

Town of Southwest Harbor Marijuana Ordinance

This ordinance shall be known and cited as the “Town of Southwest Harbor Marijuana Ordinance” and will be referred to hereinafter as “the Ordinance.” This Ordinance applies to the Town of Southwest Harbor, State of Maine. This ordinance also prescribes definitions of Adult Use and Medical Marijuana Businesses and provides for permitting and licensing and regulation of Adult Use and Medical Marijuana Businesses and provides performance standards for Adult Use and Medical Marijuana Businesses.

Article I: General Provisions

1) Authority and Applicability:

WHEREAS, implementing a system for the regulation of retail stores, , cultivation facilities, manufacturing facilities, and testing facilities, which exist in order to facilitate the production and sale of marijuana, is a complex function with significant administrative demands on the Town of Southwest Harbor, and

WHEREAS, ensuring that possession and use of Adult Use Marijuana is limited to persons who are 21 years of age or older and, that the possession and use of Medical Marijuana is limited to qualifying patients, as that term is defined in state law, is necessary to protect those who have not yet reached adulthood from the effects of irresponsible use of marijuana; and

WHEREAS, the Town of Southwest Harbor 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 Town of Southwest Harbor.

NOW THEREFORE, this Ordinance is adopted pursuant to the Marijuana Legalization Act, 28-B M.R.S. §101 et seq., the Maine Medical Use of Marijuana Act, 22 M.R.S. §2421 et seq., and the Town's home rule authority under Article VIII, Part 2, Section 1 of the Maine Constitution 30-A M.R.S. §3001 et seq., and 30-A M.R.S. §4301 et seq.

2) Purpose:

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

3) Conflict with Other Ordinances; State Law:

- a) Whenever a provision of this Ordinance conflicts with or is inconsistent with other provisions of this Ordinance, or of any other statute, ordinance, regulation, standard, or rule, the more restrictive provision shall apply. Nothing herein is intended to conflict with State law; whenever

a provision of this Ordinance conflicts with State law the more restrictive provision shall apply. All applicants and licensees shall comply with all applicable State laws.

- b) 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 Business in the Town of Southwest Harbor. Compliance with all applicable State laws and regulation shall be deemed an additional requirement for issuance or denial of any license under this Ordinance, and noncompliance with State laws or regulations shall be grounds for revocation or suspension of any license issued hereunder.
- c) Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in both the Maine Marijuana Legalization Act, 28-B M.R.S., Chapter 1, as may be amended, and the Maine Medical Use of Marijuana act, 22 M.R.S., Chapter 558-C, as may be amended. In the event of a conflict between the provisions of this Ordinance and the provisions of either the Maine Marijuana Legalization Act or the Maine Medical Use of Marijuana Act or other applicable State or local law or regulation, the more restrictive provision shall control.

4) Effective Date:

The effective date of this Ordinance, and the business licensing thereunder, shall be the date of adoption by majority vote at a duly called Town Meeting or secret ballot referendum.

5) Validity and Severability:

In the event that any article, section, subsection or any portions of this Ordinance is declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this Ordinance.

6) Violations and Penalties / Consent Agreements Allowed

- a) The operation of any Marijuana Establishment without the required Local License, or in violation of this Ordinance shall be a violation of this Ordinance.
- b) 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. Any such fine may be in addition to any suspension or revocation imposed in accordance with the Ordinance
- c) Each day that a violation remains shall constitute a separate violation.
- d) In any court action initiated by the Town due to alleged violation of this Ordinance, the Town may seek injunctive relief in addition to penalties.
- e) The Town shall be entitled to recover its costs of enforcement, including its attorney's fees.
- f) The Town Board of Selectmen, or its authorized agent, is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering payment of penalties subject to factors such as negotiations with no court action. Any person, including but not limited to, a Marijuana Establishment 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 prosecuted in accordance with 30-A M.R.S. §4452.

7) Appeals

- a) Any appeal of a decision of the Board of Selectmen shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.
- b) Any appeal of a decision of the Planning Board under the provisions of this Ordinance shall be made to the Board of Appeals. The Board of Appeals 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 application meets the requirements of this Ordinance.
Any appeal of a decision of the Board of Appeals shall be to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

8) Definitions:

Except where specifically defined herein or defined by rule through the State of Maine Office of Marijuana Policy, all words used in this Ordinance shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the word “shall” is always mandatory; and “occupied” or “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied.”

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

Adult Use Cultivation Facility: “cultivation facility,” as that term is defined in 28-B M.R.S. § 102(13), 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.

Adult Use Marijuana Nursery Cultivation Facility: a facility licensed under this ordinance to cultivate Adult Use Marijuana under current Maine state law limitations.

Adult Use Marijuana Store: “marijuana store,” as that term is defined in 28-B M.R.S. § 102(34), as may be amended.

Adult Use Marijuana Testing Facility: “testing facility,” as that term is defined in 28-B M.R.S. § 102(54), as may be amended.

Adult Use Products Manufacturing Facility: “products manufacturing facility,” as that term is defined in 28-B M.R.S. § 104(43), as may be amended.

Cultivation or Cultivate: “cultivation” or “cultivate” as those terms are defined in 28-B M.R.S. § 102(12), as may be amended.

Harvested Marijuana: “harvested marijuana,” as that term is defined in 22 M.R.S. § 2422(3-C), as may be amended.

Immature marijuana plant: “immature marijuana plant,” as that term is defined in 28-B M.R.S. § 102(19).

Inherently Hazardous Substances (IHS): “inherently hazardous substance,” as that term is defined in 22 M.R.S. § 102(20), as may be amended.

Manufacturing or Manufacture: “manufacturing” or “manufacture,” as those terms are defined in 28-B M.R.S. § 102(26), as may be amended.

Marijuana: “marijuana,” as that term is defined in 28-B M.R.S. § 102(27), as may be amended.

Marijuana Establishment: Medical Marijuana Cultivation Facility, Medical Marijuana Manufacturing Facility, Medical Marijuana Testing Facility, Registered Dispensary, Registered Caregiver Retail Store, Adult Use Marijuana Cultivation Facility, Adult Use Marijuana Products Manufacturing Facility, Adult Use Testing Facility, or Adult Use Marijuana Store licensed under this Ordinance.

Medical Marijuana Cultivation Facility: a facility licensed under this Ordinance to cultivate, prepare and package medical marijuana at a location that is not the residence of the Registered Caregiver or Qualifying Patient.

Medical Marijuana Manufacturing Facility: “manufacturing facility,” as that term is defined in 22 M.R.S. § 2422(4-R), as may be amended.

Medical Marijuana Testing Facility: “marijuana testing facility,” as that term is defined in 22 M.R.S. § 2422(5-C), as may be amended.

Medical Use: “medical use,” as that term is defined in 22 M.R.S. § 2422(5), as may be amended.

Plant Canopy: “plant canopy,” as that term is defined in 22 M.R.S. § 2422(7-B), as may be amended.

Qualifying patient: a person meets the specifications and performs the activities authorized by 22 M.R.S. § 2423-A(1), as may be amended.

Registered caregiver: a person meets the specifications and performs the activities authorized by 22 M.R.S. § 2423-A(2), as may be amended.

Registered Caregiver Retail Store: a facility licensed by the Town of Southwest Harbor to sell harvested marijuana to qualifying patients for the patients' medical use, provided that the same may not be used on the premises.

Registered Dispensary: “registered dispensary” or “dispensary,” as those terms are defined in 22 M.R.S. § 2422(6), as may be amended.

Resident: “resident” as that term is defined in 28-B M.R.S. § 102(48), a may be amended.

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 Marijuana Policy, or its designee.

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

Tracking: a system implemented to track marijuana products from seed to sale.

Article II. Licensing

1) Purpose

The purpose of this Article is to provide for and regulate: (1) the issuance of Local Licenses for Marijuana Establishments as defined in this Ordinance and by the State of Maine under the Marijuana Legalization Act, 28-B M.R.S.A. Chapter 1, as may be amended, and (2) to provide for and regulate the issuance of Local Licenses for Medical Marijuana Establishments as defined in this Ordinance and by the State of Maine under the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended.

2) Prohibited Activities

No Marijuana Establishment shall: (1) be established or operated within the Town of Southwest Harbor without first receiving and then maintaining all approvals required under this Ordinance, or (2) conduct any activity for which it has not received the required State License or Local License. Medical Marijuana Dispensaries are expressly prohibited.

3) License Required

- a) State License. A Marijuana Establishment shall not operate until it is licensed by the State Licensing Authority pursuant to the requirements of 28-B M.R.S. Chapter 1, as may be amended, or pursuant to the requirements of 22 M.R.S. § 558-C, as may be amended.
- b) Local License. A Local License issued under the provisions of this Article is required for any Adult Use Marijuana Cultivation Facility, Adult Use Marijuana Manufacturing Facility, Adult Use Marijuana Store, or Adult Use Marijuana Testing Facility. A Local License issued under the provisions of this Article is required for any, Medical Marijuana Manufacturing Facility, Medical Marijuana Retail Store, or a Medical Marijuana Testing Facility.
- c) Pursuant to 28-B M.R.S. § 402, an applicant seeking to operate an Adult Use Marijuana Establishment may not submit an application for a local license unless the applicant has been issued a conditional license by the State of Maine to operate the Adult Use Marijuana Establishment.

4) Review and Licensing Authority

- a) The Board of Selectmen for the Town of Southwest Harbor shall be the Review and Licensing Authority under Article II of this Ordinance.
- b) The Licensing Authority shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this Ordinance or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license.
- c) No Local License shall be granted by the Licensing Authority until the Police Chief, the Fire Chief and, if applicable, the Code Enforcement Officer have all made a positive recommendation upon the Applicant's ability to comply with this Article. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any ordinance provision or State law, it shall be the duty of the Applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the Town authorized to make the inspection at any reasonable time that admission is requested.

5) Limit on Number of Licenses

- a) No more than two (2) licenses for an Adult Use Marijuana Store shall be issued by the Licensing Authority according to the provisions of this Ordinance.
- b) No more than two (2) licenses for an Adult Use Marijuana Cultivation Facility shall be issued by the Licensing Authority according to the provisions of this Ordinance.
- c) No more than two (2) licenses for an Adult Use or Medical Marijuana Manufacturing Facility shall be issued by the Licensing Authority according to the provisions of this Ordinance. This requirement shall not be construed to mean two of each types of facilities but two total facilities that manufacture marijuana products for either adult use or medicinal use.
- d) No more than two (2) licenses for a Medical Marijuana Retail Store shall be issued by the Licensing Authority according to the provisions of this Ordinance.
- e) No more than two (2) licenses for an Adult Use Marijuana Testing Facility or Medical Marijuana Testing Facility shall be issued by the Licensing Authority according to the provisions of this Ordinance. This shall not be construed to mean two of each types of facilities but two total facilities that test marijuana products for either adult use or medicinal use. A Testing Facility may test both Adult Use and Medical Marijuana, provided that such a Testing Facility is licensed to test both types of marijuana by the State of Maine.

6) License Fees

Fees for a Local License shall be as established by the Board of Selectmen for the Town of Southwest Harbor and shall be paid annually.

7) License Application Procedure

- a) Initial Open Period. Following the adoption of this Ordinance, the Licensing Authority shall set an initial application period of at least 60 days and not more than 90 days for applications to be

submitted before reviewing or issuing any license under this Ordinance. After the initial open period, all applications for available licenses will be reviewed by the Licensing Authority as they are received according to the provisions of this Ordinance.

- b) Form Provided. Application for any license under this Article shall be made on a form as formally adopted by the Licensing Authority, a copy of this application may be obtained from the Southwest Harbor Town Clerk.
- c) Application Made. Applicants for a license under this Ordinance shall provide all information required by the form provided and any additional information requested by the Licensing Authority. Any falsification or substantive omission in the application process may be considered grounds for denial of any license under this Ordinance or revocation of any license under this Ordinance.
 - i) The completed application for a Marijuana Establishment license shall contain the following information and shall be accompanied by the following documents:
 - (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) 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.
 - (5) If the applicant intends to operate the Marijuana Establishment under an assumed name, they must state the Marijuana Establishment's assumed name and submit the required registration documents.
 - (6) If the applicant has had a previous license under this Ordinance or other similar Marijuana Establishment license applications in another town, city or state denied, suspended or revoked, they must list the name and location of the Marijuana Business for which the 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 license has previously been denied, suspended or revoked, listing the name and location of the Marijuana

Establishment for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.

- (7) If the applicant holds any other permits/licenses under this Ordinance or other similar Marijuana Establishment license from another town, city, or state the applicant shall provide the names and locations of such other permitted/licensed businesses.
 - (8) The type of Marijuana Establishment for which the applicant is seeking a license.
 - (9) The location of the proposed Marijuana Establishment, including a legal description of the property, street address, and telephone number.
 - (10) Sufficient documentation demonstrating right, title and interest to the proposed licensed premises of the Marijuana Establishment pursuant to a lease, rental agreement, purchase and sale agreement deed, or other arrangement for possession and use of the premises.
 - (11) The applicant's mailing address and residential street address.
 - (12) Recent passport-style photograph(s) of the applicant(s).
 - (13) A copy of the applicant's driver's license, and in the case of an application made by a partnership, limited liability company, or corporation, the drivers licenses of all partners, members, and officers.
 - (14) If a State License is required for the proposed Marijuana Establishment, a copy of the applicant's state license application and supporting documentation as filed with the State Licensing Authority, and any amendments thereto.
 - (15) A sketch showing the configuration of the subject premises, including building footprint, interior layout with floor space to be occupied by the business, and parking plan.
 - (16) A copy of a Town Tax Map depicting the following: the subject property lines and the property lines of other properties within one thousand (1,000) feet of the subject property containing any preexisting public or private schools as defined by this ordinance.
 - (17) Diagram of Premises. In an effort to clearly define your license premises and the areas in which the cultivation, manufacture, testing, storage, or sale of Marijuana or Marijuana Products is requested for approval, the Town requires all applicants to submit a diagram of the premises to be licensed in addition to a completed license application. Diagrams should be submitted either as a sketch on this form or as a computer-generated drawing attached to it. The diagram should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, restrooms, and all areas for which you are requesting approval.
- ii) Residency Requirement. All applicants, including all individuals, officers, directors, managers, members, and partners, for any Marijuana Establishment license, excepting Marijuana Testing Facilities, must be residents of the State, as defined in this ordinance, and a majority of shares, partnership interests, and membership interests, or other equity interests in corporate applicants must be held or owned by persons who are residents of the State of Maine.

- iii) Qualified Applicant. All applicants must be qualified according to the provisions of this Ordinance. Applicants shall provide sufficient information to demonstrate that they meet all qualifications and standards established in this Ordinance.
- iv) Signed and Sworn. All applications made under this Article shall be signed and sworn as truthful.
- v) Application Fee Paid. All applications made under this Article shall be accompanied by an application fee as established by the Board of Selectmen.
- d) Complete Application. In the event that the Town clerk determines that a submitted application is not complete, the Town Clerk shall notify the Applicant within ten (10) business days that the application is not complete and shall inform the Applicant of the additional information requires to process the application.
- e) Review and Selection. The applications reviewed under this Article may be awarded by the Licensing Authority according to the Merit Based Criteria contained herein. Applications received within the Initial Open Period that meet license and application requirements will be ranked using the Merit Based Criteria. If there are more than two applicants, the two highest scoring applications will be considered first. In the event of a tie for any available license after calculating the Merit Based Criteria then a lottery drawing will determine which applications will be considered first. When a previously issued Marijuana Establishment license becomes available, the Licensing Authority shall establish another Initial Application Period and the same evaluation process shall apply. An applicant may apply for multiple Marijuana Establishment licenses in differing categories, but may only advance from the Merit Based Criteria Process in one category. If, after the Initial Open Period and associated review process, licenses are still available, applicants may continue in an additional category but no entity shall hold more than one (1) license in each category.
 - i) Merit Based Criteria Process. This Merit Based Points System is applied to select the best qualified candidates for the limited number of licenses made available under this Ordinance. The points system was carefully selected to ensure the Town of Southwest Harbor, its residents, and the surrounding communities will best benefit from the applicants selected for License consideration by the Licensing Authority. The Licensing Authority shall make the determination of points awarded according to the Merit Based Criteria.
 - (1) State of Maine residency = 1 Point
 - (2) Hancock County residency = 1 Point
 - (3) Southwest Harbor Residency for at least four (4) consecutive years prior to application = 1 Point
 - (4) Marijuana Education - Applicants that provide proof of successful completion of Marijuana Educational classes provided by State of Maine (including but not limited to OMP, MMA) accredited cannabis training programs (Class certificates are acceptable forms of proof) = 0.25 points for each different certification class up to a maximum of 3 points.
 - (5) Displays Business Experience - Applicant can provide proof of at least 5 years of relevant business experience = 1 Point. For Adult Use Retail Licenses, managerial experience in violation free, age verified sales of other controlled substances, such as alcohol,

tobacco, or firearms, shall be the standard for this point. For Adult Use Cultivation Licenses, managerial experience in any horticulture or agriculture-based business shall be considered. For Manufacturing Licenses, managerial experience in food service, food manufacturing, or other manufacturing facility shall be considered. For Medical Caregiver Retail Storefront, experience as a Registered Caregiver shall be considered. The Licensing Authority may, following analysis of the information provided, deem the demonstrated experience provided by an applicant insufficient to receive a merit-based point.

- (6) No outstanding taxes or liens due to the Town of Southwest Harbor (i.e. personal property, real estate) = 1 point
- ii) Notice and Hearing. The Licensing Authority shall hold a public hearing to review applications selected to advance from the Merit Based Criteria Process. Notice of this hearing shall be posted at the locations customarily used for the posting of warrants. Notice shall also appear in the local weekly newspaper at least two (2) weeks prior to the hearing. Notice shall also be provided to all abutting properties via first class mail to the address currently on file with the Town's Tax Assessor. All cost associated with the notices shall be paid by the applicant to the Town before the Public Hearing.
 - iii) Awarding of Licenses. After the public hearing, the Licensing Authority may award a Local License conditioned on site plan review and approval according to the standards contained in this Ordinance and any other applicable ordinances in effect at the time by the Town of Southwest Harbor Planning Board. Complete application for Planning Board Review shall be made within ninety (90) days of Local License approval. The Licensing Authority may revoke the Local License if complete application to the Planning Board is not made within the time allotted.
 - iv) Payment of Local License Fee. The fee for the Local License shall be paid prior to the operation of a Marijuana Establishment under this Ordinance, but no later than thirty (30) days after final approval by the Planning Board. Failure to pay the Local License Fee in accordance with these provisions shall result in revocation of any and all Local Licenses and disqualify the entity from holding a license for a period of one (1) year.

8) License Expiration and Renewal.

- i) Each Local License issued shall be effective for one year from the date of issuance.
- ii) Renewal applications must be submitted sixty (60) days prior to the date of expiration of the annual Local License. Failure to submit a timely renewal application shall result in the revocation of the Local License and open the license to the full application procedure including an Initial Open Period.
- iii) When considering renewal of existing licenses, the number and type of complaints or violations, will be a contributing factor in renewal consideration. Violation types include but are not limited to code, fire safety, law enforcement, and compliance with law.
- iv) The Licensing Authority shall hold a public hearing to review renewal applications. Notice of this hearing shall be posted at the locations customarily used for the posting of warrants. Notice shall also appear in the local weekly newspaper at least two (2) weeks prior to the hearing. Notice shall also be provided to all abutting properties via first class mail to the

address currently on file with the Town's Tax Assessor. All cost associated with the notices shall be paid by the applicant to the Town before the Public Hearing.

- v) After the public hearing, the Licensing Authority may renew a Local License.

9) Marijuana Establishment Operating Requirements.

- a) The Licensee shall comply with all of the following requirements during the term of the Local License:
 - i) Display of License. The current Local License shall be displayed at all times in a conspicuous location within the Licensed Premises.
 - ii) Location. All Licensed Premises shall be fixed, permanent locations. Licensees shall not be permitted to operate Marijuana Establishments or Medical Marijuana Establishments in temporary locations such as mall kiosks or farm stands.
 - iii) Compliance with other laws. A Marijuana Establishment and a Medical Marijuana Establishment 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 Marijuana Establishments and/or Medical Marijuana Establishments, the stricter law or regulation shall control.
 - iv) Prohibition of Inherently Hazardous Substances. The use of Inherently Hazardous Substances (IHS), as defined by 22 M.R.S. § 2423-F, as may be amended, is expressly prohibited by all Marijuana Facilities except by Testing Facilities in the Town of Southwest Harbor.
 - v) No Marijuana Establishment shall be open to the public outside of the hours of 8:00am-8:00pm. Owners or employees may still work at the Marijuana Establishment outside of these hours.
 - vi) No Marijuana Cultivation Facility shall exceed two thousand (2000) square feet on canopy.

10) Transfer of Ownership and Change of Location

- a) Licenses issued under this Article are not transferable to a new owner. Any change in ownership or change in the officers of an owner shall require a new license.
- b) Licenses issued under this Article may be transferred to a new location provided that the Licensee goes through the same Planning Board Review process required by this Article.

11) Denial, Suspension or Revocation of License.

- i) A Local License under this Article, or any renewal or amendment thereof, shall be denied to the following persons:
 - (1) A person who fails to meet the requirements of this Article. Where an Applicant is an entity rather than a natural person, all-natural persons with an ownership interest shall meet these requirements.
 - (2) A person who has had a license for a Marijuana Establishment suspended or revoked by the Town or by the State.
 - (3) An Applicant who has not acquired all necessary State approvals and other required local approvals according to the provisions of this Ordinance.

- ii) The Licensing Authority may suspend or revoke a license for any violation of this Ordinance, or violation of any other Town ordinance. The Town may suspend or revoke a license if the licensee has a State License for a Marijuana Establishment and/or Medical Marijuana Establishment suspended or revoked by the State. The Licensee shall be entitled to notice and a hearing by the Licensing Authority prior to any suspension or revocation.

Article III. Additional Land Use Standards

1) Purpose

The purpose of this Article is to apply additional land use standards to Adult Use and Medical Marijuana Facilities to supplement the existing Land Use Ordinance. The Southwest Harbor Land Use Ordinance (LUO) seeks to maintain a safe, healthy, and attractive environment. It is intended to regulate the construction of buildings, roads, signs, etc., and the uses to which buildings are put, so as to ensure that they do not cause damage to their neighbors or to natural resources (such as ground water, wetlands, fish spawning grounds, aquatic life, bird and other wildlife habitat, etc.), and so that such developments do not create dangerous situations on the public roads or overload the public services of the Town. The LUO also seeks to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources, and to protect commercial fishing and maritime industries, to prevent and control water pollution, to protect freshwater and coastal wetlands, to conserve shore cover; actual points of public access to inland and coastal waters, to conserve natural beauty and open space.

2) Review Required

A Marijuana Establishment that is properly licensed pursuant to Article II of this Ordinance shall not operate until it is reviewed and receives site plan approval from the Town of Southwest Harbor Planning Board. In addition to review required under the Town of Southwest Harbor Land Use Ordinance and any other current or future ordinance properly adopted by the Town, Marijuana Establishment licensed under this Ordinance must show it will meet the standards contained in this Article. The Planning Board may conduct this review in conjunction with any other required reviews.

3) Review Authority

The Planning Board for the Town of Southwest Harbor shall be the Review Authority under Article III of this Ordinance. The Code Enforcement Officer (CEO) for the Town of Southwest Harbor shall refer all entities intending to operate a business regulated under this Ordinance to the Planning Board for review. The CEO may provide support to the Planning Board in the review of applicants under this Ordinance.

4) Review Fees

In addition to any fees established under other ordinances, and in addition to the licensing fee established in Article II of this Ordinance, the Board of Selectmen may establish an additional planning board review fee for Marijuana Establishments licensed under this Ordinance.

5) Review Procedure

- a) Reviews conducted under this Article shall be administered in the same manner prescribed in the Southwest Harbor Land Use Ordinance (Section VIII: Permit Review, Subsection D Permit Approval Procedure, provision 3) as may be amended.
- b) Additional Information required. The Planning Board may request any additional information it finds necessary to ensure the provisions of this Ordinance are met. The following information must be provided with the application to the Planning Board:
 - i) Diagram of Premises. Diagrams of the licensed premises shall be submitted and shall clearly identify: (1) the legal boundaries of the premises, (2) the footprint of the existing/proposed building; (3) individual areas within the building used for, among other things, cultivation, manufacturing, testing, storage, or sale of marijuana or marijuana products and (4) all other areas of the licensed premises including entrances, office area, kitchen, storage areas, restrooms, and all areas for which you are requesting approval.
 - ii) Operating Plan. Marijuana Businesses which cultivate, test, and/or manufacture are required to submit an operation plan that at a minimum addresses the following:
 - (1) Wastewater removal plan
 - (2) Disposal of waste plan
 - (3) Hours of Operation
 - (4) Estimated number of Employees
 - (5) Whether the business will be seasonal
 - (6) Emergency Contact information
 - (7) Storage plan for surplus products
 - (8) A detailed description of Standard Operating Procedures in accordance with Maine State Laws.
 - (9) Odor Control Plan.
- c) In addition to the standards contained in other ordinances, the Planning Board shall determine if the proposed activity will conform to the purposes, provisions, and standards of this Article.
- d) In issuing approval, the Planning Board may attach such restrictions and conditions as it deems necessary to ensure compliance with this Ordinance.

6) Additional Land Use Standards

- a) Setbacks. The following setbacks shall apply to Marijuana Facilities licensed under this ordinance. In cases where there are greater setbacks in other ordinances, the most restrictive setback shall apply.
 - i) No Marijuana Establishment may be located on property within one thousand (1000) feet of the property line of a pre-existing public or private school (K12), as is defined in Article I of this Ordinance. Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the property line of the parcel of land on which the Marijuana Establishment is located.

- ii) Any building or structure in which a Marijuana Establishment is located, shall be set back a minimum of twenty-five (25) feet from any property line, or public or private right of way.
- b) Signs. The following requirements are in addition to any local or State rules about signage.
 - i) Any sign for a Marijuana Establishment licensed under this Ordinance must be attached to the building that houses the Establishment and located within 6 feet of the entrance to the Facility.
 - ii) 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.
 - iii) The exterior of all Registered Caregiver Retail Stores shall display a 1' x 1' image of any universal symbol for Medical Marijuana or adopted by the State's Department of Administration and Financial Services.
 - iv) Required Notices. There shall be posted in a conspicuous location inside each Adult Use Marijuana Store and Registered Caregiver Retail Store, at least one legible sign containing the following information:

"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) may purchase marijuana or marijuana products, except a minor with medical marijuana card; Loitering prohibited; The use of marijuana on National Park Property is prohibited; Marijuana and marijuana products may only be consumed on private property."
- c) Performance Standards. In addition to all performance standards in the Land Use Ordinance and any other municipal ordinance, Marijuana Establishments must meet the following standards:
 - i) **Fixed Location.** All Marijuana Establishments must be operated from a permanent structure with a fixed location.
 - ii) **Indoor Operation Only.** All activities of Marijuana Establishments, including but not limited to, cultivating, growing, processing, displaying, selling and storage, must be conducted indoors. Marijuana Establishments are not permitted to conduct outdoor sales or services of any kind
 - iii) **Ventilation and Odor Control.** For all Marijuana Establishments, 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 Marijuana Establishment. To prevent and control marijuana odors, an odor control plan shall be submitted as part of the planning board 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, including 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. 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. 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. Marijuana cultivation facilities must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein.
- iv) **Disposal Plan.** All Marijuana Establishments 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 local 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.
- v) **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 at the premises.
 - (2) Door and window intrusion, robbery, and burglary and 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 marijuana and cash stored overnight on the premises;
 - (4) Exterior lighting that illuminates the exterior walls of the premises;
 - (5) Deadbolt locks on all exterior doors and locks or bars on any other access points.
 - (6) All security recordings shall be preserved for at least seventy-two (72) hours. All Marijuana Establishments shall provide the Police Chief or his designee with the name and functioning phone number of a 24-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the establishment.

- vi) **Drive-Through and Home Delivery.** Marijuana Establishments are prohibited from having drive-through pick-up facilities or home-delivery services. However, Registered Caregivers may provide home delivery services.
- vii) **Inspections.** The Code Enforcement Officer or his/her designee will inspect all Marijuana Establishments prior to the issuance of a Certificate of Occupancy, to verify that the facilities are constructed and can be operated in accordance with the application submitted, the land use approval(s) issued and the requirements of this Ordinance, local and state building codes and electrical codes. The Fire Chief or his/her designee will inspect all Marijuana Establishments prior to issuance of a Certificate of Occupancy, to verify that the facilities are constructed and can be operated in accordance of the requirements of all applicable fire codes. The initial inspection shall occur after the Marijuana Establishment is ready for operation; but, no marijuana or marijuana products will be allowed on the premises until the inspection is complete and a Certificate of Occupancy has been issued. Nothing herein shall prevent the Fire Chief or his/her designee from inspecting Marijuana Establishments at random intervals and without advance notice provided that the inspection is during normal business hours of the Marijuana Establishment.