

12-20-18 DRAFT

CITY OF AUBURN

Adult Use and Medical Marijuana Stores, Cultivation Facilities, Manufacturing Facilities, and Testing Facilities Ordinance

ENACTED: _____, 2019

CERTIFIED BY: _____

Sue Clements-Dallaire

City Clerk
Title

Affix Seal

**City of Auburn
Chapter 11 – Land Use
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**Article 14 – Adult Use and Medical Marijuana Stores, Cultivation Facilities,
Manufacturing Facilities, and Testing Facilities Ordinance**

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**Adult Use and Medical Marijuana Stores, Cultivation Facilities, Manufacturing
Facilities, and Testing Facilities Ordinance
Chapter 11 - Land Use**

11 - 14.1 Title:

This ordinance shall be known and cited as the “City of Auburn Adult Use and Medical Marijuana Stores, Cultivation Facilities, Manufacturing Facilities, and Testing Facilities Ordinance” and will be referred to hereinafter as “this Ordinance”. This Ordinance limits all subject Adult Use and Medical Marijuana Businesses to the zoning districts specified under the Zoning Ordinance Table of Uses, prescribes definitions of Adult Use and Medical Marijuana Businesses, and provides for permitting/licensing and regulation of Adult Use and Medical Marijuana Businesses, and provides standards for Adult Use and Medical Marijuana Businesses.

11 - 14. 2 Authority and Applicability:

WHEREAS, implementing a system for the regulation of stores, cultivation, manufacturing, and testing for the adult use of marijuana, a controlled substance, is a complex function with significant administrative demands on the City of Auburn; and

WHEREAS, ensuring that possession and use of Adult Use and Medical Marijuana is limited to persons who are 21 years of age or older, except in the case of minors in possession of a medical marijuana card patient card, is necessary to protect those who have not yet reached adulthood from the effects of irresponsible use of a controlled substance; and

WHEREAS, the City of Auburn believes that any production, processing, or selling of Adult Use and Medical Marijuana should be conducted in a safe and fair manner for the health, safety, and welfare of the community, which includes complying with provisions of all applicable laws and ordinances relating to adult use and medical use of marijuana throughout the City of Auburn; and

NOW THEREFORE, this Ordinance is adopted pursuant to the Marijuana Legalization Act, 28-B M.R.S. c. 1; and Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of the Municipal Home Rule Authority (30-A M.R.S. §3001 et seq.) and the provisions of the Planning and Land Use Regulation Act, 30-A M.R.S. §4312 et seq.

11 - 14.3 Purpose:

It is the purpose of this Ordinance to regulate Adult Use and Medical Marijuana Businesses in order to promote the health, safety, and general welfare of the citizens of Auburn, and to establish reasonable and uniform regulations for the appropriate location of Adult Use and Medical Marijuana Businesses in Auburn.

Persons or entities wishing to establish an Adult Use or a Medical Marijuana Business within the City of Auburn shall first obtain a permit/license from the Auburn City Council (hereinafter “the Municipal Officers”) and shall be subject to the provisions of this Ordinance.

This Ordinance may not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Use of Marijuana Act.

11 - 14.4 Conflict with Other Ordinances; Severability:

Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or of any other ordinance, regulation or standard, the more restrictive provision shall apply.

11 - 14.5 Effective Date:

The effective date of this Ordinance, and the permitting/licensing of the establishment or operation of any Adult Use or Medical Marijuana store, Adult Use Marijuana Cultivation Facility, Adult Use Marijuana Products Manufacturing Facility, or Marijuana Testing Facility in Auburn thereunder, shall be the date of adoption by the Municipal Officers.

11 - 14.6 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.

11 - 14.7 Definitions:

For the purpose of this Ordinance, adult use marijuana businesses, including Adult Use and Medical Marijuana stores, Adult Use Marijuana Cultivation Facilities (including Adult Use Marijuana Nursery Cultivation Facilities), Adult Use Marijuana Products Manufacturing Facilities, and Adult Use Marijuana Testing Facilities, are defined as set forth in 28-B M.R.S. §102.

For the purpose of this Ordinance, medical use marijuana businesses, including medical marijuana dispensaries and caregiver's storefronts, medical use cultivation facilities, medical use marijuana manufacturing facilities, and medical use test facilities are either defined in Maine's medical marijuana law or are the medical equivalent of those adult use marijuana businesses listed in the previous paragraph.

For the purpose of this Ordinance, the term, "Marijuana Business" means any business listed in the two preceding paragraphs.

For the purpose of this Ordinance, the term, "plant canopy" is defined as set forth in 28-B M.R.S. §102.

For the purpose of this Ordinance, the term "Medical Marijuana Stores" includes an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, regular sales to more than five individual qualifying patients in any one week, and sales directly to the consumer of the product.

11 - 14.8 Permit/License Required:

No person may establish, operate or maintain an Adult Use and/or a Medical Marijuana Business without first obtaining a permit/license from the Municipal Officers. It is a violation of this Ordinance for any person to operate an Adult Use and/or a Medical Marijuana Business without a valid Adult Use Marijuana Business permit/license issued by the City pursuant to this Ordinance.

Pursuant to 28-B M.R.S. §402, the City has placed the following permit/license limits for the following three (3) categories of Marijuana Businesses: Stores - ten (10), five (5) Adult Use and five (5) Medical; Cultivation Facilities - thirty (30); and Manufacturing Facilities - five (5). Whenever a permit/license expires and is not renewed, or the City declines to renew a permit/license, other permit/license applications may be reviewed, but the cap of permits/licenses per each category shall be maintained.

In the event of the proposed sale of a Marijuana Business, the tentative purchaser shall be given preference to obtain a new permit/license to replace the seller's permit/license within sixty (60) days prior to the date of the sale.

The tentative purchaser must file an application with fee and provide all the information required in this Ordinance. If the application is approved by the City, the Municipal Officers shall specify that the permit/license for same is contingent on the sale being completed and receipt of permit/license fees by the City.

The holder of a permit/license for a medical marijuana store located in the following zones - General Business, General Business II, and Industrial (in accordance with city ordinance XXX) – may exchange their permit/license for an adult use marijuana store permit/license in the same location, as slots are available. Said holder must file an application and pay a \$1,500 fee.

The holder of a permit/license for an adult use marijuana store located in the following zones - General Business, General Business II, and Industrial (in accordance with city ordinance XXX) – may exchange their permit/license for a medical marijuana store permit/license in the same location, as slots are available. Said holder must file an application and pay a \$1,500 fee.

All Marijuana Stores must be operated from permanent locations, which may utilize telephone and internet orders as long as the buyer, on the day the order was made, pays for and picks up such orders in the store. Marijuana Stores may not use vending machines for sales, may not have "drive-through" or "drive-up" window-serviced sales, and may not have internet-based sales with credit/debit card payment and delivery by USPS, UPS, FedEx, DHL, or any other global or local delivery service or courier.

11 - 14.9 Application Procedure:

- A.** An application for a permit/license must be made on a form provided by the City.
- B.** All applicants must be qualified according to the provisions of this Ordinance. The application requests and the applicant shall provide information so the City can determine whether the applicant meets the qualifications established in this Ordinance.

C. The City will give first priority to applicants, who for the two (2) year period immediately preceding the date of application: (i) have been cultivating medical marijuana within the City in compliance with applicable State law for same; (ii) have continuously held a caregiver's registry identification card (unless this requirement is waived by the City for good cause); and (iii) have had at least three (3) patients in each year of the two (2) year period.

D. Application to establish a Marijuana Business

1. If the applicant who wishes to operate a Marijuana Business is a single individual, this person must sign the application for a permit/license. If the applicant who wishes to operate a Marijuana Business is more than one individual, each person who has an interest in the business must sign the application for a permit/license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a permittee/licensee if a permit/license is granted.
2. The completed application for a Marijuana Business permit/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 Business under a name other than that of the applicant, they must state the Marijuana Business' name and submit the required registration documents.

- f. If the applicant or a potential 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 permit/license under this Ordinance or other similar Marijuana Business ordinances from another City or State denied, suspended or revoked, they must list the name and location of the Marijuana Business for which the permit/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 permit/license has previously been denied, suspended or revoked, listing the name and location of the Marijuana Business 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 Business ordinance from another City, or State and, if so, the names and locations of such other permitted/licensed businesses.
 - i. The classification of permit/license for which the applicant is filing.
 - j. The location of the proposed Marijuana Business, including a legal description of the property, street address, and telephone number.
 - k. The applicant's mailing address and residential address.
 - l. Recent passport-style photograph(s) of the applicant(s).
 - m. The applicant's driver's license and Social Security numbers.
 - n. A sketch showing the configuration of the subject premises, including building footprint, interior layout with floorspace to be occupied by the business, and parking plan. The sketch must be drawn to scale with marked dimensions.
 - o. A copy of a City Tax Map depicting: the subject property lines and the property lines of other properties containing any existing Marijuana Businesses within one thousand (1,000) feet of the subject property; the property lines of any public or preexisting private school within seven hundred and fifty (750) feet of the subject property; and/or property used primarily for religious worship and related religious activities, and/or or areas designated as a municipal "safe zones" pursuant to 30-A M.R.S. §3253, within five hundred (500) feet of the subject property.
3. All applications for a Marijuana Business permit/license shall be kept confidential by the City and are for administrative purposes only due to sensitive information contained therein such as Social Security numbers, etc.

4. All applicants (including all officers, directors, managers, members, or partners) for any adult use marijuana business permit/license, excepting Marijuana Testing Facilities, must have been residents of the State, and paid taxes in the State, for a period of not less than four (4) years immediately preceding the date of the application per 28-B M.R.S. §202.2.B. This requirement expires on June 1, 2021 per 28-B M.R.S. §102.48 (definitions).
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. This residency requirement does not apply to applicants for testing facility licenses.

E. Application and Permit/License Fees

All applications must be submitted with a \$1,500 fee, except for exchange conversions under §11-14.8, for which the fee is \$500. If an application is approved, the following permit/license fees must be paid before the City will issue a permit/license:

Marijuana Store: Annual Operation Permit/License Fee: \$7,500

Marijuana Manufacturing Facility: Annual Operation Permit/License Fee: \$2,500

Marijuana Testing Facility: Annual Operation Permit/License Fee: \$2,500

Marijuana Cultivation:

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

Tier 2: 501-2,000 SF of mature plant canopy: Annual Permit/License Fee: \$2,500.

Tier 3: 2,001-7,000 SF of mature plant canopy: Annual Permit/License Fee: \$5,000.

Tier 4: 7,001-20,000 SF of mature plant canopy: Annual Permit/License Fee: \$7,500. For each approved increase of 7,000 SF, the additional fee is: \$2,500.

Nursery Cultivation: Cultivation of not more than 1,000 SF of plant canopy in compliance with 28-B M.R.S. §501.3: Annual Permit/License Fee: \$1,500 (Plant canopies of individual Nursery Cultivations are permanently capped at 1,000 SF.)

Every two (2) years, Tier 4 renewal applicants may seek a 7,000 SF plant canopy increase if in compliance with applicable state law.

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

Applicants for Marijuana Cultivation permits/licenses may not hold more than three (3) such permits/licenses or a total combined plant canopy in excess of 30,000 SF. Cultivation permits will be authorized in the Agricultural Zone.

11- 14.10 Standards for Permit/License:

A. General

1. Marijuana Businesses, whether Retail Stores, including Medical Marijuana Storefronts, Cultivation Facilities, Manufacturing Facilities, or Testing Facilities, may only exist and operate in the zones listed in the Allowed Uses by Zone (Appendix 1), and as further restricted below in §11-14.10.A.2.a&b.
2. Marijuana Businesses may not be operated on property located within:
 - a. Seven hundred and fifty (750) feet of the property line of a public or preexisting private school (K-12) per 28-B M.R.S. §402.2.A; and/or

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- b. Five hundred (500) feet of the property line of: property used primarily for religious worship and related religious activities; or areas designated as a municipal "safe zones" pursuant to 30-A M.R.S. §3253.*

Required setbacks under 2. a. & b. above shall be measured as the most direct, level, shortest, straight-line distance between property lines.

3. A property containing a building housing one or more Marijuana Business(es) may not be located within one thousand (1,000) feet of another property containing a building housing one or more Marijuana Businesses.
4. More than one Marijuana Business (Store and/or Cultivation Facility and/or Manufacturing Facility and/or Testing Facility) may be co-located and operated within the same building, structure, or portion thereof, as long as all ordinance and application requirements are met and the establishment is not being operated as a collective.
5. Marijuana Businesses may be open for business only between the hours of 7:00 a.m. and 9:00 p.m., locally prevailing time.
6. The sale or offering for sale of Medical Marijuana and/or Medical Marijuana products under permit/license and the sale or offering for sale of Adult Use Marijuana and/or Adult Use Marijuana products under permit/license within the same facility or building is prohibited per 28-B M.R.S. §504.5.
7. For the purpose of subsection A.2 of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest property line of a property containing a building or structure used as the premises where a Marijuana Business is conducted, to the nearest property line of the premises of a use listed in subsection A.2. Presence of a City, County, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

8. For purposes of subsection A.3 of this Section, the distance between any two properties containing a building housing one or more Marijuana Businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest property line of each property containing the building in which each business is located.
9. Medical marijuana businesses located and operating within Auburn under and in compliance with the Maine Medical Use of Marijuana Act on or before May 31, 2018 who file applications for a Marijuana Business permit/license for locations that they currently operate within and have continuously operated within since May 31, 2018, are exempt from subsections A.1 and A.2 of this section (§11-14.10.A.1&2).
10. Security measures at all Marijuana Business premises shall include, at a minimum, the following:
 - a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and
 - b. Door and window combination video and motion detector intrusion system with audible alarm and smart phone monitoring, maintained in good working condition; and
 - c. A locking safe permanently affixed to the premises that is suitable for storage of all marijuana, marijuana products, and cash stored overnight on the licensed premises; and
 - d. Exterior lighting that illuminates the exterior walls of the licensed premises during dusk to dawn, that is either constantly on or activated by motion detectors, and complies with applicable provisions of the lighting performance standards in the City of Auburn Zoning Ordinance; and
 - e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars; and
 - f. Methods to ensure that no person under the age of twenty-one (21) shall have access to marijuana and marijuana products.

11. Ventilation

All Marijuana Businesses are required to be in compliance with the Odor Nuisance Control and Abatement Performance Standard in the City's Zoning Ordinance, and all indoor Marijuana Cultivation facilities shall have odor mitigation systems.

12. Required Notices

There shall be posted in a conspicuous location inside each marijuana store, at least one legible sign containing the following information:

Use of or allowed on-site consumption of marijuana is illegal; Open and public consumption of marijuana in the State of Maine is illegal; The use of marijuana or marijuana products may impair a person's ability to drive a car or operate machinery; No one under the age of twenty-one (21) allowed, except a minor with medical marijuana card; Loitering prohibited.

13. Signs

All signs used by and all marketing and advertising conducted by or on behalf of the marijuana business may not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age. The signs, marketing, or advertising is prohibited from making any health or physical benefit claims. All signage shall meet the City's Sign Ordinance and may use an image or images of the marijuana plant or plants, or parts thereof, as long as they do not exceed 20% of the sign face, but there shall be no pictorial representations of other marijuana products, by-products, or paraphernalia associated with the use or distribution of retail marijuana.

The exterior of all marijuana stores shall display a 1' x 1' image of any universal symbol for Medical or adopted by the State's Department of Administration and Financial Services.

B. Right of Access/Background Check/Inspection

Every Marijuana Business shall allow law enforcement officers 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 Business applying for a permit/license, shall contact the Auburn Police Department for the purposes of fingerprinting and criminal background checking, and all premises managers for Marijuana Businesses shall submit emergency contact information to the Lewiston – Auburn 911 Communication Center.

Due to fire, explosion, and other hazards inherent in Marijuana Cultivation, Testing, and Manufacturing facilities, including, but not limited to, heavy electrical loads, hot lighting fixtures, CO² enrichment, extraction solvents (acetone, butane, propane, ethanol, heptane, isopropanol, CO², etc.), high-pressure extraction methods (CO², etc.), and flammable contents, the owners of all such facilities shall agree to be inspected annually by the Auburn Fire Department and have a Knox Box installed at the structure's exterior entrance for emergency access. Knox Boxes shall be obtained and installed in coordination with the Auburn Fire Department.

C. Indemnification

By accepting a permit/license issued pursuant to this Ordinance, the permittee/licensee waives and releases the City, 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 Business owners, operators, employees, clients, or customers for a violation of local, State or federal laws, rules, or regulations.

By accepting a permit/license issued pursuant to this Ordinance, the permittee/licensee agrees to indemnify, defend, and hold harmless the City, 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 Business.

D. State Law

In the event the State of Maine adopts any additional or stricter law or regulation governing the sale, cultivation, manufacture, distribution, or testing of Marijuana or Marijuana products, the additional or stricter regulation shall control the establishment or operation of any Marijuana Store, Marijuana Cultivation Facility, Marijuana Manufacturing Facility, or Marijuana Testing Facility in Auburn.

Compliance with 28-B M.R.S. c. 1 and any other applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any permit/license under this Ordinance, and noncompliance with 28-B M.R.S. c. 1 and any other applicable State law or regulation shall be grounds for revocation or suspension of any permit/license issued hereunder.

11 - 14.11 Enforcement

A. Violations

1. Any violation of this Ordinance, including failure to comply with any condition, shall be deemed to be a violation of 30-A M.R.S. §4452. Every day a violation exists constitutes a separate violation.
2. Commencement of any Marijuana Business without a City permit/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 CEO. Upon such CEO notification, the City can pursue fines and/or penalties under 30-A M.R.S. §4452.

B. Law Enforcement Officer ("LEO")

Law enforcement officers may at any reasonable time conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit/license approvals, and shall investigate all complaints of alleged violations of the Ordinance.

1. If the LEO finds that any provision of this Ordinance is being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including but not limited to, discontinuance of illegal use of land, buildings, or structures, or work being done, removal of illegal buildings or structures, and abatement or mitigation of violations. A copy of such notices shall be submitted to the Municipal Officers and be maintained as a permanent record.
2. The LEO shall keep a complete record of all essential transactions of the LEO, including Marijuana permit/license applications submitted, permits/licenses granted or denied, revocation actions, revocation of permits/licenses, appeals, court actions, violations investigated, violations found and fees collected.

C. Legal Actions

When the above notification and/or inspection actions do not result in the voluntary correction or abatement of the violation by the subject Marijuana Business, the Municipal Officers, upon receiving written notification from the LEO, shall institute any and all actions and proceedings, either legal or equitable, including injunctions of violations and the impositions of penalties and/or fines in order to enforce the provisions of this Ordinance.

The Municipal Officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.

D. Penalties/Fines

Any person, including but not limited to, a Marijuana Business owner, a property owner where such business is located, or any agent or contractor for same, who orders or conducts any activity in violation of this Ordinance, or fails to comply with any of its requirements, shall be penalized in accordance with 30-A M.R.S. §4452.

11 - 14.12 Amendments:

A. Initiation of Amendments

An amendment to this Ordinance may be initiated by:

1. The Municipal Officers, provided a majority of the Municipal Officers has so voted; or

2. Written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the municipality at the last gubernatorial election.

B. Public Hearing

The Municipal Officers shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing.

C. Adoption of Amendment

An amendment of this Ordinance shall be adopted by a majority vote of a City Meeting.

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