

Town of Whiting Adult Use Cannabis Ordinance

Section 1. Authority; Purpose

This Ordinance is adopted pursuant to 28-B M.R.S. § 402 and 30-A M.R.S. §3001.

The purpose of this Ordinance is to set forth standards under which Adult Use Cannabis Cultivation Facilities may be allowed within the Town of Whiting, in order to protect public health, safety, and welfare.

Adult Use Cannabis Stores, Adult Use Cannabis Testing Facilities, and Adult Use Cannabis Manufacturing Facilities are prohibited in the Town of Whiting.

Section 2. Definitions

As used in this Ordinance, the terms below shall be defined as indicated. All terms not defined below shall have the same definition as set forth in 28-B M.R.S. § 102-A, as may be applicable.

Adult Use Cannabis: “adult use cannabis,” as that term is defined in 28-B M.R.S. § 102-A(1), as may be amended or recodified.

Adult Use Cultivation Facility: “cultivation facility,” as that term is defined in 28-B M.R.S. § 102-A(25), as may be amended. Tiers in relation to Adult Use Cultivation are based on square feet of plant canopy as defined in 28-B M.R.S. § 301, as may be amended or recodified.

Adult Use Cannabis Store: “cannabis store,” as that term is defined in 28-B M.R.S. § 102-A(16), as may be amended or recodified.

Adult Use Cannabis Testing Facility: “testing facility,” as that term is defined in 28-B M.R.S. § 102-A(64), as may be amended or recodified.

Adult Use Products Manufacturing Facility: “products manufacturing facility,” as that term is defined in 28-B M.R.S. § 102-A(51), as may be amended or recodified.

Cannabis: “cannabis,” as that term is defined in 28-B M.R.S. § 102-A(8), as may be amended or recodified.

Cultivation or Cultivate: “cultivation” or “cultivate” as those terms are defined in 28-B M.R.S. § 102-A(24), as may be amended or recodified.

Plant Canopy: “plant canopy,” as that term is defined in 28-B M.R.S. § 102-A(49), as may be amended or recodified.

School: “school,” as that term is defined in 28-B M.R.S. § 402(2)(A), as may be amended, which includes public schools, private schools, public preschool programs, and any other educational facility that serves children from prekindergarten to grade 12.

State License: any license, registration, or certification issued by the State Licensing Authority.

State Licensing Authority: the Maine Office of Cannabis Policy, or its designee.

Tier 1 Cultivation Facility: an adult use cultivation facility that is licensed by the State Licensing Authority to cultivate no more than 30 mature cannabis plants or 500 square feet of plant canopy.

Tier 2 Cultivation Facility: an adult use cultivation facility that is licensed by the State Licensing Authority to cultivate no more than 2,000 square feet of plant canopy.

Tier 3 Cultivation Facility: an adult use cultivation facility that is licensed by the State Licensing Authority to cultivate no more than 7,000 square feet of plant canopy.

Tier 4 Cultivation Facility: an adult use cultivation facility that is licensed by the State Licensing Authority to cultivate no more than 20,000 square feet of plant canopy.

Section 3. Permit Required

No adult use cultivation facility may operate within the Town of Whiting until it receives permitting approval from the Planning Board in accordance with the standards set forth in this Ordinance.

In order to properly review such a proposal, an interested party must submit a completed application form to the Planning Board, in a form and manner authorized by the Town. The application shall be accompanied by a

nonrefundable application fee in an amount determined by the Select Board. At a minimum, said application must include:

- A. The name and business identity of the applicant;
- B. The principal contact, mailing address, and telephone number of the applicant;
- C. The physical location of the proposed adult use cultivation facility, including the designated tax map and lot number;
- D. A site plan detailing the location of the proposed facility upon its lot, the distances between each exterior wall of the facility and the nearest lot line, the total square footage of the proposed/existing structure and the total square footage of proposed plant canopy;
- E. A copy of the applicant's conditional adult use cultivation facility license issued by the Maine Office of Cannabis Policy and any other state approval required to operate the proposed cultivation facility; and
- F. Proof of the applicant's right, title, and interest in the proposed location, by virtue of a lease, rental agreement, or deed, and in the case of rented premises, a statement from the property's owner giving express permission for the property to be used as an adult use cannabis cultivation facility.

Upon submittal of the above materials, the Code Enforcement Officer or their designee shall review the same to determine whether the applicant's application is complete. If the application is found to not be complete, the Code Enforcement Officer shall notify the applicant within 10 business days. If the additional required information is not submitted to the Code Enforcement Officer within 30 days of its request, the application may be denied.

Upon determining that an application is complete, the Planning Board shall schedule a public hearing for consideration of the same within thirty (30) days. Notices of public hearing shall be posted in the Town Office and shall be mailed to the assessed owners of all properties within 500 feet of the property upon which the adult use cannabis cultivation facility is proposed.

The Planning Board shall render a decision on the application's conformance with this Ordinance within sixty (60) days of the closure of the public hearing, unless otherwise extended with the agreement of the applicant.

Section 4. Permit Application Fee

All permit applications shall be accompanied by a nonrefundable application fee in an amount determined by the Select Board, which may be modified from time to time.

Section 5. Adult Use Cultivation Facility Operating Requirements.

The Planning Board shall grant a permit for the operation of an adult use cultivation facility upon demonstration by the applicant that all of the following requirements have been met. The applicant shall continue to comply with all these requirements during the use's operation.

- A. **No outdoor cultivation.** All adult use cultivation facilities must operate in a fixed, permanent location, and no cultivation of cannabis may occur outdoors.
- B. **Size limit.** No adult use cultivation facility shall maintain a plant canopy in excess of the tier limits for which it has been permitted; however, no limit on floor area is imposed.
- C. **Subsurface Wastewater Disposal.** All adult use cultivation facilities must comply with the State of Maine's Subsurface Wastewater Disposal rules, as found in 10-144A C.M.R., ch. 241, as may be amended from time to time.
- D. **Security.** All adult use cultivation facilities must have lockable doors and windows and shall meet the applicable security requirements of state law and regulation. In addition, they shall be served by a monitored alarm system that includes automatic notification to the Washington County Sheriff's office and fire dispatch center. The premises shall be required to install a "Knox" lock box and provide building keys to be placed in said "Knox Box." Further, the premises shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording, 24 hours per day, 7 days a week, and video retained for a minimum duration of 30 days.
- E. **Lighting.** The premises shall have exterior security lights with motion sensors covering the entrances and exists to the facility. Lighting fixtures must be shielded or hooded so that the lighting

elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings, or so that they do not unnecessarily light the night sky.

- F. **Odor.** The odor of cannabis may not be detectable offsite, *i.e.*, must not be detected at premises that are not under the custody or control of the permit holder. All adult use cultivation facilities shall have an odor mitigation system installed that has been approved by a Maine licensed engineer. Such system shall provide odor control sufficient to ensure that no odors are perceptible off the premises.
- G. **Setbacks.** No adult use cultivation facility may be located on a parcel of property that is within 1,000 feet of a parcel of property containing preexisting public or private school, or within 10,000 feet of a parcel of property an existing adult use cannabis cultivation facility. Such distances shall be measured between the nearest property lines of such parcels. All structures within which cannabis will be cultivated must be setback at least 75 feet from all property boundaries.

If, after review, the Planning Board determines that the submitted application does not comply with all provisions of this Ordinance, the Planning Board shall deny the application.

Section 6. Enforcement and Penalties

The operation of any adult use cannabis cultivation facility without a permit issued by the Town of Whiting Planning Board, or the failure of a permitted adult use cannabis cultivation facility to comply with the requirements of this Ordinance shall be a violation of this Ordinance. Violations of this Ordinance shall be subject to a minimum fine of \$100.00 per day and a maximum fine of \$2,500.00 per day, pursuant to 30-A M.R.S. § 4452. Each day that a violation remains constitutes a separate violation. The Whiting Select Board, or its authorized agent, is authorized to initiate legal proceedings in Maine District Court to enjoin operation of the adult use cannabis cultivation facility. If the Town is the prevailing party in such proceedings, the Town shall be entitled to recover its costs of enforcement, including its attorney's fees.

Section 7. Appeals

Any person aggrieved by a decision of the Planning Board or Code Enforcement Officer under this Ordinance may appeal such decision to the Town of Whiting Appeals Board within **30 days** of the date of the decision.

The Appeals Board shall conduct a *de novo* hearing in which it will hear evidence on the application and make its own findings of fact and conclusions of law on the issue of whether the proposed or existing adult use cultivation facility meets the requirements of this Ordinance, or, in the case of decisions of the Code Enforcement Officer, whether such decision was consistent with the requirements of this Ordinance.

Any appeal of a decision of the Board of Appeals shall be to Superior Court, in accordance with 30-A M.R.S. § 2691(2)(G) and Rule 80B of the Maine Rules of Civil Procedure.

Section 8. Effect of Outstanding Taxes, Fees, and Penalties

No application for permitting under this Ordinance shall be deemed complete for processing, and no permit under this Ordinance shall be issued by the Town of Whiting, if it is determined by the Planning Board, as of the date of the application for approval, that:

- A. The applicant owes any real estate or personal property taxes to the Town of Whiting;
- B. Real estate or personal property taxes are due and payable to the Town of Whiting on the premises, or for personal property located on those premises, for which permitting is requested;
- C. There is an outstanding final judgment against the applicant or the owner or lessee of the premises for which permitting is requested that is due and payable to the Town of Whiting; or
- D. There is any other account of the applicant or the owner or lessee of the premises for which permitting is sought that is due and payable to the Town of Whiting.

Section 9. Severability

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 10. Other Laws

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Cannabis Legalization Act, 28-B M.R.S. Chapter 1, as may be amended. In the event of a conflict between the provisions of this Ordinance and the provisions of said Act or any other applicable state or local law or regulation, the more restrictive provision shall control.

Section 11. Limit on Permits

No more than three (3) permits may be issued under this Ordinance. All three (3) permits may be issued for the same Tier, if requested. Permits shall be issued in the order in which applications are received. Should multiple applications be received simultaneously, the Town shall act upon such applications in the order in which the Planning Board deems such applications to be complete, as defined in Section 3 of this Ordinance.

Section 12. Effective Date

The effective date of this Ordinance shall be the date of adoption by majority vote at a duly called Town Meeting.