



Town of Gorham Planning Division

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PLANNING REVIEW MEMO

TO: Planning Board and Ordinance Committee
FROM: Carol Eyerman, Town Planner
RE: Marijuana Cultivation or Manufacturing Ordinances and Fees
DATE: May 8, 2020

The town has already established an ordinance regulating personal cultivation of marijuana for the grower's use on their own property. If the town would like to participate and regulate any other type of marijuana establishment, then it would need to "opt-in" as allowed under State law.

The state has regulations to license cultivation, testing, manufacturing, and retail store. After discussion between staff and ordinance committee members, it was determined that the town would like to "opt-in" for cultivation, manufacturing/processing only. For purposes of Gorham's licensing ordinance, staff has utilized the state's regulations and terminology for licenses for cultivation and manufacturing, since there is no reference in State regulations that are termed "processing." The discussion and agreement within the committee is that the town would like to regulate by license, similar to the victualer's license and allow cultivation, manufacturing facilities in two (2) of the existing industrial zoning districts as well as the rural zoning district when associated with an existing agricultural building. The committee also recommended that the town limit the number of licenses to twenty (20). Although the state law and program rules require "plans for ventilation and filtration systems that prevent marijuana plant odors from significantly altering the environmental odor outside, while addressing the potential for mold, after a tour through one of the current cultivation facilities, the committee agreed that there is still the need for additional odor controls at property lines or lease lines for mixed use buildings.

To regulate for these facilities in this way, we will need to create a licensing system, change the zoning ordinance to allow cultivation in three (3) of the existing industrial and rural zoning districts, and add performance standards to either to the licensing ordinance itself or the

performance standards section of the zoning ordinance as well as establish a schedule of fees.

State Laws

Current state law requires submission of an operating plan that includes the following: odor controls through ventilation and filtration; safety and security; wastewater and waste disposal; lighting and irrigation, list of pesticides, fungicides, insecticides, and fertilizers; etc. Local approval is also required for new licenses, license renewals or relocations to a different location. State law (Title 28-B, Chapter 1 Subchapter 3 section 301) breaks down cultivation facilities into four tiers based on the size of the plant canopy and therefore license types. They are:

- 1. Tier 1 cultivation facility license.** A tier 1 cultivation facility license, which allows cultivation by a licensee of:
 - A. Not more than 30 mature marijuana plants and an unlimited number of immature marijuana plants and seedlings; or
 - B. Not more than 500 square feet of plant canopy.
- 2. Tier 2 cultivation facility license.** A tier 2 cultivation facility license, which allows cultivation by a licensee of not more than 2,000 square feet of plant canopy;
- 3. Tier 3 cultivation facility license.** A tier 3 cultivation facility license, which allows cultivation by a licensee of not more than 7,000 square feet of plant canopy;
- 4. Tier 4 cultivation facility license.** A tier 4 cultivation facility license, which allows cultivation by a licensee of not more than 20,000 square feet of plant canopy, except as provided in section 304; or
- 5. Nursery cultivation facility license.** A nursery cultivation facility license, which allows cultivation by a licensee of not more than 1,000 square feet of plant canopy, subject to the requirements and restrictions of section 501, subsection 3.

The attached ordinances would regulate the cultivation and manufacturing of marijuana in a way that supplements the current state law. They include: Marijuana Cultivation or Manufacturing Facility Licensing, and Zoning Ordinance Amendments.

Town of Gorham
Marijuana Cultivation or Manufacturing Facility Licensing Ordinance
Adopted - ?

Town of Gorham
Marijuana Cultivation or Manufacturing Facility Licensing Ordinance

Section 1 – Title

This ordinance shall be known as and cited as the “Town of Gorham Marijuana Cultivation or Manufacturing Facility Licensing Ordinance” and will be referred to hereinafter as “this ordinance”. This ordinance limits all subject cultivation or manufacturing facilities to the zoning districts specified under the Gorham Zoning Ordinance, prescribes definitions and provides for permitting/licensing, regulation, and performance standards for cultivation or manufacturing facilities.

Section 2 – Authority and Applicability

This ordinance is adopted pursuant to the authority granted by 28-B M.R.S.A. §101 et seq., as may be amended, and the Town’s home rule authority under Chapter VIII, Part 2 Section 1 of the Maine Constitution.

Section 3 – Purpose

The purpose of this ordinance is to assure the safety of Gorham citizens by reviewing and regulating marijuana cultivation or manufacturing facilities, as permitted under state law.

Section 4 – Conflict with other ordinances; state law

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 apply. Nothing herein is intended to conflict with state law; whenever a provision of this ordinance conflicts with state law the more restrictive provision shall apply. All applicants and licensees shall comply with all applicable state laws.

Section – 5 Validity and severability

Should any section or provision of this ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

Section 6 – Effective Date

The effective date of this ordinance and the licensing thereunder shall be the date of adoption by the town council.

Section 7 – Definitions

Agricultural Building – a structure designed, constructed, and used to store farm machinery, supplies, implements, livestock, or crops.

Cultivate or cultivation – the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. “Cultivation” or “cultivate” does not include manufacturing, testing or marijuana extraction.

Cultivation facility – a facility licensed under this ordinance to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature plants and seedlings to marijuana stores. A cultivation facility includes a nursery cultivation facility.

Manufacture, processing – the production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including but not limited to marijuana extraction or preparation by means of chemical synthesis. “Manufacture” or “manufacturing” does not include cultivation or testing.

Manufacturing batch – a quantity of marijuana concentrate or extract that is produced in on production cycle using the same extraction methods or formulation and standard operating procedures.

Marijuana – the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. “Marijuana” includes marijuana concentrate but does not include hemp as defined in Title 7 M.R.S.A. §2231(1-A paragraph D) or a marijuana product.

Marijuana establishment. "Marijuana establishment" means a cultivation facility, products manufacturing facility, a testing facility or a marijuana store licensed under this ordinance.

Plant canopy. "Plant canopy" means the total surface area within the licensed premises of a cultivation facility that is authorized by the town for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by identifiable boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed premises of a cultivation facility that are used by the licensee to cultivate immature marijuana plants and seedlings and that are not used by the licensee at any time to cultivate mature marijuana plants.

Section 8 – Annual License required; distribution of licenses; renewal

No person may establish, operate or maintain a marijuana cultivation or manufacturing facility without first obtaining an annual license from the town council.

It is a violation of this ordinance for any person to operate a marijuana cultivation or manufacturing facility without a valid license issued by the town council pursuant to this ordinance.

Pursuant to 28-B M.R.S.A. §301 and §502, an applicant seeking to operate a cultivation or manufacturing facility may submit an application for a license concurrent with an application for a conditional license by the State of Maine to operate a marijuana cultivation or manufacturing facility.

The Town Council is authorized to issue no more than twenty (20) licenses in accordance with this ordinance and where allowed in the Land Use and Development Code.

Cultivation or manufacturing facilities that were operating with Town approval prior to the enactment of this ordinance shall have a priority of review for license issuance by the Town Council, provided that the owner/operator of the business submits a completed application for a

license within 90 days of enactment of this ordinance. Such businesses shall be included in the maximum number of licenses permitted.

Any change in ownership or change in officers of an owner of an existing cultivation or manufacturing facility shall have a priority of review to maintain the issued license, provided that a completed license application is submitted prior to the change of ownership.

The Town Council shall issue no more than one (1) cultivation or manufacturing facility license per business/individual/owner.

Marijuana cultivation or manufacturing facility licenses shall be administered on a first come, first serve basis based upon the date the application is deemed complete.

Home cultivation or manufacturing of adult use marijuana for personal use is exempt from the licensing requirements of this ordinance.

Section 9 – Application procedure

A. An application for a license must be made on a form provided by the town of Gorham.

B. Applications for a license required by this Ordinance shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk, and if referred to the municipal officers shall bear the recommendation for approval or disapproval with reasons noted of the Code Enforcement Officer, the Police Chief and the Fire Chief, and such other departments as may be required by the Municipal Officers or other Town ordinances.

C. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

D. Application to establish a Marijuana Cultivation or Manufacturing Facility

1. If the applicant who wishes to operate a Marijuana Cultivation or Manufacturing Facility is a single individual, this person must sign the application for a license. If the applicant who wishes to operate a Marijuana Cultivation or Manufacturing Facility is more than one individual, each person who has an interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

2. The completed application for a Marijuana Cultivation or Manufacturing Facility license shall contain the following information and shall be accompanied by the following documents:

a. If the applicant is an individual: The individual shall state their legal name and any aliases, and submit proof that they are at least twenty- one (21) years of age.

b. If the applicant is a partnership: The partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, submit a copy of the partnership agreement, if any, and submit proof that all partners are at least twenty-one (21) years of age.

c. If the applicant is a corporation: The corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under State law, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, the address of the registered office for service of process, and submit proof that all officers, directors and principal stockholders are at least twenty-one (21) years of age.

d. If the applicant is a limited liability company (LLC): The LLC shall state its complete name, the date of its establishment, evidence that the LLC is in good standing under State law, the names and capacity of all members, a copy of its operating agreement, if any, the address of its registered office for service of process, and submit proof that all members are at least twenty-one (21) years of age.

e. If the applicant intends to operate the Marijuana Cultivation or Manufacturing Facility under a name other than that of the applicant, they must state the Marijuana Cultivation or Manufacturing Facility name and submit the required registration documents.

f. If the applicant, an officer, member or employee has been convicted of criminal activity under State and/or federal law, they must list the specified criminal activity involved, and the date, place, and jurisdiction of each conviction.

g. If the applicant has had a previous license under this Ordinance or other similar Marijuana Cultivation or Manufacturing Facility license applications in another town, city or state denied, suspended or revoked, they must list the name and location of the Marijuana Cultivation or Manufacturing Facility for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and they must list whether the applicant

has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is permitted/licensed under this Ordinance, whose license has previously been denied, suspended or revoked, listing the name and location of the Marijuana Cultivation or Manufacturing Facility for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.

h. If the applicant holds any other permits/licenses under this Ordinance or other similar Marijuana Cultivation or Manufacturing Facility license from another town, city, or state the applicant shall provide the names and locations of such other permitted/licensed businesses.

i. The type of Marijuana Cultivation Facility for which the applicant is seeking a license.

j. The location of the proposed Marijuana Cultivation or Manufacturing Facility, including a legal description of the property, street address, and telephone number.

k. Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the Marijuana Cultivation or Manufacturing Facility pursuant to a lease, rental agreement, purchase and sale agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

l. The applicant's mailing address and residential address.

m. Recent passport-style photograph(s) of the applicant(s).

n. The applicant's driver's license.

o. A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.

p. A copy of a town of Gorham Tax Map depicting: the subject property lines and the property lines of other properties containing any existing Marijuana Cultivation or Manufacturing Facility within one thousand (1,000) feet of the subject property; and the property lines of any preexisting public or private school within seven hundred and fifty (750) feet of the subject property, measured in accordance with this ordinance.

3. All applications for a Marijuana Cultivation or Manufacturing Facility license shall be kept confidential by the town.

4. All applicants, including all individuals, officers, directors, managers, members, and partners, for any Marijuana Cultivation or Manufacturing Facility license must be residents of the State, as defined in 28-B M.R.S. A. §102, and a majority of shares, partnership interests, and membership interests, or other equity interests in corporate applicants must be held or owned by persons who are residents.

5. If an applicant is a person, the applicant must be a resident as that term is defined in the application. If the applicant is a corporation, partnership, or limited liability company, every officer, director, and managing partner must be a person who is a resident, and a majority of shares, partnership interests, and membership interests, or other equity interests must be held or owned by persons who are residents.

Section 10 – Standards for license

A. General

1. All Marijuana Cultivation or Manufacturing Facilities shall comply with applicable state and local laws and regulations.

2. Marijuana Cultivation or Manufacturing Facilities shall only be located within the zoning districts permitted in the Gorham Zoning Ordinance.

3. Marijuana Cultivation or Manufacturing Facilities may not be located on property within seven hundred and fifty (750) feet of the property line of a preexisting public or private school (K-12). For the purposes of this Ordinance, "school" includes a public school, private school, or public preschool program as defined in 20-A M.R.S. §1, or any other educational facility that serves children from prekindergarten to grade 12. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Marijuana Cultivation or Manufacturing Facilities is located. If the Marijuana Establishment is located within a subdivision, the required setback shall be measured from the front door of the Marijuana Cultivation or Manufacturing Facilities to the property line of the school. Presence of a town, city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

4. Marijuana Cultivation or Manufacturing Facilities may not be located on property within one thousand (1,000) feet of the property line of a parcel containing one or more Marijuana Cultivation or Manufacturing Facility. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the property lines of the parcels of land on which the Marijuana Cultivation or Manufacturing Facilities are located. If the Marijuana Cultivation or Manufacturing Facilities is located within a commercial subdivision, the required setback shall be measured from the front door of each of the Marijuana Cultivation or Manufacturing Facilities. Presence of a town, city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. Notwithstanding the foregoing, more than one Marijuana Cultivation or Manufacturing Facilities may be located on the same parcel, provided all state and local requirements are met. This setback requirement does not apply to properties with more than one Marijuana Cultivation or Manufacturing Facilities that are subdivided, as long as the Marijuana Cultivation or Manufacturing Facilities located on the property were operating with town approval prior to the adoption date of this ordinance.

5. No outside cultivation or Manufacturing or storage of marijuana, marijuana products, or related supplies is permitted, except as allowed by ordinance.

6. Ventilation and Odor - All Marijuana Cultivation or Manufacturing Facility are required to be in compliance with the state requirements and all Marijuana Cultivation or Manufacturing facilities shall have odor mitigation systems such that odor is imperceptible from the outside of any building or lease line. A ventilation plan shall be required for marijuana cultivation and manufacturing facilities that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or manufacturing of marijuana or marijuana related products from being dispersed or released outside the building or lease line. The plan shall further provide for resulting smoke, vapor, fumes, gases and particulate matter from marijuana or its manufacturing or cultivation to be effectively confined to the any building or lease line.

7. All Marijuana Cultivation or Manufacturing Facilities shall obtain a State of Maine conditional license prior to operating in the town of Gorham.

C. Operating Plan

A. Marijuana Cultivation or Manufacturing Facilities are required to submit an operation plan that at a minimum addresses the following:

- a. wastewater
- b. disposal of waste
- c. ventilation and odor
- d. parking
- e. landscaping

Section 11 - License expiration and renewal

A separate license must be obtained for each marijuana cultivation or manufacturing facility located on the same premises. Each license shall be effective for a period of one year from the date of its issuance. A license must be obtained prior to the opening of marijuana cultivation or manufacturing facility. Applications for renewal licenses shall be submitted at least sixty (60) days prior to expiration of the existing term. Any licensee that fails to submit a renewal application by the applicable deadline shall not have authority to operate until a new license is granted.

Section 12 – Denial, suspension or revocation of license

- A. A marijuana cultivation or manufacturing facility license under this ordinance shall be denied to the following entities or persons:
- a. A person or entity who fails to meet the requirements of this ordinance.
 - b. A person or entity that has had a license for marijuana cultivation or manufacturing facility revoked by the Town of Gorham or by the State of Maine.
 - c. A person or entity who has not acquired all necessary state approvals and other required local approvals prior to issuance of a license.
- B. The Town may suspend or revoke a license for any violation of this ordinance, Chapter 1, Chapter 2 or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has a state license for a marijuana cultivation or manufacturing facility suspended or revoked by the state. The licensee shall

be entitled to notice and a hearing prior to any suspension or revocation.

Section 13 - Right of Access/Background Check/Inspection

Every Marijuana Cultivation or Manufacturing facility shall allow law enforcement officers and the Gorham Code Enforcement Officer (“CEO”) to enter the premises at reasonable times for the purpose of checking compliance with all applicable State laws and this Ordinance. Every owner and employee of a Marijuana Establishment applying for a license, shall contact the Gorham Police Department for the purposes of fingerprinting and criminal background checking, and all premises managers for Marijuana Cultivation or Manufacturing Facility shall submit emergency contact information to the Police Department. Due to fire, explosion, and other hazards inherent in Marijuana Cultivation or Manufacturing facilities, including, but not limited to, heavy electrical loads, hot lighting fixtures, CO2 enrichment, and flammable contents, the owners of all such facilities shall agree to be inspected annually by the Gorham Fire Department and have a Lock Box installed at the structure's exterior entrance for emergency access. Lock Boxes shall be obtained and installed in coordination with the Gorham Fire Department.

Section 14 - 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 Marijuana Establishment 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 permittee/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 permitted/licensed Marijuana Establishment.

Section 15 - State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the cultivation or manufacturing of Marijuana, the additional or stricter regulation shall control the establishment or operation of any Marijuana Cultivation or manufacturing Facility in Gorham. Compliance with all applicable State laws and regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.

Section 16 – Advertisement and Public Hearing

A. For new or renewal licenses requiring Town Council action the Council shall hold a public hearing.

B. Prior to any public hearing held in accordance with this Ordinance, the application shall be advertised by posting notice in two (2) or more public places and advertising in a local newspaper, at least seven (7) days prior to the public hearing.

Section 12 – License Fees

Fees for a marijuana cultivation or manufacturing facility shall be as set forth in the fee schedule established by the Gorham Town Council and shall be paid annually.

Section 13 - Enforcement

Violations

Any violations of this ordinance, including failure to comply with any conditions, may be enforced in accordance with 30-A M.R.S.A. §4452. Every day a violation exists constitutes a separate violation.

Commencement of any marijuana cultivation or manufacturing facility 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 Code Enforcement Officer (CEO). Upon such

CEO notification, the town can pursue fines and/or penalties under 30-A M.R.S.A. §4452.

Law enforcement officer and code enforcement

Law enforcement officers and the CEO may at any reasonable time conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to license approvals and shall investigate all complaints of alleged violations of this ordinance.

Section 14 - Appeals

Any appeal of a decision of the Town shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

Below are the proposed Zoning Ordinance Amendments:

Language to be added is underlined.

SECTION 1-8 – RURAL DISTRICT

B. 24) Marijuana Cultivation or Manufacturing Facility, when inside an existing agricultural building

SECTION 1-12- INDUSTRIAL DISTRICT

B. PERMITTED USES

11) Marijuana Cultivation or Manufacturing Facility

SECTION 1-21- OLDE CANAL INDUSTRIAL DISTRICT

B. PERMITTED USES

13) Marijuana Cultivation or Manufacturing Facility

Below is a proposed fee schedule

All applications must be submitted with a \$500 fee.

If an application is approved, the following license fees must be paid before the Town will issue

a license:

Marijuana Manufacturing Facility: \$5,000

Marijuana Cultivation Facility:

Tier 1: 0 to 500 SF of plant canopy: Annual Permit/Licensing Fee: \$1,000.

Tier 2: 501 to 2,000 SF of mature plant canopy: Annual License Fee: \$1,500.

Tier 3: 2,001 to 7,000 SF of mature plant canopy: Annual License Fee: \$2,500.

Tier 4: greater than 7,000 SF of mature plant canopy: Annual License Fee: \$5,000.

Nursery Cultivation facility: Annual License Fee: \$1,000 (Plant canopies of individual Nursery Cultivations are capped at 1,000 SF, subject to the requirements and restrictions of State law.)

Renewal applicants for Marijuana Cultivation licenses may seek an increase to a higher tier if they comply with the requirements in this section and State law.