

TOWN OF HOWLAND

RECREATIONAL MARIJUANA ORDINANCE

An Ordinance establishing land use regulations for recreational marijuana retail and social establishments, cultivation of marijuana and personal use restrictions.

Whereas, the Board of Selectmen finds that:

1. A Citizen's Initiative known as the Maine Marijuana Legalization Measure, otherwise known as 'Question 1', approved on November 8, 2016, modified the State Controlled Substance Act to allow the legalization of recreational marijuana for persons over the age of 21, and;
2. The initiative now codified as the Maine Marijuana Legalization Act ("the Act"), 7 M.R.S. Chapter 417, allows for persons over the age of 21 to possess, use and transport up to 2.5 ounces of prepared marijuana and process, grow, cultivate and transport up to 6 flowering plants, 12 immature plants and an unlimited numbers of seedlings, and possess all the marijuana produced by these plants at the person's residence.
3. The initiative allows for the licensure of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act and this Ordinance and provides that the marijuana industry be regulated by the Maine Department of Agriculture, Conservation and Forestry, and;
4. The initiative allows for municipalities to limit or prohibit the operation and location of retail marijuana stores and the operation and location of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities and adopt and enforce regulations for retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities which are at least as restrictive as state law and may include local licensing requirements, and;
5. The Town of Howland desires to adopt permanent regulations as provided herein; and
6. The Town of Howland's interests are best served by adopting permanent regulations at this time, even though the Town will continue to monitor impacts and additional information related to this new industry in Howland and elsewhere in the State, and will make additional changes as may be determined by the Town to be in its best interests; and

7. The Howland Planning Board held four (5) workshops in between December, 2016 and July, 2017, making recommendations to the Board of Selectmen regarding the permanent regulations for recreational marijuana; and
8. The Howland Board of Selectmen held a public hearing on August 28, 2017; and

Whereas, the Board of Selectmen concludes that:

1. Nothing in this Ordinance is intended to encourage any use or activity that violates federal law; and
2. It is prudent to continue to take a conservative approach to regulations related to recreational marijuana production, processing, sales, use and possession until there is more evidence concerning the community impact from such uses in Howland and elsewhere in the State of Maine; and
3. This Ordinance promotes the best long term interests of the community of Howland.

NOW, THEREFORE THE TOWN OF HOWLAND DOES ORDAIN:

Section 1. Findings of Fact

The “Whereas” provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2. Ordinance:

A. Explanation:

As well as the Laws under the State of Maine Marijuana Legalization Act, 7 M.R.S., Chapter 417 the following Ordinance shall apply to recreational marijuana in the Town of Howland.

This Ordinance has no effect on the current laws pertaining to the manufacture, sale and use of Medical Marijuana as set forth by the State of Maine Department of Human Services.

B. Definitions:

“Dwelling” shall mean a building exclusively for residential occupancy including single family and multi-family dwellings.

“Licensee” means a person licensed pursuant to the Maine Marijuana Legalization Act, 7 M.R.S. Chapter 417.

“Marijuana” means all parts of the plant of the genus *Cannabis*, whether growing or not, the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin including cannabis concentrate.

“Marijuana cultivation” means the planting, tending, improving, or harvesting of marijuana.

“Retail marijuana” means marijuana that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment or retail marijuana social club.

"Retail marijuana cultivation facility" means an entity licensed to cultivate, prepares, and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

"Retail marijuana establishment" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility, or a retail marijuana testing facility.

"Retail marijuana product" means concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments, and tinctures.

"Retail marijuana products manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores, and retail marijuana social clubs.

"Retail marijuana social club" means an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

"Retail marijuana store" means an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

"Retail marijuana testing facility" means an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

“Smoking” shall mean the ingestion of marijuana by inhalation with or without the use of smoking paraphernalia, including “vaping”.

C. Producers and Processors:

Retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities may not locate or operate in the Town of Howland.

D. Retailers:

Retail marijuana social clubs and retail marijuana stores may operate in the Town of Howland pursuant to the following restrictions:

- a. Retail marijuana social clubs and retail marijuana stores must comply with all requirements of State law;
- b. Retail marijuana social clubs and retail marijuana stores may locate only in Districts as outlined in Article 6.1 and 6.2 of the Town’s Zoning Ordinance.
- c. Retail marijuana social clubs and retail marijuana stores may not locate within Residential zones as defined in Article 6.3 of the Town’s Zoning Ordinance.
- d. Retail marijuana social clubs and retail marijuana stores may not locate in a building in which non-conforming retail uses have been established in Residential zones.
- e. Retail marijuana social clubs and retail marijuana stores may not locate within 1,000 feet of any parcel containing an elementary or secondary school, playground, recreation center or facility, child care center, public park (to include public trails, walkways and the fish by-pass), public transit center, library or any church.
- f. Retail marijuana social clubs and retail marijuana stores may not locate within 2,500 feet of any other legally established retail marijuana social clubs and retail marijuana stores.
- g. Customer parking for retail marijuana social clubs and retail marijuana stores must be on the public street side of the structure.
- h. Vehicular access to the parking lot of a retail marijuana social clubs and retail marijuana store must be from the public street frontage of the structure.

E. Measurements:

Distances provided under this Ordinance shall be measured as the shortest distance between the perimeters of the parcels at issue.

F. Compliance:

Retail marijuana social clubs and retail marijuana stores are required to acquire all necessary licenses and required to comply with municipal tax regulations and all other applicable Town ordinances and regulations.

G. Establishment:

The Town of Howland will not issue required permits for retail marijuana social clubs and retail marijuana stores prior to the applicant(s) providing the Town of Howland proof that the applicant(s) has been approved for a recreational marijuana license from the Department of Agriculture, Conservation and Forestry or any other State agency requiring such licensure pursuant to the Maine Marijuana Legalization Act, 7 M.R.S., Chapter 417.

H. Marijuana Cultivation

a. Cultivation, generally.

1. No marijuana cultivation shall be conducted openly or publicly.
2. Marijuana cultivation shall comply with all applicable laws and regulations of the Town of Howland and State of Maine.
3. Marijuana cultivation shall not occur in detached outbuildings.
4. In no event shall a person cultivating marijuana pursuant to this Ordinance keep, cultivate or process more marijuana than such a person is entitled under Maine Law.
5. All marijuana cultivation shall take place in a locked and enclosed space in accordance with 22 M.R.S.A, §2422(3).
6. No marijuana produced under this section shall be made available for sale.

b. Cultivation within dwellings

1. No dwelling shall be used primarily as a place to cultivate marijuana
2. In no event shall more than twelve (12) marijuana plants of any size, or six (6) mature, flowing plants be cultivated or kept within, or on the same legal parcel as, any single-family dwelling.

3. No marijuana plants may be cultivated within any dwelling unit in a two-family, multi-family or single-family attached dwelling without expressed, written consent of the building owner(s).
4. Marijuana cultivation shall not be perceptible from the exterior of the dwelling in which the cultivation occurs.
5. The owner shall properly dispose of such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. In the event there is a lessee of the subject premises, the owner and lessee shall be jointly and severally liable for such conditions.

I. Violations and Penalties.

Any person who violates any of the provisions of Ordinance shall be guilty of a civil offense in accordance with Title 30-A, M.S.R.A, § 4452.

J. Prohibited in Public Places:

- a. No individual shall ingest marijuana by smoking or any other means, in public places into which the public is invited or allowed, including stores, restaurants, bars, and membership clubs when a function is held that is open to the public during the function. This also applies to day care facilities including throughout the home at home-based day care facilities, during the hours of operation. This applies to units/apartments within any zone licensed by Maine DHHS when an employee is physically present to perform work there. This also applies to government offices, public transportation (buses, trains, taxi cabs) and motel and hotel lobbies, hallways, and meeting rooms.
- b. Smoking of marijuana is prohibited in all outdoor eating areas including patios, decks or other property including bars, restaurants, dairy bars, and snack bars. The law applies year around, 24 hours a day whenever the business is open and serving food or drink.
- c. Smoking of marijuana is prohibited in any areas as outlined in the State of Maine Tobacco Smoking Laws, Title 22, M.R.S.A., §1542 (1) and the Marijuana Legalization Act, 7 MRSA, Chapter 417, section 2452.

K. Prohibited in Private Places

- a. Owner(s) of buildings with rental units may place additional (written) restrictions on the use and growing of marijuana within the individual rental units.

Section 3. Enforcement

Any violation of this Ordinance is subject to enforcement by the Town of Howland Code Enforcement Officer, any designee or any law enforcement officer having powers and duties within the jurisdiction of the Town of Howland.

Section 4. Conflict

In the event there is a conflict between the provisions of this Ordinance and any other Town ordinance, the provisions of this Ordinance shall control.

Section 5. Severability

Should any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance or its application to any person or situation be declared unconstitutional, invalid for any reason, or preempted by State or federal law or regulations, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other persons or situations. The Board of Selectmen hereby declares that it would have adopted this Ordinance and each section, subsection, paragraph, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases or portions be declared unconstitutional, invalid, or preempted.


Section 6. General Duty


It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of the Ordinance that no provision or any term used in the Ordinance is intended to impose any duty whatsoever upon the Town or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the Town, its officers, employees or agents for any injury or damage resulting from any action or inaction on the part of the Town related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 7. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Adopted this 11th day of Sept, 2017


Michael O'Harris


Tom Whelan

Howland Board of Selectmen