

NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on October 5th, 2021 at 6:30 p.m. to consider the following:

Shall the Town Council of the Town of Old Orchard Beach amend the Code of Ordinances, by adding Chapter 78, Section 1279, Conditional Use Standards for Adult Use Marijuana Businesses, by adding the underscored language below:

Sec. 78-1279 – Adult Use Marijuana Business

(1) Purpose

The purpose of this section is to implement the Marijuana Legalization Act, 28-B M.R.S. §101 et seq. and to protect the public health, safety, and welfare of the residents of and visitors to the Town of Old Orchard Beach by prescribing the manner in which Marijuana Business can be conducted in the Town.

In addition, this section provides for the protection of public health and safety through reasonable controls on marijuana sales, cultivation, manufacturing, testing, and distribution operations as they relate to air quality, neighborhood and customer safety, security for these operations and their personnel, and other health and safety concerns.

(2) Applicability

The regulations in this Ordinance shall apply to any persons or entities operating or interested in operating an Adult Use Marijuana Business in Old Orchard Beach.

(3) Definitions exclusive to Adult Use Marijuana Business

As used in this section the terms listed below have meanings set forth below, whether or not such terms are otherwise defined elsewhere in this chapter. Terms not listed below have the same meanings as in section 78-1 of this chapter.

Adult Use Marijuana: marijuana cultivated, manufactured, distributed or sold by an adult use marijuana business.

Adult Use Marijuana Business: Adult Use Marijuana Cultivation Facility, Adult Use Marijuana Products Manufacturing Facility, Adult Use Marijuana Testing Facility, or Adult Use Marijuana Store regulated under this Ordinance.

Adult Use Marijuana Cultivation Facility: a facility licensed to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to Adult Use Products Manufacturing Facilities, to Adult Use Marijuana Stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to Adult Use Marijuana Stores.

Adult Use Marijuana Nursery Cultivation Facility: a facility licensed to cultivate not more than 1,000 SF of plant canopy pursuant to 28-B M.R.S. §501.

Adult Use Marijuana Product: a marijuana product that is manufactured, distributed or sold by an adult use marijuana business.

Adult Use Marijuana Store: a facility licensed to purchase adult use marijuana, immature marijuana plants and seedlings from an Adult Use Cultivation Facility, to purchase adult use marijuana and adult use marijuana products from an Adult Use Products Manufacturing Facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Adult Use Marijuana Products Manufacturing Facility: a facility licensed to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

Applicant: a person or business entity that has submitted an application for conditional use approval for an Adult Use Marijuana Business pursuant to this Article.

Business Entity: a partnership, association, company, corporation, limited liability company or other entity incorporated or otherwise formed or organized by law. "Business entity" does not include a federal, state or municipal government organization.

Cultivation or Cultivate: the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale.

Edible Marijuana Product: a marijuana product intended to be consumed orally, including, but not limited to, any type of food, drink or pill containing marijuana or marijuana concentrate. "Edible Marijuana Product" does not include an edible product containing "hemp" as defined in Title 7 M.R.S.A, section 2231, subsection 1-A, paragraph D.

Harvested Marijuana: the plant material harvested from a mature marijuana plant, except the stalks, leaves and roots of the plant that are not used for a qualifying patient's medical use. "Harvested marijuana" includes marijuana concentrate and marijuana products.

Immature marijuana plant: a marijuana plant that is not a mature marijuana plant or a seedling.

Licensed premises: the premises specified in an application for a State or local license that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use marijuana or adult use marijuana products, in accordance with the requirements of State law and regulations and Old Orchard Beach Code of Ordinances.

Local License: any license required by and issued under the provisions of Chapter 18 of the Old Orchard Beach Code of Ordinances.

Manufacture or Manufacturing: the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or

preparation by means of chemical synthesis. "Marijuana" means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not.

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., section 2231, subsection 1-A, paragraph D or a marijuana product.

Marijuana Product: a product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana Product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana Product" does not include marijuana concentrate or a product containing hemp as defined in Title 7 M.R.S.A., section 2231, subsection 1-A, paragraph D.

Owner: a person whose beneficial interest in an Adult Use 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 an Adult Use Marijuana Business and has a controlling interest in an Adult Use Marijuana Business.

Person: a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

Plant Canopy: the total surface area within the licensed premises of a cultivation facility that is authorized by the department 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.

State License: any license, registration or certification issued by the State of Maine.

Testing or test: the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

(4) Permitting and Licensing

a) An Adult Use Marijuana Business shall be operated in Old Orchard Beach in compliance with this ordinance and other applicable local, state and federal laws, regulations and codes.

b) A person or business entity seeking to operate an Adult Use Marijuana Business shall not submit a conditional use application until their Adult Use Marijuana Business License is selected in accordance with Old Orchard Beach Code of Ordinances, Ch. 18, Sec. 18-610 (1).

c) Pursuant to 28-B M.R.S.A. § 402, a person or business entity seeking to operate an Adult Use Marijuana Business may not submit a conditional use application or business license

application unless the person or business entity has been issued a conditional license by the State of Maine to operate the Adult Use Marijuana Business.

(5) Performance Standards for Adult Use Marijuana Business

An Adult Use Marijuana Business requires approval from the Planning Board prior to the issuance of any business license, building permit or certificate of occupancy. The following performance standards are to be used by the Planning Board in reviewing conditional use applications and compliance with the same shall serve as requirements for approval of such conditional use applications.

a) Separation from sensitive uses.

(1) No Adult Use Marijuana Business shall be sited within one thousand (1,000) feet of the lot lines of a school, and

(2) No Adult Use Marijuana Business shall be sited within one thousand (1,000) feet of the lot lines of a child care facility, community center, higher educational facility, public outdoor recreational area, church, synagogue or other house of religious worship, public library, amusement parks, and drug and alcohol rehabilitation center.

The distance cited in this section shall be measured between the lot line of the proposed site for the Adult Use Marijuana Business and the lot line of the site of the use listed in (1) or (2) above at their closest points. For purposes of this measurement, if an Adult Use Marijuana Business is to be located on a site that is leased from an unrelated third party, such Business lot line shall be determined as follows:

- (i) If the Business leases an entire parcel of land, the lot line of such Business shall be the lot line of the parcel;
- (ii) If the Business leases a free-standing building or buildings which is or are part of a larger parcel containing other free-standing buildings, the lot line of such Business shall be the outer wall of the building(s) being leased by the Business; and

For purposes of this section, the term “school” means a “public school” as that term is defined in 20-A M.R.S. § 1(24), as may be amended; a “private school” as that term is defined in 20-A M.R.S. § 1(22), as may be amended; and/or a “public preschool program” as that term is defined in 20-A M.R.S. § 1(23-A), as may be amended.

For purposes of this section, the term “child care facility” means a “child care facility” as that term is defined in 22 M.R.S. § 8301-A(1-A) (B), as may be amended, and/or a “family child care provider” as that term is defined in 22 M.R.S. § 8301-A(1-A) (C), as may be amended.

For purposes of this section, the term “community center” means a place where people from the community can meet for social, educational, and recreational purposes that is owned and operated by a municipality or a non-profit corporation.

For purposes of this section, the term “higher education facility” means a community college, college or university authorized by the State of Maine to award associate, baccalaureate or higher degrees.

For purposes of this section, the term “public outdoor recreational area” means a place used for public recreation, regardless of its size, owned by a governmental agency.

For purposes of this section, the term “amusement parks” means the property located within the Amusement Overlay District as shown on the Town of Old Orchard Beach General Zoning Map.

Once all required licenses, permits and approvals are issued, the Town will not preclude a sensitive use listed in (1) or (2) above from opening at a location within the applicable buffer zones. An Adult Use Marijuana Business may continue to operate in its present location as a pre-existing use if a sensitive use as listed in (1) or (2) above later locates within the applicable buffer zone; however, the Adult Use Marijuana Business does so at its own risk, and Town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a Adult Use Marijuana Business near a sensitive use listed in (1) or (2) above.

b) Days and hours of operation. Adult Use Marijuana Businesses are limited to the following days of the week and hours of operation: Monday – Sunday, 9:00 AM – 9:00 PM.

c) Proximity limit. No Adult Use Marijuana Business shall be sited within one thousand (1,000) feet of another Adult Use Marijuana Business, medical marijuana registered dispensary or medical marijuana production facility as measured from the main entrance of one to the main entrance of the other by the ordinary course of travel.

d) Multiple occupancy buildings. No Adult Use Marijuana Business may be located within or attached to a building that provides space for any other residential or nonresidential occupancies.

e) Area of activities.

(1) All activities of an Adult Use Marijuana Business, including, but not limited to cultivating, growing, manufacturing, processing, displaying, selling, and storage, shall be conducted indoors. An Adult Use Marijuana Business is not permitted to conduct outdoor sales or services of any kind.

(2) An Adult Use Marijuana Business must be operated from permanent locations, which may utilize telephone and internet orders as long as the buyer pays for and picks up such orders in the store on the day the order is made.

f) An Adult Use Marijuana Business shall have a minimum of one off-street parking space per 250 square feet of floor area and one off-street parking space for each on-shift employee. Applicant shall provide documentation representing the legal right to use each parking space throughout the life of the Adult Use Marijuana Business.

g) Submission of a waste management plan which shall include, but is not limited to compliance with Old Orchard Beach Code of Ordinances Chapter 46 (solid waste).

h) Drive-through and home delivery prohibited. Adult Use Marijuana Stores are prohibited from having drive-through pick-up facilities and home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within an Adult Use Marijuana Store.

i) Signs. Notwithstanding the sign requirements of the zoning district where the Adult Use Marijuana Business is located and Chapter 78, Article VIII, Division 5 of Old Orchard Beach Code of Ordinances, and 28-B M.R.S. §702, all signs used by and all marketing and advertising conducted by or on behalf of an Adult Use 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 to persons under 21 years of age. The signs, marketing, or advertising are prohibited from making any health or physical benefit claims.

j) Sale of edible products. No food products shall be sold, prepared, produced or assembled by an Adult Use Marijuana Business except in compliance with all operating and other requirements of the State and Old Orchard Beach laws and regulations. Any goods containing marijuana for human consumption shall be stored in a secure area.

k) Odor management. For all Adult Use Marijuana Businesses, the odor of marijuana must not be detected offsite, i.e., must not be detected at premises that are not under the custody or control of the Business. To prevent and control marijuana odors, an odor control plan shall be submitted as part of the conditional use application describing the odor(s) originating or anticipated to originate at the premises and the control technologies to be used to prevent such odor(s) from leaving the premises. The odor control plan shall, at a minimum, include the following:

(1) A facility floor plan that identifies the locations of all odor-emitting activities and sources. The plan shall also identify the location of doors, windows, vents, HVAC systems, odor control systems and other relevant information.

(2) A list of specific odor-emitting activities and sources, and a description of the processes that will take place at the facility, including, but not limited to, vegetative flowering, processing and storage.

(3) For each odor-emitting activity or source, a description of the administrative procedures as well as the engineering processes, technologies, and equipment the facility will use.

(i) Administrative controls shall include, at a minimum: management practices to isolate odor activities and sources, use of standard operating procedures, employee training, regular equipment inspections and maintenance of inspection logs.

(ii) Engineering controls shall include, at a minimum, building design features; use of equipment and technology to address each specific odor-emitting activity or source; a systems and equipment maintenance and replacement schedule; and evidence that proposed equipment and technology are sufficiently capable and

appropriately sized consistent with marijuana industry best practices for control technologies designed to effectively mitigate odors.

An Adult Use Marijuana Business must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein and to mitigate noxious gases or other fumes used or created as part of the production. While the Town does not mandate any particular equipment specifications with regard to filtration, an Adult Use Marijuana Business is strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

l) Sufficient means of preventing smoke, debris, dust, fluids and other substances from exiting an Adult Use Marijuana Business must be provided at all times.

m) An Adult Use Marijuana Business shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and Town laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard adult use marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended and security cameras must be installed to record activities in the area of such trash receptacles.

n) Security. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:

(1) Security surveillance cameras installed and operating 24 hours a day, 7 days a week 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;

(2) Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working order;

(3) A locking safe or its functional equivalent permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;

(4) Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of the Old Orchard Beach Code of Ordinances;

(5) Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks; and

(6) Methods to ensure that no person under the age of twenty-one (21) shall enter an Adult Use Marijuana Business and have access to marijuana and marijuana products.

(7) Methods to control loitering, which includes obstruction of free passage of pedestrians and vehicular traffic.

All security recordings shall be preserved for at least seventy-two (72) hours. An Adult Use Marijuana Business shall provide the Police Chief or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the business.

o) Change of use/addition of use/expansion of use. If any type of Adult Use Marijuana Business wants to change to another type of establishment, add another type of Adult Use Marijuana Business to its existing operations, or to expand the existing use (including additional square footage), such change of use, additional use or expansion of use must be reviewed and approved by the Planning Board for compliance with this Ordinance.

p) Other laws remain applicable. An Adult Use Marijuana Business shall meet all operating and other requirements of State and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing Adult Use Marijuana and/or Adult Use Marijuana Businesses, the stricter law or regulation shall control.

q) Conditional approval. All Adult Use Marijuana Business approvals shall include a condition that requires the person or business entity to secure applicable State and Town licensing approvals before any on-site operations begin.

Per Order of the Municipal Officers this 21st day of September, 2021.

A True Copy

Attest:

s/Kim McLaughlin

Kim M. McLaughlin, Town Clerk