

Order 166-19/20

Amended to have signage comply with state statute: 6-2 (Cook absent) on 5/18/2020

Amended to eliminate multiple initial rounds of licensing: 6-2 (Cook absent) on 5/18/2020

Passage as amended: 8-1 (Cook) on 5/18/2020

Effective 6/17/2020

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTERS 10, 11, 15 AND 35
RE: MARIJUANA BUSINESS LICENSES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*1. That Section 10-18 of Chapter 10 of the Portland City Code
is hereby amended to read as follows:*

Sec. 10-18. Amendments.

The Fire Prevention Code adopted by section 10-16 is amended,
modified and deleted in the following respects:

(a) The following provisions shall be added to the Fire Code
as unnumbered sections, and shall amend any provisions of the Fire
Code to the contrary:

...

(u) Annex E, Fire Fighter Safety Building Marking System is
adopted.

(v) Section 38.3.1 shall be added as follows:

For other than CO2 and nonhazardous extraction processes, any
facility conducting marijuana extraction shall be protected
throughout with a NFPA 13 sprinkler system.

(w) Section 38.6.2.4.4 shall be added as follows:

In addition to the continuous gas detection system required
by 38.6.2.4.1, at least one gas detection monitor, supervised by
a monitored fire alarm system, shall be installed outside of an
extraction room. The gas detection monitor shall be installed in
accordance with NFPA 72.

2. That Sections 11-4 and 11-22 of Chapter 11 of the Portland City Code are hereby amended to read as follows:

Sec. 11-4. Amendments.

The Maine State Food Code 2013: Food Code adopted by section 11-1 is amended and modified in the following respects.

(a) Section 1.201.10.B shall be amended as follows:

...

(b) Section 1.201.10.B shall be amended to add the following:

Base station shall mean a location used by a mobile food service establishment for the disposal of liquid/solid waste, re-filling of water tanks and the storage of food, supplies, and equipment. A base station is permissible for one or more of these purposes. However, the *preparation of food or ware washing* is not permissible unless it is a licensed commercial kitchen.

...

Marijuana food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged for sale to retail outlets or directly to consumers.

...

Sec. 11-22. License Required.

No person shall operate any food service establishment or marijuana food processing establishment within the city unless licensed to do so by the city. Applications for licenses for a food service establishment, other than a temporary food service establishment, must be submitted at least thirty (30) calendar days before operations are planned to commence. Applications for licenses for a temporary food service establishment must be submitted at least seven (7) business days before operations are planned to commence.

3. That Sections 15-6 and 15-12 of Chapter 15 of the Portland City Code is hereby amended to read as follows:

Sec. 15-6. Fees.

(a) *Application fees.* Except as expressly provided, all applications for original licenses or for the consent of the city council, other than a flea market seller, temporary FSE or auction license, shall be accompanied by an administrative fee of forty-five dollars (\$45.00) to defray the cost of processing the application. All applications for renewal of licenses shall be accompanied by the fees for issuance and an administrative fee of thirty-five dollars (\$35.00), except for a flea market seller to defray the cost of processing the application. In any case where notice by publication or mail is required, the applicant shall pay the cost of publication and postage in advance. Application fees shall not be refundable.

(1) Applications for any original licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of five hundred dollars (\$500.00). Applications for renewal of licenses pursuant to Chapter 35, other than licenses for Small Scale Caregivers, shall be accompanied by an administrative fee of two hundred and fifty dollars (\$250.00).

(2) Applications for original Small Scale Caregiver Licenses shall be accompanied by an administrative fee of fifty dollars (\$50.00). Applications for renewal of Small Scale Caregiver Licenses shall be accompanied by an administrative fee of forty dollars (\$40.00).

...

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

Location in Code	Description	Fee	Expiration Date
Ch. 3, Art. II	Bottle clubs (must obtain FSE and entertainment if applicable)	\$940.00	June 30

...

Ch. 11, Art. II	Food service establishments (FSE):		
	FSE/Commissary - Food preparation on premises	\$459.00	January 31
	<u>Marijuana Food Processing Establishment</u>	<u>\$459.00</u>	<u>Concurrent with marijuana license</u>

...

Ch.30, Art. V	Tour companies	315.00, plus 32.00 per vehicle/operator operator	April 30
<u>Ch. 35</u>	<u>Marijuana Cultivation - Tier 1</u>	<u>500.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Marijuana Cultivation - Tier 2</u>	<u>5,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Marijuana Cultivation - Tier 3</u>	<u>10,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Manufacturing - manual</u>	<u>2,500.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Manufacturing - high hazard</u>	<u>5,000.00</u>	<u>Twelve months/concurrent with state license</u>
	<u>Retail Marijuana - medical</u>	<u>5,000.00</u>	<u>Twelve months</u>
	<u>Retail Marijuana - adult use</u>	<u>10,000</u>	<u>Twelve months/concurrent with state license</u>
	<u>Small Scale Marijuana Caregiver</u>	<u>250.00</u>	<u>Twelve months</u>

	<u>Marijuana Testing</u>	<u>1,000.00</u>	<u>Twelve months/concurrent with state license</u>
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...

4. That the Portland City Code Sections 35-2 to 35-46 of Chapter 35 of the Portland City Code are hereby amended to read as follows:

CHAPTER 35.

ARTICLE I. ADMINISTRATIVE PROVISIONS

...

35-2. Definitions.

Except as otherwise specified, the definitions in Chapter 14 shall apply to this Chapter.

Disqualifying conviction shall mean any of the following: (1) any felony conviction where the conviction or completion of any sentence, whichever is more recent, has been completed within the last ten years; or (2) any conviction for a drug related crime other than a felony, but not including convictions for marijuana related crimes, where the conviction or completion of any sentence, whichever is more recent, has been completed within the last five years.

Disqualifying violation shall mean, within the previous five years, the non-payment or late payment greater than 30 days of any tax or fee; any citation for licensing, land use, life safety, building, fire, health, or similar violation that was not corrected within the timeframe required by the City; any suspension, revocation, or denial of any license or permit; any false statement on a City form or application; and any other significant failure to comply with City ordinances. Disqualifying violations shall not include parking tickets.

Manual processing shall include the extraction, processing, or manufacturing of marijuana using only mechanical methods that do not involve the use of chemicals or solvents other than water or ice; and the infusion of marijuana in typical cooking fats and food additives.

Marijuana means the leaves, stems, flowers and seeds of a marijuana plant, whether growing or not. "Marijuana" includes

marijuana concentrate but does not include hemp as defined in 7 M.R.S. §2231(1), or a marijuana product.

Marijuana business shall mean any individual or entity cultivating, harvesting, manufacturing, processing, testing, selling or transferring, delivering, or otherwise engaging in any activity with respect to marijuana for profit within the City. This shall include registered dispensaries, but shall not include (1) individuals cultivating and processing marijuana for their personal consumption; or (2) caregivers who are not required to be registered pursuant to 22 M.R.S. Chapter 558-C.

35-3. Enforcement.

(a) This Chapter shall be enforced by the City Manager and his/her designee(s).

(b) Each day that a violation of this Chapter exists shall be a civil violation subject to the following:

1. Civil penalties. Each violation of this Chapter shall be subject to civil penalties in the minimum amount of \$100 and the maximum amount of \$2,500 per day that the violation has existed. However, the maximum amount of civil penalties may be increased where:

a. There has been a previous violation or judgment against the same party within the past two years for a violation of this Article, except that the maximum civil penalties may not exceed \$25,000 per day; or

b. The economic benefit resulting from the violation exceeds the applicable penalties, except that the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation.

2. Posting against occupancy. In addition to any other remedies provided by this Code, the City may take all necessary steps to immediately shut down any marijuana business and post the business and the space that it occupies against occupancy for any of the following violations:

a. Operating a marijuana business without a valid City and state license;

- b. Failure to allow entrance and inspection to any City official on official business after a reasonable request;
- c. Allowing the use or consumption of marijuana or marijuana products on the premises of the marijuana business; and
- d. Any other violation that the City determines has the potential to threaten the health and/or safety of the public, including significant fire and life safety violations.

(c) The City Manager or his/her designee is authorized to cause to be instituted by the corporation counsel, in the name of the City, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this Chapter.

(d) If the City is the prevailing party in any legal action to enforce this chapter, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

35-4. Appeals.

Appeals of decisions made pursuant to this Chapter shall be as follows:

(a) An appeal from a decision to issue, issue with conditions, deny, or revoke a license pursuant to Article 2 may be appealed to Superior Court pursuant to M.R. Civ. P. 80B by a party with standing.

(b) An appeal from any notice of violation, suspension, revocation, or similar enforcement action under this Chapter may be appealed to the City Manager or his/her designee by a party with standing within ten business days of the written decision taking such action. An appeal from any decision of the City Manager may be appealed to Superior Court pursuant to M.R. Civ. P. 80B.

35-5. Reserved.

35-6. Reserved.

35-7. Reserved.

ARTICLE II. REGULATION OF MARIJUANA BUSINESSES

DIVISION 1. APPLICABILITY

35-8. Applicability.

This Article will apply to the operation of any marijuana business, as defined, within the City.

35-9. Reserved.

35-10. Reserved.

35-11. Reserved.

DIVISION 2. GENERAL LICENSE REQUIREMENTS

35-12. Licensing Requirements.

(a) Chapter 15 to apply. Except as otherwise provided in this Article, the provisions of Chapter 15 shall apply to all licenses applied for and issued under this Article.

(b) Operating without a license prohibited. No individual or entity may operate a marijuana business within the City without first obtaining a license from the City.

(c) Burden of proof. The applicant for any license under this Article bears the burden of proving that all qualifications for licensure have been satisfied.

(d) Current information. Any applicant or licensee must keep all information disclosed in their application current and must notify the City of any change in information within ten business days of any such change.

(e) No vested rights. No person shall have any entitlement or vested right to a license under this Article, and operating a marijuana business is a privilege and not a right in the City.

(f) Licenses not transferable. Licenses issued pursuant to this Article are not transferable. However, retail and dispensary licenses shall be transferable in accordance with Sec. 35-43 until the effective date of federal legislation allowing federally regulated financial institutions to serve marijuana businesses, or the removal of the cap on marijuana retail stores and dispensaries in Sec. 35-43(i).

(g) Multiple licenses. An individual or entity may hold multiple licenses under this Article, except that an individual or entity may not hold more than one retail and/or dispensary license, or have an interest in an entity that holds more than one retail and/or dispensary license, until after January 1, 2025.

35-13. License Types.

The City has established the following license types for marijuana businesses:

(a) Cultivation - Tier 1. A tier 1 marijuana cultivation license shall allow the license holder to cultivate up to 500 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.

(b) Cultivation - Tier 2. A tier 2 marijuana cultivation license shall allow the license holder to cultivate up to 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.

(c) Cultivation - Tier 3. A tier 3 marijuana cultivation license shall allow the license holder to cultivate more than 2,000 sq. ft. of marijuana plant canopy, and to sell harvested, unprocessed marijuana, marijuana plants, or seedlings at wholesale.

(d) Dispensary. A dispensary license shall allow a registered dispensary to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statute.

(e) Manufacturing - Manual. A manual manufacturing license shall allow the license holder to manufacture marijuana using manual processing only.

(f) Manufacturing - High Hazard. A high hazard manufacturing license shall allow the license holder to manufacture marijuana using chemicals and solvents in addition to manual processing methods.

(g) Retail - Medical. A medical marijuana retail license shall allow a registered caregiver to sell marijuana in accordance with Title 22, Chapter 558-C of the Maine Revised Statutes.

(h) Retail - Adult Use. An adult use marijuana retail license shall allow the license holder to sell adult use marijuana in accordance with Title 28-B of the Maine Revised Statutes.

(i) Small Scale Caregiver. A small scale caregiver license shall allow a registered caregiver to engage in the business of a small scale caregiver, as defined in Chapter 14, including

cultivation, manual processing, and limited sales to patients, as defined.

(j) Testing. A marijuana testing license shall allow the license holder to engage in the business of testing medical and/or adult use marijuana for third parties.

35-14. Licensing Procedure.

(a) Applications submission. All applications for licenses under this Article shall be submitted to the Business Licensing Office on forms provided by the City, and shall include all required information, attachments, and fees. No application will be considered unless and until it is complete, as determined by the Business Licensing Office.

(b) Review and recommendation by City departments. The following City departments shall review all applications and recommend whether to issue, issue with conditions, or deny the permits applied for.

1. The Permitting and Inspections Department shall review all applications for compliance with this Article, Chapters 6, 14, 10, and 15 of this Code, as applicable, and all other matters within its purview.
2. The Police Department shall review the security plans submitted by each applicant, as well as any disqualifying convictions of the applicant and associated individuals, and all other matters within its purview.
3. The Fire Department shall review all applications as to compliance with Chapter 10 of this Code, other fire and life safety concerns, and all other matters within its purview.
4. Other City staff or departments shall review and provide recommendations on applications as necessary to adequately evaluate the applications.

(c) Hiring of third party professionals. Where the City determines that it is necessary for an applicant to hire a third party professional to complete any portion of the application, the City may require an applicant to hire a professional with qualifications sufficient to satisfy the City.

(d) City consultation with third party experts. Where the City determines that it is necessary for the City to consult with

a third party expert on an application or portion of an application, it may do so and charge the costs of that third party expert consultation to the applicant. Before doing so, however, the City shall give notice to the applicant of its determination of need, including the basis for that determination; the third-party that the City proposes to engage; and the estimated fee for the third-party consultation. The applicant shall have the opportunity to provide feedback to the City on its determination before the City engages the third party.

(e) Licensing decisions. Applications for any license shall be granted, granted with conditions, or denied by the City Manager or his/her designee. Conditions may be imposed on any license issued pursuant to this Article, as necessary to protect the health, safety, and welfare of the public.

(f) Allocation of retail licenses. Retail licenses shall be considered as follows:

1. The City Manager shall establish an opening date and a closing date for applications in the initial year in which licenses become available. This shall be considered the First Round of applications for retail licenses.
2. Upon submission of an application for a given round of licensing, the City will perform a completeness review and establish that the applicant has a complete application and meets the minimum qualifications.
 - a. If the application is complete and the applicant meets the minimum qualifications, the City will assign the application a numerical score based on the criteria outlined in subsection (f)(4) below.
 - b. If the application is incomplete, the applicant will be notified of the incompleteness and given one week to correct any incompleteness. If the application is still incomplete after that time, the City will reject the application. The applicant may reapply, but any second or subsequent application will be treated as a new application.
3. Each application shall be awarded points based on the following matrix. Except where otherwise stated, a particular qualification must be held by at least 26% of the individuals owning the entity to qualify for any points.

<u>At least 51% owned by socially and economically disadvantaged individual(s), as defined further by regulations to be promulgated by the City Manager based off of the Small Business Association Section 8(a) regulations.</u>	<u>6</u>
<u>At least 51% owned by individual(s) who have been a Maine resident for at least five years.</u>	<u>5</u>
<u>Owned by individual(s) with experience running a business in a highly regulated industry, such as marijuana, liquor, banking, etc. with no history of violations or license suspensions or revocations.</u>	<u>6</u>
<u>Owned by individual(s) who have previously been licensed by the State of Maine or a Maine municipality for non-marijuana related business, with no history of violations or license suspensions or revocations for a minimum of 5 years</u>	<u>4</u>
<u>Owned by individual(s) who have been a registered caregiver in the State of Maine for at least two years.</u>	<u>3</u>
<u>Ownership of proposed retail location by applicant; or at least five year lease for proposed retail location.</u>	<u>4</u>
<u>Evidence of at least \$150,000 in liquid assets</u>	<u>2</u>
<u>Business plan committing to social and economic development, by including three or more of the following:</u> <ol style="list-style-type: none"> <u>1. Create at least five (5) full-time jobs paying a minimum of \$15/hr;</u> <u>2. Provide PTO (or vacation/sick time) and health benefits to employees;</u> <u>3. Provide at least one annual training around diversity, cultural awareness, sexual harassment, or workplace violence. Training must be in addition to any required by the State or City;</u> <u>4. Annual contribution of 1% net profits as a restricted donation to the City for</u> 	<u>4</u>

<u>youth education on substance use education and prevention.</u>	
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4. Applicants with the highest point totals shall be chosen first for tentative approval for a license.

Where two or more applicants have the same number of points, some or all of the applicants cannot be awarded tentative approval due to either the 250' dispersal requirement, the cap imposed by Sec. 35-43, or other limitations in this ordinance, tentative approval will be awarded, as between those two or more applicants, based on a lottery.

5. If the application is tentatively approved, the applicant will have one year from tentative approval to open the retail business, including obtaining all final state and local approvals, building permits and approvals, certificates of occupancy, and any other criteria. If the applicant fails to meet the one-year deadline, it forfeits its tentative approval. The applicant may reapply, but any second or subsequent application will be treated as a new application.

6. Any applicant with a complete application, but who is not awarded tentative approval, may choose to be placed on a wait list for a period of up to one year. In the first round of applications, all applicants placed on the wait list will be placed in order of their matrix point totals, from the highest to the lowest. Ties shall be broken via a lottery.

7. A licensee who has its license revoked, or who fails to timely renew its license, shall forfeit its right to renew its retail license. The licensee may reapply, but any second or subsequent application will be treated as a new application.

8. Except for licenses issued pursuant to Sec. 35-43(i)(1), licensees who have a medical marijuana retail license may convert to an adult use retail license, so long as they meet the requirements for such license and pay the licensing fees. An applicant who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement.

9. Following the First Round of applications, the City Manager shall accept future applications on a first-come-first-served basis. However, if there are two or more applications that are submitted on the same business day and that cannot all be granted due to some limitation in this Chapter, the process set out in subsections (f)(2) through (f)(6) shall be followed to award licenses as between those applicants.

35-15. License Application.

Applications for all licenses under this Article shall be on forms provided by the City. In addition to any other information deemed necessary by the City, applicants shall provide the following information:

(a) General application.

1. The name, mailing address, physical address, and phone number of the business, as well as any other available contact information, including email address, fax number, website, etc.
 2. The name, mailing address, phone number, and email address of the following:
 - a. The individual or corporate owner of the marijuana business;
 - b. A community relations liaison, as described in Sec. 35-33;
 - c. A person with a physical address in the City who is authorized to accept service of process on behalf of the marijuana business; and
 - d. An emergency contact, as described in Sec. 35-33.
2. A general description of the business, including hours of operation, type of business, etc.
 3. The license being applied for.

(b) Corporate entity supplement. Where the marijuana business is a corporate entity, the applicant must disclose the name, mailing address, phone number, and email address of each and every individual or corporate owner, officers, directors, managers, general partners, shareholders, and/or other parties responsible for the marijuana business.

(c) Background check information and consent. Where a background check of any kind is required by this Code, the applicant must provide all relevant information sufficient to conduct the background check, as well as any necessary consents.

(d) Landlord permission. Notarized, written permission from the owner of the property where the marijuana business proposes to operate for the applicant to operate the marijuana business for which the applicant is applying, or a copy of a fully executed lease agreement specifically allowing the use of the leased space to be used as they type of marijuana business applied for.

(e) State authorizations. Applicants must provide evidence of all required state authorizations, including evidence of a caregiver registration in good standing, a conditional license pursuant to Title 28-B, food license, and any other required state authorizations.

(f) Security plan. A security plan, which shall be kept confidential, and which shall be sufficient to prevent the diversion of marijuana and marijuana products, and to protect the health and safety of owner, patrons, City officials, and the public.

1. The security plan shall, at a minimum, address all of the security requirements included in Sec. 35-36.
2. The City may require any reasonable modifications to the security plan that it deems necessary to prevent diversion and protect the public safety.
3. A copy of the approved security plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the security plan before or after licensing must be reviewed by the Police Department.

(g) Waste disposal plan. A waste disposal plan, which shall be sufficient to prevent diversion of marijuana or marijuana product, and shall be sufficient to prevent contamination of land, water, and sewer; and

1. The waste disposal plan shall, at a minimum, address all of the waste disposal requirements included in Sec. 35-39, and all waste disposal requirements otherwise included in this Code, including, but not limited to, Chapters 24 and 32.

2. The City may require any reasonable modifications to the waste disposal plan that it deems necessary.

3. A copy of the approved waste disposal plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the waste disposal plan before or after licensing must be reviewed and approved by the City.

(h) Odor mitigation plan. An odor mitigation plan, which shall be sufficient to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer.

1. The odor mitigation plan shall at a minimum, address all of the odor mitigation requirements included in Sec. 35-39.

2. The City may require any reasonable modifications to the odor mitigation plan that it deems necessary, including requiring that the plan be designed by a qualified, licensed professional engineer.

3. A copy of the approved odor mitigation plan shall be maintained at the licensee's site at all times and shall be made available to any City representative upon request. Any modifications to the odor mitigation plan before or after licensing must be reviewed and approved by the City.

(i) License specific requirements. A licensee must provide the additional information specific to the license being applied for, as described in Sec. 35-24 through 35-28.

(j) Any other information that the City Manager decides is necessary to evaluate an application under this Article.

35-16. Performance Guarantee Required.

(a) For all marijuana businesses, other than small scale caregivers and marijuana testing facilities, a performance guarantee shall be required in the amount of the cost of winding down the marijuana business, including proper disposal of all marijuana, marijuana plants, and marijuana product; disposal of chemicals and solvents; disposal of specialized equipment; and resolution of any outstanding compliance issues.

(b) The performance guarantee shall be supplied before the issuance of the final license.

(c) This requirement may be satisfied by surety bond, letter of credit, escrow account, or by evidence, acceptable to the City, of the financial and technical ability and commitment of the applicant or its agents to wind down the business in full compliance with all federal, state, and local requirements.

(d) At the sole discretion of the City Manager or his/her designee, the marijuana business may be released from its obligation to maintain the performance guarantee after three years of successful and responsible operation of the marijuana business in a manner acceptable to the City.

35-17. Fees and Costs.

(a) The initial application fee, annual licensing fee, and expiration date for licenses issued under this Article shall be as listed in Chapter 15 of this Code. Application fees shall be due only for the initial application, or any time that the applicant makes substantial changes to the licensed business and requires re-approval.

(b) Applicants shall also be responsible for paying the City's reasonable expenses associated with the review of an application, including:

1. Any required criminal background checks;
2. Any costs of notification; and
3. The cost of any independent, third-party review, where the City determines it is necessary to effectively evaluate an application.

(c) Application fees and any expenses charged pursuant to this section shall be non-refundable.

(d) Upon request of the applicant, the annual licensing fee may be refunded if the applicant 1) withdraws its application prior to the granting of the license; 2) is denied a marijuana business license; or 3) notifies the City that it is abandoning its license prior to opening the marijuana business. Refunds must be requested within 60 days of withdrawal, denial, or abandonment.

35-18. Minimum Qualifications for Individual Applicants.

All natural persons who apply for a license under this Article shall meet all of the following requirements:

- (a) Be at least 21 years of age;
- (b) Not have any disqualifying convictions or currently be subject to prosecution for any disqualifying conviction;
- (c) Not have any disqualifying violations;
- (d) Not have been an owner, officer, director, manager, general partner, shareholder, or other responsible party in any corporate entity with disqualifying violations within the past two years;
- (e) Not have any revocation or suspension of a marijuana-related license, permit, certificate, or registration;
- (f) Not be employed by any state agency or City department with regulatory authority over the marijuana business, including the City Executive Department, Police Department, Permitting and Inspections Department, Planning Department, Fire Department, and Corporation Counsel's Office; and
- (g) Not be a law enforcement officer.

35-19. Minimum Qualifications for Corporate Applicants.

All corporate or other entities who apply for a license under this Article shall meet all of the following requirements:

- (a) Be formed or organized under the laws of the State of Maine;
- (b) Be in good standing with the Maine Secretary of State;
- (c) Not have any disqualifying violations within the past two years; and
- (d) Have all officers, directors, managers, and general partners be natural persons who meet the minimum requirements for an individual applicant in 35-17 above.

35-20. Suspension and Revocation.

(a) Grounds for suspension. In addition to the grounds for suspension enumerated in Chapter 15, the following shall be grounds for suspension of a license pursuant to this Article:

1. Any event or condition that would have disqualified an applicant from obtaining an original license, until that disqualification is resolved to the satisfaction of the City;
2. The licensee has failed to timely supplement its license information, as required;
3. The licensee has failed to file any required reports or furnish any information, as required; and
4. The licensee has knowingly permitted, encouraged, failed to prevent, or failed to remedy a violation of this Article.

(b) Length of suspension. Any first suspension pursuant to this Article may not exceed six months after the resolution of the condition that formed the grounds for suspension. Any second and subsequent suspensions may not exceed one year after the resolution of the condition that formed the grounds for suspension.

(c) Grounds for revocation. In addition to the grounds for revocation enumerated in Chapter 15, the following shall be grounds for revocation of a license pursuant to this Article:

1. Failing to timely remedy any condition in (a) above;
2. Repeated significant violations of this Article; and
3. Any event that would have disqualified the license from initially obtaining a license.

(d) Length of revocation. Any license revocation shall prohibit the licensee from being an owner, officer, director, manager, general partner, shareholder, and/or otherwise responsible for any marijuana business for one year after the resolution of the condition that formed the grounds for revocation.

(e) Procedures for suspension or revocation. Suspension or revocation proceedings shall be conducted by the Permitting and Inspections Department pursuant to the following procedures:

1. Prior to suspension or revocation, a licensee shall be given notice of the reasons that the City is considering the action and an opportunity to be heard.
2. Where the reason for suspension or revocation could reasonably threaten health, safety, and/or welfare, a license may be suspended without notice and hearing, so

long as notice and an opportunity to be heard is provided as soon as practicable.

3. Suspensions or revocations will be issued in writing.

35-21. Reserved.

35-22. Reserved.

35-23. Reserved.

DIVISION 3. SPECIFIC LICENSE REQUIREMENTS

35-24. Cultivation Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for any tier of cultivation license must also provide the following:

(a) The amount of plant canopy to be grown;

(b) Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;

(c) Operations plan, including growing and fertilizing methodology, inventory control, transportation, overview of policies and procedures, and similar information;

(d) Quality control plan detailing the testing protocols and schedules to ensure the safety of the marijuana being cultivated;

(e) Disclosure of chemicals, fertilizer, pesticides, and similar substances - whether organic or synthetic - to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;

(f) Written certification by a qualified engineer that the cultivation facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code; and

(g) Written certification by a Maine certified Master Electrician that the cultivation facility and operation meets all electrical standards adopted by the State of Maine and/or the City.

35-25. Manufacturing Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a manufacturing license must also provide the following:

(a) Description of manufacturing processes to be used, including extraction methods;

(b) Floor plans, including the location of processing equipment, storage areas for marijuana, chemicals and solvents, and other items; office areas, etc.;

(c) Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information;

(d) Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured;

(e) Disclosure of chemicals, solvents, and similar substances to be used in the cultivation process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation;

(f) Written certification by a certified professional engineer, licensed by the State of Maine, that the manufacturing facility, equipment, and operation meet all requirements of Chapter 38 of NFPA 1, as adopted by Chapter 10 of this Code;

(g) Written certification by a Maine certified Master Electrician that the manufacturing facility and operation meets all electrical standards adopted by the State of Maine and/or the City; and

(h) Where a licensee will manufacture food or food products, the licensee must also provide proof of licensing pursuant to the Maine Food Code and Chapter 11 of this Code.

35-26. Retail and Dispensary Licenses.

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

(a) Total square footage of the facility under the control of the applicant and dedicated to the retail facility or dispensary and ancillary activities;

(b) Floor plans, including the location of retail space, storage areas for marijuana products, areas dedicated to the sale of non-marijuana products, office areas, etc.;

(c) Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors, and similar information; and

(d) Documentation that the marijuana retail facility or dispensary meets the dispersal requirements of Sec. 35-43.

35-27. Small Scale Caregiver License.

In addition to the requirements provided elsewhere in this Article, an applicant for a small scale caregiver license must also provide the following:

(a) Total square footage dedicated to the small scale caregiver use;

(b) Total plant canopy;

(c) Floor plans, including the location of mature, immature, and seedling plants, storage areas, office areas, etc.;

(d) Quality control plan detailing the testing protocols and schedules to ensure the safety of the products being manufactured; and

(e) Operations plan, including overview of policies and procedures, including policies and procedures to prevent sales to minors and to ensure that the small scale caregiver operation does not exceed the five patients in one calendar month, and similar information.

35-28. Marijuana Testing License

In addition to the requirements provided elsewhere in this Article, an applicant for a retail license must also provide the following:

(a) Floor plans, including the location of testing equipment; storage areas for marijuana samples, chemicals and solvents, and other items; office areas, etc.;

(b) Operations plan, including intake and inventory control, transportation, overview of policies and procedures, and similar information; and

(c) Disclosure of chemicals, solvents, and similar substances to be used in the testing process, the quantities of such substances, and the Safety Data Sheets for any covered products to be used in the operation.

35-29. Reserved.

35-30. Reserved.

35-31. Reserved.

DIVISION 3. PERFORMANCE STANDARDS.

35-33. Applicability.

Except where otherwise indicated, the performance standards in this Division shall apply to all marijuana businesses.

35-33. Cooperation with municipal officials.

(a) The City Manager's designees shall be permitted to enter any marijuana business during regular business hours for the purpose of making inspections, and examining and copying records.

(b) Each and every person responsible for the management or control of the marijuana business must afford free access to every part of such establishment and to render all aid and assistance necessary to enable the City to make a full, thorough and complete examination thereof to determine compliance with this Article.

(c) Each marijuana business shall designate a community relations liaison, who shall be responsible for receiving and responding to inquiries from, and reasonably addressing concerns raised by, members of the public and other individuals.

(d) Each marijuana business shall designate an emergency contact who shall respond to all non-emergency contacts by the City within 72 hours of contact, and to any emergency contact by the City within two hours of contact.

35-34. Record retention Requirements.

In addition to those records required to be kept and maintained by the State of Maine, all marijuana business licensee shall also keep the following records:

(a) Invoices of all purchases for the previous two years demonstrating the source of those purchases;

(b) Receipts of all sales for the previous two years;

(c) Testing results, if any, for the previous two years;

(d) A copy of all current state and local licenses; and

(e) Information about each concern addressed to the community relations liaison, including the date and time of the contact; the substance of the concern raised; the contact

information of the originator of that contact; the date and time of the licensee's response; and the substance of the response.

35-35. Compliance with Approvals.

All licensees under this Article shall comply with their approved plans, including security plans, waste disposal plans, operating plans, odor mitigation plans, and any other plans that are submitted to and approved by the City.

35-36. Security Requirements.

All marijuana businesses must implement the following minimum security requirements, which shall also be incorporated into a security plan.

(a) Building security. All fixed locations for a marijuana business shall have the following:

1. Exterior lighting sufficient to deter nuisance activity and facilitate surveillance but not disturb neighbors.
2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are connected to a new or existing AES system, and are professionally monitored and maintained in good working condition.
3. Interior electronic monitoring, video cameras, and panic buttons. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
4. Exterior electronic monitoring and video cameras. Electronic monitoring and video camera recording records must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request.
5. Consistent and systematic prevention of loitering.
6. Facilities approved by the Police Department or its third party designee for securing cash and all marijuana product packaged for sale as further detailed in regulations to be promulgated by the City Manager. Regulations shall require facilities sufficient to provide for the safety of employees and the public, and to prevent employee and third party theft and diversion.

7. Any other security features that the Police Department deems necessary to ensure public safety and prevent theft and illegal transfer of marijuana.

(b) Mobile security. All mobile operations of a marijuana business, including pick-ups and deliveries of samples for testing, wholesale products, deliveries by small scale caregivers, and similar functions shall have the following security:

1. The vehicle may not have identifying marks associating the vehicle with a marijuana business;
2. The vehicle must have video cameras showing the interior of the vehicle, as well as the exterior of the vehicle, and recordings must be maintained for at least 14 days and must be made available to an authorized representative of the City upon request; and
3. For mobile operations of a marijuana retail store, marijuana manufacturing and marijuana cultivation, the vehicle must have at least two individuals present in the vehicle.

35-37. Responsibility for Employees, Guests, and Customers.

(a) A marijuana business shall be responsible for all individuals on their premises.

(b) A marijuana business shall not sell any marijuana product to, or allow an individual to enter or to remain on their premises, who is

1. Disorderly;
2. Intoxicated;
3. A threat to safety; or
4. Has consumed or attempted to consume marijuana on the premises.

35-38. Information disclosure requirements.

(a) A copy of the business license issued pursuant to this Article must be prominently displayed at each location of the marijuana business.

(b) The business license number issued to each marijuana business must be clearly disclosed in all written advertising, marketing, and promotional materials.

(c) Each marijuana business must disclose the telephone number of its community relations liaison, after the statement, "For questions or concerns contact [number]" in all written advertising, marketing, and promotional materials; and must be prominently displayed at each location of the marijuana business.

(d) A sign, prominently displayed near the entrance to the marijuana business stating the minimum age to enter the business and, if a retail store, the minimum age to purchase products from the retail store.

35-39. Waste Disposal Requirements.

(a) No marijuana, marijuana products, marijuana plants, or other marijuana waste may be stored outside, other than in secured, locked containers.

(b) No marijuana, marijuana products, marijuana plants, or other marijuana waste may be disposed of unless and until it has been modified such that it is not useable.

(c) All waste and wastewater from any marijuana facility must be treated such that it will not create excessive odors, contamination, or pollution.

(d) No waste from a marijuana business may be disposed of in residential trash.

35-40. Odor Mitigation Requirements.

The smell of marijuana shall not be detectable at the property boundary and/or at any adjoining use of the same property. A marijuana business licensee is responsible for taking any and all measures necessary to ensure that this standard is met.

35-41. Labeling.

Any marijuana business that sells marijuana or marijuana products at retail, must label all products as follows:

(a) All marijuana must be in labeled containers meeting the requirements of this section.

(b) All required statements must be in a font and size that is readily legible to the average person.

(c) Where applicable, the label must contain the following:

1. A statement that the marijuana or marijuana product contains THC;

2. If the marijuana or marijuana product has been tested for quality, purity, or potency, and any such representations are made about the marijuana or marijuana product, the following must be disclosed in close proximity to that representation:
 - a. The name, location, and license number of the testing facility
3. If the marijuana or marijuana product has not been tested for quality, purity, and/or potency by an independent third party, a statement that the product has not been tested for quality, purity, and/or potency.

35-42. Limitations on the Production and Sale of Marijuana Food Products.

The following limitations apply to the manufacture and sale at wholesale or retail of food or beverage products containing marijuana:

- (a) Marijuana products may not be manufactured or sold in a shape or design that is intended to appeal to minors;
- (b) Marijuana or marijuana derivatives may not be added to commercially available products that do not otherwise contain marijuana; and
- (c) Marijuana food and beverage products may not be manufactured, processed, or packaged in the same kitchen or room, or using the same equipment, as non-marijuana food and beverage products.

35-43. Additional Retail Store and Dispensary Requirements.

Retail stores and dispensaries licensed pursuant to this Article must also meet the following performance standards:

- (a) Hours of operation. Marijuana retail stores and dispensaries may only be open to the public between the hours of 7:00 a.m. and 10:00 p.m. daily, and no sale or other distribution of marijuana may occur on the premises outside of those hours.
- (b) Age restrictions.
 1. A medical marijuana retail store may not allow any individual under the age of 18 to enter their premises, including as an employee.

2. An adult use marijuana retail store may not allow any individual under the age of 21 to enter their premises, including as an employee.

(c) On-premises consumption of any marijuana products is not permitted.

(d) Other uses prohibited. Marijuana retail stores and dispensaries may not have uses other than marijuana retail or other retail on the premises, including entertainment or restaurant uses, except that the sale of pre-packaged, ready-to-eat foods that are not prepared on site and non-alcoholic beverages shall be allowed provided the applicant has an appropriate food service license.

(e) Education requirements.

1. Marijuana retail stores and dispensaries must have a sign, prominently displayed by the point of sale, informing customers of:

- a. The dangers of over consumption;
- b. The impact that marijuana has on brain development;
- c. That consumption of marijuana is illegal at the federal level and that consuming marijuana could impact employment, immigration status, the right to own firearms, the right to a commercial driver's license, and other rights;
- d. That consumption of marijuana and marijuana products in public is illegal; and
- e. Additional information as required by rules promulgated by the Department of Health and Human Services.

2. The City shall draft acceptable language for the signs required by this subsection. Any marijuana retail store or dispensary wishing to use alternative language must receive prior approval from the City's Department of Health and Human Services.

(f) Fixed location sales only.

1. A marijuana retail store, small scale caregiver, and/or dispensary may only sell marijuana and marijuana products in person, directly to the purchaser, and out of a fixed and licensed location.

2. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.

3. Mail order, telephone, internet or similar remote sales are specifically prohibited.

4. Notwithstanding the provisions of this section, a small scale caregiver, medical marijuana retail store, and/or dispensary may make deliveries of marijuana products to a qualifying patient with whom that small scale caregiver, medical marijuana retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of marijuana the small scale caregiver, medical marijuana retail store, and/or dispensary has previously verified in person.

(g) Drive through windows. A marijuana retail store or dispensary may not use a drive through window, or any other outdoor space to sell marijuana or marijuana products.

(h) Dispersal requirement. A marijuana retail facility or dispensary may not be located within 250' of any other marijuana retail facility or marijuana dispensary, as measured along or across public ways, in a straight line, from any entrance that is accessible to the public.

This distance restriction shall not apply to one adult use and one medical marijuana retail facility or dispensary that 1) share the same or immediately adjoining space; 2) have common ownership; 3) have consistent naming and branding; and 4) are permitted by the state to share such space.

The distance restriction shall also not apply to an existing dispensary or medical marijuana retail store that qualifies pursuant to Sec. 35-43(i)(1).

(i) Cap on retail stores. The number of retail stores and dispensaries in the City combined shall be capped at 20.

1. However, this cap shall not apply to any dispensary or medical marijuana retail store operating with a City business license, a change of use permit, certificate of occupancy, and/or a site plan approval prior to September 1, 2019, so long as that dispensary or medical marijuana retail store does not apply to convert to an adult use retail store.

2. If an existing dispensary or medical marijuana retail store applies to convert to an adult use retail store, the facility will become subject to the cap in this section and the allocation procedures of Sec. 35-14.

(j) Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary must attend a City-approved training within ninety days of beginning in that position and then annually thereafter. Employing a manager or front line staff that does not have the required training may be grounds for suspension. If the training program is provided by the Department of Health and Human Services, the Department shall charge a fee for the cost of this class.

1. Retail stores must submit a list of employees annually with their license renewal, along with verification that they have successfully completed a City-approved training program.

(k) Transfer of retail and dispensary licenses. The ownership of a retail or dispensary licensee may only be transferred subject to the following limitations:

1. No more than 25% of the ownership interests in a licensee may be transferred in any five-year period.
2. Any transfers of interest in a retail or dispensary license occurring before January 1, 2025 must not impact any of the licensee's points calculated under Sec. 35-14(f)(4).
3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

35-44. Signs.

In addition to the sign regulations contained in Chapter 14 of this Code, all signage in connection with a marijuana business, whether adult use or medical, shall comply with the requirements for signs under Title 28-B of the Maine Revised Statutes, and any regulations adopted thereunder.

35-45. Other Prohibitions.

(a) On-premises consumption. Consumption of marijuana on the premises of any marijuana business is prohibited.

(b) Outdoor growing. Marijuana plants may not be grown outdoors and may only be grown within a fully enclosed and secured structure.

(c) Indoor air quality. A marijuana business may not use any chemical, process, or methodology that would result in compromised indoor air quality, including the use of technology such as sulfur pots.

(d) Giveaways and samples prohibited. Marijuana businesses may not distribute marijuana or marijuana products free of charge.

35-46. Insurance and Indemnification.

(a) Each marijuana business, other than a small scale caregiver, shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$1,000,000.00 per occurrence for bodily injury, death, and property damage.

(b) Each small scale caregiver shall procure and maintain occurrence based commercial general liability coverage in the minimum amount of \$500,000.00 per occurrence for bodily injury, death, and property damage.

(c) Evidence of insurance required herein shall be a condition of the issuance of any license under this article, and shall be submitted to the City prior to obtaining the final license. Certificates shall guarantee ten days notice to the City of termination of insurance from the insurance provider or agent. The City's acceptance or lack of acceptance of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this article.

d) By accepting a license from the City for a marijuana business, the licensee knowingly and voluntarily waives, releases and discharges the City from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the City, or any of its officers, agents, employees, representatives, insurers, successors and assigns for 1) any injuries, damages, or liabilities resulting from the arrest, prosecution, or other consequence of the marijuana business or its parties of control for a violation of local, state, or federal laws, rules, or regulations; and 2) any claim by a third party against the marijuana business.

(e) To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the City, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of, resulting from, or

relating to the performance of any license issued to licensee under this Article or the operation of the licensee's marijuana business. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City which otherwise exists. The extent of the indemnification provision shall survive termination of any license issued to a licensee under this Article and shall not be limited by the provision for insurance in this Article.

(f) This article shall not be construed as imposing upon the City or any official, agent, or employee of the City, any liability or responsibility for damages to any person resulting from or in relation to the performance of this license, nor shall the City or any official, agent or employee of the City be deemed to have assumed any such liability or responsibility by reason of inspections authorized herein, or the issuance of any license.