

Town of Gorham
Adult-Use and Medical Marijuana Licensing Ordinance
Adopted July 7, 2020
Amended December 1, 2020
Amended September 5, 2023

Section 1 - Title

This ordinance shall be known as and cited as the "Town of Gorham Adult-Use and Medical Marijuana Licensing Ordinance" and will be referred to hereinafter as the " Ordinance." This Ordinance limits all subject adult-use marijuana establishments and medical marijuana businesses, as both are defined herein, to the zoning districts specified under the Gorham Zoning Ordinance, prescribes definitions and provides for permitting/licensing, regulation, and performance standards for such uses.

Section 2 - Authority and Applicability

This Ordinance is adopted pursuant to the authority granted by 22 M.R.S.A. § 2429-D, 28-B M.R.S.A. § 101 et seq., as both may be amended or recodified, and the Town's home rule authority under Chapter VIII, Part 2 Section 1 of the Maine Constitution and 30-A M.R.S.A. § 3001, as may be amended or recodified.

Section 3 - Purpose; Construction

The purpose of this Ordinance is to allow for the licensed operation of adult-use marijuana cultivation facilities, adult-use marijuana manufacturing facilities, adult-use marijuana testing facilities, medical marijuana caregivers, medical marijuana manufacturing facilities, and medical marijuana testing facilities in Gorham, while ensuring that the same are operated safely and in accordance with state law.

This Ordinance does not authorize the operation of adult-use marijuana stores as that term is defined in 28-B M.R.S.A. § 102(34), as may be amended or recodified. In addition, this Ordinance does not authorize the operation of medical marijuana caregiver retail stores or medical marijuana dispensaries, as those terms are defined in 22 M.R.S.A. §§ 2422(1-F) and 2422(6) respectively, as may be amended or recodified.

The operation of a medical marijuana caregiver within his/her primary residence, or in the primary residence of one or all of its officers or managers, is exempt from the licensing requirements of this Ordinance, but is still subject to the home occupation standards set forth in Section 2-15 of the Town of Gorham Land Use and Development Code.

This Ordinance does not, and shall not be interpreted to limit the rights and privileges afforded by the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C.

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 shall be thirty (30) days from the date of adoption by the Town Council.

Section 7 - Definitions

Adult-use marijuana cultivation facility - an adult-use "cultivation facility," as that term is defined in 28-B M.R.S.A. § 102(13), as may be amended or recodified. An adult-use marijuana cultivation facility includes a "nursery cultivation facility," as that term is defined in 28-B M.R.S.A. § 301(5), as may be amended or recodified.

Adult-use marijuana establishment - an adult-use marijuana cultivation facility, an adult-use marijuana products manufacturing facility, or an adult-use marijuana testing facility, which uses are only allowed to operate in Gorham once properly licensed by the State of Maine and under the applicable sections of this Ordinance.

Adult-use marijuana products manufacturing facility - an adult-use "products manufacturing facility," as that term is defined in 28-B M.R.S.A. § 102(43), as may be amended or recodified.

Adult-use marijuana testing facility - an adult-use "testing facility," as that term is defined in 28-B M.R.S.A. § 102(54), as may be amended or recodified.

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 of adult-use or medical marijuana. "Cultivation" or "cultivate" does not include manufacturing, testing or marijuana extraction.

Manufacture, processing - "manufacture," as that term is defined in 28-B M.R.S.A. § 102(26), as may be amended or recodified.

Manufacturing batch - "batch," as that term is defined in 28-B M.R.S.A. § 102(5), as may be amended or recodified.

Marijuana - "marijuana," as that term is defined in 28-B M.R.S.A. § 102(27), as may be amended or recodified.

Medical Marijuana Caregiver - a "caregiver," as that term is defined in 22 M.R.S.A. § 2422(8-A), as may be amended or recodified.

Medical Marijuana Business - a medical marijuana manufacturing facility, a medical marijuana testing facility, or a medical marijuana caregiver that operates in a location that is not that caregiver's primary residence, or in the case of a caregiver that is a registered entity, the primary residence of any of the entity's officers, partners, managers, or members. A medical marijuana business does not include or encompass a medical marijuana caregiver store or a medical marijuana dispensary, neither of which are authorized to operate in the Gorham.

Medical Marijuana Manufacturing Facility - a medical marijuana "manufacturing facility," as that term is defined in 22 M.R.S. § 2422(4-R), and further specified in 22 M.R.S. § 2423-F, as both may be amended or recodified.

Medical Marijuana Testing Facility - a medical "marijuana testing facility," as that term is defined in 22 M.R.S. § 2422(5-C), as may be amended or recodified.

Plant canopy - "plant canopy," as that term is defined in 28-B M.R.S.A. § 102(41), as may be amended or recodified.

Private school. "Private school" means an academy, seminary, institute or other private corporation or body formed for educational purposes covering kindergarten through grade 12 or any portion thereof.

Private school approved for tuition purposes. "Private school approved for tuition purposes" means a private school approved for the receipt of public funds under sections 2951 to 2955.

Public preschool program. "Public preschool program" means a program offered by a public elementary school pursuant to chapter 203 that provides instruction to children who are 4 years of age, including but not limited to a Head Start program that is approved as a component of the public preschool program.

Publicly supported secondary school. "Publicly supported secondary school" means:

A. A public secondary school; or

B. A private secondary school approved for the receipt of public funds under chapter 117, subchapter 2 that enrolls 60% or more publicly funded students.

Public school. "Public school" means a school that is governed by a school board of a school administrative unit and funded primarily with public funds.

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

A. License Required. No person may establish, operate or maintain an adult-use marijuana establishment or a medical marijuana business without first obtaining an annual license from the Town Council.

It is a violation of this Ordinance for any person or entity to operate, or cause to be operated, an adult-use marijuana establishment or a medical marijuana business 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 an adult-use marijuana establishment 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.

B. Limit on Number of Licenses; Licenses Not Transferable. The Town Council may only issue one (1) total adult-use marijuana establishment to a single business, individual, or owner. For the purposes of this restriction, a "business" or "owner" shall include a separate business entity where the majority of ownership interests are held by the same individual(s) or entity/entities.

The Town Council is authorized to issue no more than twenty (20) adult-use marijuana establishment licenses in accordance with this Ordinance and where allowed in the Land Use and Development Code. Licenses issued pursuant to this Ordinance are not transferable following a change in ownership of the licensee or a change in location of the licensed activity. Any change in ownership or change in officers of an owner of an adult-use marijuana establishment or medical marijuana business 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.

Adult-use marijuana establishment licenses shall be administered on a first come, first serve basis based upon the date the application is deemed complete.

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

Section 9 - Application procedure

A. An application for a license required by this Ordinance 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. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.

D. Application Requirements

1. If the applicant is a single individual, this person must sign the application for a license. If the applicant is a business entity, 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 an adult-use marijuana establishment or medical marijuana business 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 adult-use marijuana establishment or medical marijuana business under a name other than that of the applicant, they must state the establishment or business 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 marijuana-related license applications in another town, city or state denied, suspended or revoked, they must list the name and location of the 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 marijuana-related 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 adult-use marijuana establishment, or medical marijuana business for which the applicant is seeking a license.
 - j. The location of the proposed adult-use marijuana establishment or medical marijuana business, 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 adult-use marijuana establishment or medical marijuana business 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: (1) the subject property lines, and (2) the property lines of any preexisting public or private school within five hundred (500) feet of the subject property, measured in accordance with this Ordinance.

3. Medical marijuana caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. § 2425-A(12), as may be amended or recodified, and the Maine Freedom of Access Act, 1 M.R.S.A. § 403(3)(F), shall mark such information as confidential. An individual who possesses a valid Maine medical marijuana registered caregiver identification card need not identify themselves in an application for a license for a medical marijuana business. The cardholder must, however, identify themselves and provide the relevant cards to the Town Clerk for examination, but the identity of the cardholder shall not be a public record and the Town shall not share the identity of the cardholder, except as necessary by law in the performance of the Town's official functions. At the time of the application, the cardholder may appoint a representative to appear before the Town Council on their behalf. Advertisements for the requisite public hearing shall contain the location of the proposed medical marijuana business and the identity of the owner of the real estate and the identity of the designated representative.

Section 10 - Standards for license

General

1. All adult-use marijuana establishments and medical marijuana businesses shall comply with applicable state and local laws and regulations.
2. Adult-use marijuana establishments and medical marijuana businesses shall only be located within the zoning districts permitted in the Gorham Zoning Ordinance.
3. Any new Adult-use marijuana establishments and medical marijuana businesses may not be located on property within five hundred (500) 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.A. § 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 adult-use marijuana establishment or medical marijuana business is located. If the adult-use marijuana establishment or medical marijuana business is located within a subdivision, the required setback shall be measured from the front door of the facility 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. If a new school meeting the definition included in this ordinance is opened within 500 feet of an existing licensed adult-use marijuana establishments or medical marijuana business, that business may continue to operate at its licensed location, under current or new ownership, provided there is no change in use.
5. No outdoor cultivation, testing, or manufacturing or storage of marijuana, marijuana products, or related supplies is permitted, except as allowed by ordinance.
6. All adult-use marijuana establishments and medical marijuana businesses are required to operate in compliance with the state standards related to odor control and mitigation, as outlined in 18-691 C.M.R., ch. 1, § 2.4.2, as may be amended or recodified, and all adult-use marijuana establishments and medical marijuana businesses shall have odor mitigation systems such that odor is imperceptible from any adjoining property line.. A ventilation plan shall be required 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 adult-use marijuana establishments shall obtain a State of Maine conditional license prior to operating in the Town of Gorham. All caregivers or other individuals or entities wishing to operate medical marijuana businesses must be licensed by the State of Maine prior to applying for licensure from the Town of Gorham, and must provide a copy of said license to the Town as part of its licensing application.

8. Operating Plan - All Adult-use marijuana establishments and medical marijuana businesses 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

All licenses expire on the December 1st. 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

A separate license must be obtained for each adult-use marijuana establishment or medical marijuana business 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 adult-use marijuana establishment or medical marijuana business. 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

An application for any license under this Ordinance shall be denied to the following entities or persons:

1. A person or entity who fails to meet the requirements of this Ordinance.
2. A person or entity that has had a license for an adult-use marijuana establishment or a medical marijuana business revoked by the Town of Gorham or by the State of Maine.
3. A person or entity who has not acquired all necessary state approvals and other required local approvals prior to issuance of a license.

The Town may suspend or revoke a license for any violation of this Ordinance, Chapter 1or Chapter 2 of the Land Use and Development Code, or any other applicable building and life safety code requirements. The Town may suspend or revoke a license if the licensee has had a state license for an adult-use marijuana establishment suspended or revoked, or in the case of a medical marijuana business, the applicant has been disqualified as a caregiver, or otherwise had a needed license suspended or revoked by the State of Maine. The licensee shall be entitled to notice and a hearing before the Town Council prior to any suspension or revocation, provided, however, that any such hearing, including all documents related thereto, pertaining to a licensed medical marijuana caregiver business, shall be confidential and conducted in executive session.

Section 13 - Right of Access/Background Check/Inspection

- A. Every adult-use marijuana establishment and medical marijuana business licensee 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.
- B. Every owner and employee of an adult-use marijuana establishment, medical marijuana manufacturing facility, or medical marijuana testing facility, applying for a license, shall contact the Gorham Police Department for the purposes of fingerprinting and criminal background checking.
- C. All medical marijuana caregivers shall provide to the Town a copy of all registered caregiver licenses issued to any and all officers, managers, and/or employees, and shall update the same annually.
- D. All licensees shall submit emergency contact information to the Police Department.
- E. Due to fire, explosion, and other hazards inherent in adult-use marijuana establishments and medical marijuana caregiver businesses, including, but not limited to, heavy electrical loads, hot lighting fixtures, CO2 enrichment, and flammable contents, the owners and/or operators 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 adult-use marijuana establishment or medical marijuana 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 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 an adult-use marijuana establishment or medical marijuana business licensed under this Ordinance.

Section 15 - State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the adult-use marijuana businesses, medical marijuana businesses, or medical marijuana caregivers, the additional or stricter regulation shall control. Compliance with all applicable State laws and regulations 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. At said hearing the Town Council shall determine whether the license applicant has satisfied all applicable licensing criteria as outlined in this Ordinance, and if so, shall authorize the issuance of such a license, with or without conditions.
- 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.
- C. In the case of an application for license by a medical marijuana caregiver, or any renewal thereof, the notice and public hearing shall be subject to the confidentiality provisions of Section 9(D)(3) of this Ordinance, if applicable.

Section 17 - License Fees

Licensing fees for adult-use marijuana establishments and medical marijuana businesses shall be paid annually as set forth below.

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

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

Adult-Use Marijuana Manufacturing Facility: \$5,000

Adult-Use 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.

Adult-Use 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.)

Adult-Use Marijuana Testing Facility: Annual License Fee: \$3,000.

Medical Marijuana Caregiver (Non-Home Occupation): Annual License Fee:

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.

Medical Marijuana Manufacturing Facility: Annual License Fee: \$5,000.

Medical Marijuana Testing Facility: Annual License Fee: \$3,000.

Renewal applicants for adult-use marijuana cultivation licenses may seek an increase to a higher tier if they comply with the requirements in this section and State law.

Section 18 - 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. Operation of any adult-use marijuana establishment or medical marijuana business without a town license 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, and failure of the licensee or other individual or business to take the required remedial action in a timely manner, the Town can pursue fines and/or penalties under 30-A M.R.S.A. § 4452.

Section 19 - Appeals

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