

Chapter 135

Marijuana, Cultivation and Distribution of

[HISTORY: Adopted by the City Council of the City of Saco 9-18-2017. Amended 3-25-2019]

GENERAL REFERENCES

Cultivation and sale of recreational marijuana — See Ch. 165.

§ 135-1 Title.

This chapter shall be known as the "Marijuana Cultivation and Distribution Ordinance."

§ 135-2 Findings; purpose.

- A. The State of Maine has recently enacted laws allowing greater cultivation, handling, storing, packaging, processing and distribution of marijuana plants and products. In addition, the citizens of the state in a recent referendum have voted to allow for and decriminalize personal or so-called "recreational" use of marijuana. Additional state laws and regulations are anticipated regarding recreational marijuana. These are not policy decisions of the City, but the City has become aware of certain adverse effects from these recent legislative undertakings, and it proposes to address potential issues that have arisen.
- B. Specifically, the City has learned through its Code Enforcement Office, through its Electrical Inspector, as well as through other public officials, including its Police and Fire Departments, that individuals are rapidly installing throughout the City cultivation facilities without City knowledge, without proper City inspection and review and in some cases in areas not zoned for such use. Of particular concern is the installation of energy-intensive lighting that can pose significant risk of injury, death and of fires within residential structures. The City Council has received information regarding structure fires in other communities caused by heat-intensive lighting used for cultivation and growing equipment.
- C. The Council is also aware that not all states have decriminalized marijuana, and this community's easy highway access and close proximity to the border may make Saco an attractive location for those who intend to traffic marijuana as part of a criminal enterprise.
- D. It is evident that businesses and citizens desire to commercialize and otherwise avail themselves of opportunities presented by these new laws. However, doing so in an unregulated and, in some cases, surreptitious fashion poses substantial risk of criminal activity, physical harm, even death. These conditions have created an emergency for the community.
- E. This emergency ordinance, enacted pursuant to City Charter Provision 2.10, seeks to assure the safety of Saco citizens while allowing properly reviewed and regulated use as permitted under state law. It is enacted pursuant to Home Rule Authority under both Maine's Constitution and 30-A M.R.S.A. § 3001 et seq.

§ 135-3 License required.

- A. All persons and parties who grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana, or any marijuana product, or material or medication derived thereon ("marijuana products"), for the use or benefit of any third parties, from or within the City of Saco, must register with the City and must secure and maintain a valid license at all times. Notwithstanding the preceding, a license is not required to grow, cultivate, and harvest marijuana for personal use.
- B. All businesses, commercial enterprises, as well as any not-for-profit entity, that grows, cultivates, harvests, manages, processes, transfers, exchanges or distributes marijuana, or any marijuana products, from or within the City of Saco, must register with the City of Saco and must secure and maintain a valid license at all times.

- C. To register means to complete and submit a license application to the City Clerk of Saco the forms created by that office, and to pay the fees set forth herein. No registration shall be approved, and no license granted, until the required fees have been paid, and all applicable reviews and inspections have been completed.
- D. Once all applicable reviews have been fully and properly completed, and the applicant has been found qualified, the Clerk shall thereupon issue a license to the applicant.
- E. All licenses shall run for one year (365 days), and may be renewed as set forth herein. No license shall be issued, denied, or revoked by the City Clerk except as expressly provided in this chapter.
- F. In the absence of the City Clerk, the City Administrator will assume all authority and responsibility of the Clerk as designated herein.

§ 135-4 Permitted locations.

- A. A person in their own home may grow, cultivate, and harvest marijuana for their own personal use, and for the personal use of a resident family member, regardless of the zone in which the structure is located.
- B. The limit as to the number of permitted marijuana plants and ounces of harvested marijuana for each person in single-family structure shall be set by state law.
- C. In no event may any person owning or residing in a single-family structure increase their home electrical service beyond 200 amps.
- D. In no event may a person from their home, or any other residence, grow, cultivate, distribute, harvest, manage, process, transfer, exchange, or distribute any amount of marijuana or marijuana products for a third party, except as permitted in Subsection A above.
- E. All parties who grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products for any other third party may do so provided they operate from a structure or premises found within the City of Saco's approved zones. No growing, cultivation, harvesting, managing, processing, transferring, exchanging or distribution of marijuana or marijuana products shall be allowed outside the boundaries of these zones of the City. Such activity shall be a violation of this chapter.
- F. No other properties outside of the approved zones may be used or licensed for growing, cultivation, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products for any party's personal use except for personal use as permitted in Subsection A above.

§ 135-5 Violations.

- A. No person or entity shall grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products without having a license as required herein, except as allowed pursuant to Section 135-3.
- B. Every license holder shall exhibit its license in a conspicuous place on the premises, visible to the public. The failure to display the issued license at all times is a violation of this chapter. Upon discovering that a person, party or entity has not displayed its license, the City shall deliver a written warning. The failure to display a license after written warning shall constitute a violation of this chapter.
- C. No person, party or entity may sell, transfer or assign its license. Any attempt to sell, transfer or assign will confer no rights, and will render the license immediately void. The sale, assignment or transfer of a license is a violation of this chapter.

- D. It is violation of this chapter to grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana, or any marijuana product, in any structure or zone not otherwise allowed as set out in § 135-4A and E.
- E. It is a violation of this chapter for any license holder to traffic, transport, mail, distribute, transfer, or otherwise assist in the trafficking, transporting, mailing, distribution or transfer of marijuana or marijuana products outside the boundaries of this state. It is a violation of this chapter for any agent, employee or officer of the license holder to do the same.

§ 135-6 **Applications.**

A. All registrations to grow, cultivate, harvest, manage, process, transfer, exchange or distribute marijuana or marijuana products for any third parties shall be made in writing on forms provided by the Clerk. Each registration shall state the applicant's name, address, telephone number and e-mail. In addition, the applicant shall:

- (1) Identify its estimated yearly production of marijuana;
- (2) Whether it will ship or distribute any marijuana outside of the State of Maine;
- (3) Identify all individuals and entities to whom it will contract for delivery of marijuana and include the amounts expected to be delivered monthly and annually.

B. All registrations submitted by an entity applicant shall include the following:

- (1) Federal tax identification number.
- (2) Type and state of organization.
- (3) Names, addresses and date of birth of all principal officers, owners and managers.
- (4) Whether the entity is for profit or non-profit entity, and confirmation thereof.
- (5) Proof of insurance upon the proposed premises in the name of the license holder.
- (6) Name and address of clerk or registered agent for service of process.

C. No employee of the City of Saco shall have any beneficial interest in an issued license, or license holder.

D. Copies of all registrations and materials shall, upon completion, be transmitted to the Code Enforcement Officer, Electrical Inspector, and the City of Saco Fire and Police Departments for the following purposes:

- (1) Review compliance: that the applicant license holder is permitted to operate in each and every location (map and lot number) where specified; and
- (2) To record such information into any existing Code Enforcement Officer management program ("Code Enforcement Pro") for use and review; and
- (3) Site inspection by Code Officer, Electrical Inspector and Fire Department at any and all applicable location(s) used for growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products; and
- (4) To allow inspection of plan drawings detailing nature of site, location of utilities and how utilities such as electrical power will be used; and such other factors deemed necessary or advisable by City staff; and

- (5) For a follow-up inspection between 30 and 60 days after issuance of license to inspect any facilities related to marijuana growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products.
- (6) To determine if the applicant needs or has a duly issued state license for the state use/undertaking, and to determine that the applicant is in compliance with all State of Maine requirements.

§ 135-7 Fees.

Fees shall be established annually by the City Council following a public hearing.

§ 135-8 Investigations.

- A. Registration. The Clerk shall accept and maintain an applicant's registration forms and all supporting material. The Clerk shall submit all registration materials to City staff for review as set out in **§ 135-6D**. All findings and conclusions of City staff shall be reported to the Clerk within 30 days.
- B. Licenses. Upon receipt of an application for renewal of license, the Clerk shall inquire of City officials whether a license may be renewed in compliance with the provisions of this chapter. City staff shall have 30 days to complete their investigation.
- C. Only upon satisfaction of the Clerk, and after review by all appropriate departments, and only upon full compliance with all conditions set forth in this chapter, shall the Clerk issue a license.
- D. The Clerk shall complete his or her review promptly and grant or deny a license or license renewal subject to the additional terms found in **§ 135-13**.

§ 135-9 Decision; standards for denial.

- A. Notice. The Clerk shall issue all decisions in writing, and subject to the same time period set out in **§ 135-13**.
- B. Grounds. A license, and the renewal of a license may be denied, or revoked, upon one or more of the following grounds:
 - (1) Failure to fully complete the application forms; knowingly making a false or incorrect statement of a material nature on such form; failure to supply any requested information reasonably necessary to determine whether such license may be issued; or failure to pay any fee required hereunder;
 - (2) The person, party applicant, license holder, officers, or managers of license holders have caused a significant breach of the peace; have been convicted of more than one misdemeanor, or have been convicted of any felony;
 - (3) There is a clear danger to the public if the license is issued, including significant risk of injury or fire;
 - (4) The parties or persons patronizing the license holder will adversely affect the peace and quiet of the neighborhood, whether or not residential;
 - (5) The person, party or entity has violated a provision of this chapter or other ordinance of the City of Saco, including its Zoning Ordinance;
 - (6) The occurrence of any event subsequent to issuance of the license, which event would have been a basis for denial of the license, shall be grounds for revocation thereof;
 - (7) Real or personal property taxes or legal judgments that are due and owing to the City and are determined to be in arrears as of the date of the license request or license renewal; or
 - (8) Such other acts or conduct found to be detrimental to the citizens or community, including but not

limited to suffering a fire or significant injury arising from growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products after the issuance of a license.

C. Hearings.

- (1) Except as expressly provided in this chapter, no license may be revoked without prior notice to the person, party or entity, and only after a hearing.
- (2) In the case of the revocation of a license, a hearing shall be given to the individual or entity, and a generalized statement of the nature of the complaint constituting the basis for the proposed action shall be included in the notice of hearing. Failure of the person, party or entity to appear at the hearing shall be deemed a waiver of the rights to said hearing.
- (3) All revocations shall be upon substantial evidence, and all hearings shall be conducted with substantial fairness. Rules of evidence shall not apply in such hearing.

D. Fairness. The Clerk shall not arbitrarily deny any registration or license renewal but must base his or her decision upon substantial and credible evidence of one or more of the grounds described above.

E. Complaints. Any citizen or public official of the City can file and/or initiate a complaint against a license holder. Complaints will be kept and maintained by the City Clerk and may be considered when and if a licensee seeks a renewal of his or her license in any succeeding year.

§ 135-10 Appeals.

- A. Procedure. An appeal of the Clerk's decision to the City Council may be taken by any person aggrieved by the denial or revocation of a license by filing a notice of appeal within 30 days of the decision with the City Administrator. Every appeal should be in writing and shall state the basis for the appeal. The City Council shall hear the appeal within 30 days after the filing of the appeal and may affirm, reverse or modify the decision appealed from.
- B. Scope of review. On appeal, the City Council shall review the decision of the Clerk and determine whether the decision was based upon substantial evidence and in compliance with the standards of this chapter. The Council may take additional evidence with respect to such decision or action and, if additional testimony or evidence is taken, it shall determine the appeal upon all of the evidence.
- C. Status or operations pending municipal appeal. During the pendency of an appeal to the City Council, the person, business or entity aggrieved by the decision of the City Clerk may operate without risk of fine if it has an existing license and the Clerk has revoked or denied a renewal of the license. However, if the person, business or entity has been denied its initial license, then any operation prior to a decision by the City Council will be subject to the civil penalties set forth herein.
- D. Appeal to the Superior Court. Any person aggrieved by the decision of the City Council may appeal to the Superior Court in accordance with the provisions of Maine Rule of Civil Procedure 80B.

§ 135-11 Notices of hearing.

- A. Content. Whenever a hearing is required, the Clerk shall give written notice of the time and place of the hearing to the license holder and the City Administrator. Notice shall also be posted in two prominent public locations.
- B. Service. Except as expressly provided, whenever notice by mail is required, such notice shall be mailed by regular United States mail at least five days in advance of the hearing date.

§ 135-12 (Reserved)

§ 135-13 Renewal.

- A. Each year, a license holder must submit a renewal application on the forms provided by the Clerk. The

required fee set out in § **135-7** must be provided, or the Clerk will stay review.

- B. The Clerk shall submit to City staff the current license and registration materials in the applicant's file, as well as copies of any complaints and letters received by the Clerk regarding the renewal applicant.
- C. City staff shall conduct those reviews set out in §§ **135-6D** and **135-8** except City staff may use their discretion to reduce the scope and depth of investigation if circumstances of the renewal warrant.
- D. The Clerk shall issue his or her decision within 30 days unless City staff are unable, in good faith, to finalize their investigation and review, but in no event shall the license renewal decision take more than 60 days.
- E. License holders who do not submit their renewal applications at least 30 days before expiration of their license are at risk in the event the Clerk is unable to complete his or her review within 30 days, and, in such case, if the license expires during such review without a renewal having been yet granted, the license holder must cease growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing of marijuana or marijuana products.

§ 135-14 **Retroactivity.**

The City Council, due to the importance of life safety to all, and because a number of individuals are surreptitiously growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products within its boundaries, expressly intends that this chapter be applied retroactively to January 1, 2016. Any party who commenced growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products after January 1, 2016, but prior to the date of the enactment of this chapter must register for a license, but fees for its first license will be waived if the party can substantially establish that it was engaged in growing, cultivating, harvesting, managing, processing, transferring, exchanging or distributing marijuana or marijuana products prior to enactment of this chapter.

§ 135-15 **Enforcement and penalties.**

- A. Lack of license. Any person or entity that grows, cultivates, harvests, manages, processes, transfers, exchanges or distributes marijuana or marijuana products without a valid license shall be subject to the following fines:
 - (1) First violation: \$2,500.
 - (2) Second violation: \$5,000.
 - (3) Each subsequent violation: \$10,000.
- B. The failure to publicly display a license shall be \$500 per offense.
- C. The fine for selling, transferring or assigning a license in violation of § **135-5C** shall be \$5,000.
- D. The fine for violating § **135-5D** shall be \$2,500 for the first offense and \$5,000 for each occurrence thereafter.
- E. Violation of § **135-5E** (transporting or trafficking) shall result in permanent loss of license.

§ 135-16 **Severability.**

If any portion of this chapter is held to be invalid, the remainder of the chapter shall remain in full force and effect, it being the City Council's intention that these provisions be severable to the greatest extent allowed by law.