijuana Testing Facility, all as defined in the Town of Windham Land Use Ordinance.

Owner shall mean 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 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 Business is to conduct its business.

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.

§ 160-3. License Requirement

Effective 30 days following enactment of this Ordinance (“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 Ordinance. 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 timeline of the review process.

§160-4. Licensing Authority

All Medical Marijuana Caregiver and Medical Marijuana 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 Ordinance 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 (7) days prior to action.

§160-5. 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 Ordinance 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 Ordinance 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 Ordinance 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 Ordinance.
- C. No license shall be granted by the Licensing Authority until the Police Chief, Fire Chief, Health Officer and Code Enforcement Officer have all made positive recommendations

regarding the Applicant's ability to comply with this Ordinance 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 Retail Stores 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 has in the past license term been operating in accordance with this Ordinance as well as with the Store's previously submitted Operations Plan.
- 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 Caregiver (home occupation) shall, prior to operating the licensed business, contact the Code Enforcement Office to request an inspection by the Code Enforcement Officer and the Town Manager or his/her designee to determine the Marijuana Business' compliance, as built, with the requirements of this Ordinance 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.

§160-6. Application Submission Requirements

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. 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 non-

refundable. 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:

- A. 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.
- B. 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 Ordinance, 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.
- C. 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.
- D. 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 (3) years. Supporting documents, including but not limited to motor vehicle operator's license, motor vehicle registration, voter registration or utility bills shall be provided.
- E. 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.
- F. 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 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.
- G. Evidence of all other local approvals or conditional approvals required to operate the Marijuana Business, including any applicable food or victualer's license.
- H. A description of the premises for which the license is sought, including a plan of the premises.
- I. 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.
- J. For Adult Use Marijuana Stores and Medical Marijuana Caregiver Retail Stores, an Operations Plan, describing the Applicant's:

1. Security plan;
2. Provisions to ensure against loitering and using marijuana and marijuana products on or near the Premises;
3. Protocols for hiring and training employees;
4. Experience and training in Maine's seed-to-sale tracking system;
5. Protocols for odor control and disposal of waste marijuana or marijuana products; and
6. Protocols for ensuring the safety and security of product.

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 thirty (30) days of the Clerk's request, the application may be denied.

§ 160-7. License Issuance and Renewal; Limit on Retail Stores

- A. Each license issued under this Ordinance shall be valid for the term of license granted by the State License Authority ("the license year"), or otherwise for one (1) year from the date of issuance. Applications for renewal licenses shall be submitted between 60 and 90 days prior to expiration of the existing term to allow for timely processing. Any Marijuana Caregiver Retail Store 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.
- B. There shall be no more than two (2) total issued licenses for Adult Use Marijuana Stores. There shall be no more than four (4) total issued licenses for Medical Marijuana Caregiver Retail Stores, 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 paragraph (F) of this section, and otherwise meets the provisions of this Ordinance.
- 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 Caregiver, Medical Marijuana Caregiver (home occupation), Marijuana Cultivation Facility, Marijuana Manufacturing Facility or Marijuana Testing Facility will be processed as received and, if applicable for renewals (see Section 160-5(D)), 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.

- E. Applications for Medical Marijuana Caregiver Retail Stores 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.
- F. Applications for Medical Marijuana Caregiver Retail Stores and Adult Use Marijuana Stores will be held until the 30th day following the effective date. On that date, the Clerk shall forward all completed applications for such stores to the Town Council for further action.
- G. The Council shall award initial licenses to Medical Marijuana Caregiver Retail Stores as follows:
 - 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 Ordinance.
 - 2. If fewer than four licenses are issued to existing Medical Marijuana Caregiver Retail Stores as set forth in paragraph (1), the Council shall assign priority points to each application which otherwise meets the criteria of this Ordinance as follows:
 - a. Zero to twelve 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 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 twelve 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 paragraphs G and H above within thirty (30) to sixty (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 or Medical Marijuana Caregiver Retail Store, the tentative purchaser may apply for a new license to replace the seller's license within thirty (30) days following the date of the sale, but shall not operate the store until a license is obtained. If a purchaser does not apply for a new license within said thirty (30) 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 has been made of the Licensed Premises prior to or within the thirty (30) days following the sale.

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 (6) consecutive months, except that the Licensing Authority may, upon written request from the Licensee, allow for a suspension of use of up to one year if the suspension in use is caused by 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.

L. A license for an Adult Use Marijuana Store or Medical Marijuana Caregiver Retail Store that is forfeited or revoked pursuant to the provisions of this Ordinance 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 this Section 160-7(B).

§ 160-8. Denial, Suspension or Revocation of a 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 Ordinance.
- B. Is not at least twenty-one 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 the Land Use Ordinance or Shoreland Zoning Ordinance.
- G. Has been convicted of a criminal violation arising out of operation of a Marijuana Business.

- H. Has, within ten years prior to the date of the application, been convicted of selling marijuana, alcohol, or any scheduled drug to a minor.
- I. Has provided false or misleading information in connection with the license application.

§ 160-9. Approval and Operating Requirements

In order to obtain and retain a license pursuant to this Ordinance, 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 Establishments 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 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.
 - 3. The Licensed Premises shall have exterior spot lights 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 paragraphs (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 Ordinance, 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 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 Ordinance, or requires additional conditions of approval, the change shall be forwarded to the Town Council for consideration.

§ 160-10. 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 premises 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.

§ 160-11. 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 Ordinance.
 - 3. Appeal by the applicant of any permit granted by the Town Clerk with conditions to which the applicant/Licensee objects.
- B. Appeals must be filed with the Town Clerk within thirty (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 thirty (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 Ordinance shall be made to the Cumberland County Superior Court within thirty (30) days of the date of the decision being appealed.

§ 160-12. Enforcement and Penalties

The operation of any Marijuana Business without the required license or in violation of the requirements of this Ordinance shall be a violation of this Ordinance. The Windham Town Council or its designee shall enforce the provisions of this subsection. 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. § 4452 shall apply. Current penalties include fines of not less than \$100.00 nor more than \$2,500.00 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. The Windham Town Council may also revoke or suspend the license after notice and hearing.

§ 160-13. 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.

§ 160-14. 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 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 Acts or any other applicable state or local law or regulation, the more restrictive provision shall control.

APPENDIX A
MARIJUANA BUSINESS LICENSING ORDINANCE SCHEDULE OF FEES

	Adult Use Marijuana Store	\$2,500.00
	Marijuana Cultivation Facility	\$1,000.00
	Marijuana Manufacturing Facility	\$1,000.00
	Medical Marijuana Caregiver,– cultivation conducted on site	\$300.00
	Medical Marijuana Caregiver– cultivation not conducted on site	\$150.00
	Medical Marijuana Caregiver Retail Store	\$2,500.00
	Marijuana Testing Facility	\$1,000.00
	Education Fee – Payable for Each Licensed Marijuana Business Use	40% of the License Fee (\$100 minimum)