

**Remote HHS and Public Safety
Meeting Agenda**
September 19, 2023 at 5:30 PM
Remoter Meeting



MEMBERS
Councilor April Fournier, At-Large, Chair
Councilor Anna Trevorrow, District 1
Councilor Victoria Pelletier, District 2

To submit written public comment on an agenda item, email HHSPS@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Health & Human Services and Public Safety meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below). Public comment will be taken at the meeting for both the Draft Resolution for Psychedelic Plants and Fungi and the Proposed Changes to Chapter 35.

The Health & Human Services and Public Safety Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

You are invited to a Zoom webinar.

When: Sep 19, 2023 05:30 PM Eastern Time (US and Canada)

Topic: Remote HHS and Public Safety Meeting

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/85006590044?pwd=MEkrM0tmRzBDdmRseWhxdnBWS3lkUT09>

Passcode: 972886

Or One tap mobile :

+16469313860,,85006590044#,,, *972886# US

+19292056099,,85006590044#,,, *972886# US (New York)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 646 931 3860 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 689 278 1000 US

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

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Webinar ID: 850 0659 0044

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International numbers available: <https://portlandmaine-gov.zoom.us/j/kbYxTK4sfC>

1. Announcements
2. Review and Approval of Minutes from August 8, 2023
 - a. August 8, 2023 Draft Minutes
3. Draft Resolution for Psychedelic Plants and Fungi
 - a. Presentation by Corporation Counsel
 - b. Public Comment
 - c. Committee Vote
4. Proposed Changes to Chapter 35
 - a. Presentation by Corporation Counsel
 - b. Public Comment
 - c. Committee Vote
5. Next HHS & PS Committee Meeting To Be Held on October 17, 2023



Health & Human Services and Public Safety Committee Minutes

Tuesday, July 11, 2023, 5:30pm, Remote Meeting

Committee Attendance: April Fournier, Chair (At-large), Anna Trevorror (District 1).

City Staff:

Kristen Dow, Director of HHS; Adam Harr, Executive Assistant for Social Services; Amy McNally, Associate Corporation Counsel; Keith Gautreau, Fire Chief; Jessica Hanscomb, Director of Permitting and Inspections; Leah Givhan, Community Health Promotion Specialist.

Announcements

- Councilor Trevorror moved to approve April 11, 2023 and May 9 draft meeting minutes, Councilor Fournier seconded and the minutes were approved unanimously.
- Councilor Victoria Pelletier (District 2) is unable to attend the meeting.

Chapter 35

- Previously decided on a cap of 20 retail stores, but then decided to license all who applied and not issue new licenses until we reached under 20.
 - Voters removed the cap via ballot referendum.
- 1 marijuana inspector.
- 36 total licenses have been issued this year; 62 were issued last year.
- We are adding retail stores, cultivation, and caregivers.
- There are novel issues:
 - Odor mitigation.
 - Waste removal,
 - Extraction chemicals

- Must have gas detectors due to the odorless chemical used.
- There are stricter testing regulations for adult use; medical products that were not tested must be labeled as untested. \
 - Has hoped the state would update medical to match adult use.
- Every year there are new laws.

Committee Questions and Discussion

- Councilor Trevorow asked if it is optional for municipalities to opt in to adult use. How does our ordinance compare to other municipalities and how many have adopted adult use ordinance?
 - We do now know how many have adopted ordinances; South Portland did buy there ordinance is different from ours.
- What does the license fee cost.
 - It ranges from annual \$20 to \$10,000 based on license type.
 - Care giver: \$250
 - High volume retail is \$10,00
 - Licenses are based on how much staff time would be needed such as calls for service.
 - We originally intended for only 20.
- Is there a geographical restriction?
 - Originally intended for a 200ft buffer zone but voters approved a 100 ft buffer.
 - Measured door to door
- Councilor Fournier asked if there is a sliding scale based on size of business or amount of revenue?
 - No; we do not do that for other licenses.
 - Liquor licensing is based on what is served, beer, wine, etc.
 - We do not track revenue for our license types. The state requires how much bars and hotels make for liquor and lodging licenses but we do not track or consider it.
- What is our annual revenue on licenses as it stands now and since we have so many more businesses would we consider lowering the fees?
 - We will need to return with the exact number.
 - As a whole we make \$1.6 across all licenses
- We cap cultivation at square footage and don't allow outdoor growing which limits the types of businesses.

- What is the feedback from business owners and residents, can it be categorized for the next meeting.
 - The majority of complaints on See Click Foix are odor complaints or businesses complaining about each other.

Decriminalize Maine: Decriminalize Psychedelic Plants and Fungi

- Decriminalization isn't legalization.
- Taking a position memorialized by resolution on specific substances and which actions it is intended to decriminalize (such as possession) and what it is not (trafficking, selling, etc.

Committee Questions and Discussion

- Councilor Trevorrow said an ordinance has teeth, what is the difference between ordinance and resolution.
 - A resolution is a streamlined process when both will have the same effect due to existing state and federal law.
- Chief Dubois is onboarding a the end of the month and will be available for question before this returns to the committee.
- Language detailing substances will be ready for next meeting.
- Decriminalize Maine thought they were presenting this evening.
 - Public comment will taken at the next meeting in September.

Crisis Pregnancy Centers.

- Post Roe, we have seen pregnancy crisis centers with false and misleading advertising that may impact people seeking reproductive care; we sought how to address this in our community within the law.
- Public Health Campaign.
 - Partnered with Planned Parenthood of New England and Grand Mothers for Reproductive Rights (GRR) client facing Public Health programs.
 - Conducted a review of existing landscape of resources for the campaign.
 - Social media,
 - City and State webpages on awareness of pregnancy crisis centers and comprehensive reproductive services such as MA< NYC, and Chicago.
 - Internal working d=group is developing a campaign on four key messages disseminated

through FB/IG paid post, printed cards and posted in clinical services programs

- If you are pregnant, you deserve to know the facts about all of the options and resource available to you, including abortion.
- Pregnancy crisis centers do not provide unbiased compressive reproductive health counseling and services. Here is how to spot and avoid crisis pregnancy centers.
- abortion is legal and available in Maine
- Here is how to access comprehensive reproductive health counselling and care, including abortion care in our community.
- Drafted for general audience on FB and easily adapted to print.
 - Sent external partners for review and feedback
- When finalized, they will be translated into Portuguese, French, & Spanish.
 - Preliminary outreach with partners who work with specific audiences for feedback such as from new Mainers and young adults.
- Attended inaugural meeting of the comprehensive reproductive health cities collaborate.
 - Quarterly virtual meeting hosted by US DHHS, convening local public health departments on reproductive services in the emerging landscape.

Cooling Centers

- Protocol for opening cooling centers during dangerous levels of heat and humidity.
 - National Weather Service puts out a heat advisory at a heat index of 95 degrees or higher that last for 2 hours.
 - Excessive heat warning is when the heat index is expected to reach 105 degrees.
 - During normal business hours the cooling center is the Portland Public Library.
 - 5-6 PM.
 - We generally col down during the evening.
 - Heat advisory continues if we do not cool down below 75 degrees at night.
- Process to open center: Monitor weather and put a press release if reached bench mark to note where the cooling centers would be.
- Off hours or during an excessive heat warning, we would look art other locations owned by the city such as the ice arena or ocean gateway, both of which would incur staffing expenses.
- Usua.ly only about 3 people used the warming or cooling centers in the past; we have more people outside than before.
- The committee suggested a press release reminding people of text reminders.

**RESOLUTION IN SUPPORT OF THE DEPRIORITIZATION OF CRIMINAL
PROSECUTION AND PENALTIES FOR PERSONAL
USE OF PSYCHEDELIC PLANTS AND FUNGI**

WHEREAS, the City of Portland City Council recognizes its responsibility to make public health a priority; and

WHEREAS, drug enforcement policy in the United States has historically disproportionately impacted people of low-income communities and has led to disproportionate penalization, arrest, and incarceration of vulnerable populations, particularly people of color and people of limited financial means, instead of prioritizing policies that reduce harm and treat substance use as an issue of public health;

WHEREAS, psychedelic plants and fungi, specifically, for the purposes of this Resolution, Psilocybin, Psilocyn, Ibogaine and Dimethyltryptamine¹, have a long history of being used therapeutically for healing and treatment of illnesses and ceremonially for spiritual well-being; and

WHEREAS, in recent years, there has been a resurgence of scientific research into the use of psychedelic-assisted psychotherapies for treating mental health conditions including addiction, post-traumatic stress disorder, elements of persistent traumatic stress environment conditions, chronic depression, end-of-life anxiety, grief, cluster headaches, and improving mental and socio-emotional health; and.

WHEREAS, there are criminal justice concerns associated with investigating, arresting, and incarcerating people for personal use of psychedelic plants and fungi, and it is important to balance criminal justice concerns with public health concerns when crafting just and responsible policy; and

WHEREAS, many municipalities around the country have deprioritized the enforcement of laws prohibiting the personal use of psychedelic plants and fungi; and

WHEREAS, while the possession, production, and transfer of psychedelic substances is illegal at the federal level in the United States, arrests and prosecutions for engaging in psychedelic drug offenses are usually grounded in state law, with enforcement occurring at the local level; and

WHEREAS, in Portland and other Maine communities, the COVID-19 pandemic has led to a wave of accidental opioid overdoses and other substance-related deaths, which, according to peer reviewed medical research, are ailments that psychedelic plants have been shown to have particular efficacy in treating; and

¹ Peyote is specifically excluded from this Resolution in light of its vulnerable ecological status, combined with its religious and cultural significance to Indigenous peoples.

WHEREAS, given these public health concerns, it would be appropriate for the City of Portland to support a harm reduction effort for personal psychedelic plant and fungi use in the Portland community by deprioritizing criminal prosecution and penalties for the personal use thereof.

NOW THEREFORE BE IT RESOLVED, that the City Council hereby maintains that the use and possession of all controlled substances should be understood primarily as an issue of public health by City departments, agencies, boards, commissions, and employees of the City; and

BE IT FURTHER RESOLVED, that the City Council hereby maintains that it should be the policy of the City of Portland that the investigation, arrest and prosecution of adult persons over the age of 21 for personal use or possession for personal use of psychedelic plants, specifically Psilocybin, Psilocyn, Ibogaine and Dimethyltryptamine, which are listed in 17-A M.R.S.A. § 1102 (2) (C) & (H) and Schedules I-IV of 21 U.S.C. § 812 of the Controlled Substances Act, shall be amongst the lowest law enforcement priority for the City of Portland; and

BE IT FURTHER RESOLVED, that the City Council hereby maintains that City of Portland departments, agencies, boards, commissions, officers or employees of the city should avoid using city funds or resources to assist in the investigation, criminal prosecution or the imposition of criminal penalties for the personal use or possession for personal use of psychedelic plants known as Psilocybin, Psilocyn, Ibogaine and Dimethyltryptamine by adults over age 21; and

BE IT FURTHER RESOLVED that the City Council does not intend to deprioritize the investigation, arrest, prosecution of, and imposition of criminal penalties for selling, giving away, sharing, distributing, transferring, dispensing, or administering of psychedelic plants or fungus or biosynthesized psychedelic plant or fungus drugs to another individual or commercial sales of such substances, or possessing or distributing these substances on school grounds, or operating under the influence of these substances.

RESOLUTION IN SUPPORT OF THE DEPRIORITIZATION OF CRIMINAL PROSECUTION AND PENALTIES FOR PERSONAL USE OF PSYCHEDELIC PLANTS AND FUNGI

WHEREAS, the City of Portland City Council recognizes its responsibility to make public health a priority; and

WHEREAS, drug enforcement policy in the United States has historically disproportionately impacted people of low-income communities and has led to disproportionate penalization, arrest, and incarceration of vulnerable populations, particularly people of color and people of limited financial means, instead of prioritizing policies that reduce harm and treat substance use as an issue of public health;

WHEREAS, psychedelic plants and fungi, specifically, for the purposes of this Resolution, [those containing] Psilocybin, Psilocyn, Ibogaine, [Mescaline]¹ and Dimethyltryptamine, have a long history of being used therapeutically for healing and treatment of illnesses and ceremonially for spiritual well-being; and

WHEREAS, in recent years, there has been a resurgence of scientific research into the use of psychedelic-assisted psychotherapies for treating mental health conditions including addiction, post-traumatic stress disorder, elements of persistent traumatic stress environment conditions, chronic depression, end-of-life anxiety, grief, cluster headaches, and improving mental and socio-emotional health; and.

WHEREAS, there are criminal justice concerns associated with investigating, arresting, and incarcerating people for personal use of psychedelic plants and fungi, and it is important to balance criminal justice concerns with public health concerns when crafting just and responsible policy; and

WHEREAS, many municipalities around the country have deprioritized the enforcement of laws prohibiting the personal use of psychedelic plants and fungi; and

WHEREAS, while the possession, production, and transfer of psychedelic substances is illegal at the federal level in the United States, arrests and prosecutions for engaging in psychedelic drug offenses are usually grounded in state law, with enforcement occurring at the local level; and

WHEREAS, in Portland and other Maine communities, the COVID-19 pandemic has led to a wave of accidental opioid overdoses and other substance-related deaths, which, according to peer reviewed medical research, are ailments that psychedelic plants have been shown to have particular efficacy in treating; and

¹ Peyote is specifically excluded from this Resolution in light of its vulnerable ecological status, combined with its religious and cultural significance to Indigenous peoples.

WHEREAS, given these public health concerns, it would be appropriate for the City of Portland to support a harm reduction effort for personal psychedelic plant and fungi use in the Portland community by deprioritizing criminal prosecution and penalties for the personal use thereof.

NOW THEREFORE BE IT RESOLVED, that the City Council hereby maintains that the use and possession of all controlled substances should be understood primarily as an issue of public health by City departments, agencies, boards, commissions, and employees of the City; and

BE IT FURTHER RESOLVED, that the City Council hereby maintains that it should be the policy of the City of Portland that the investigation, arrest and prosecution of adult persons over the age of 21 for personal use [or sharing without compensation] or possession [and cultivation] for personal use, of psychedelic plants, specifically [plants and fungi containing] Psilocybin, Psilocyn, Ibogaine, [Mescaline (except Peyote²)] and Dimethyltryptamine, which are listed in 17-A M.R.S.A. § 1102 (2) (C) & (H) and Schedules I-IV of 21 U.S.C. § 812 of the Controlled Substances Act, shall be amongst the lowest law enforcement priority for the City of Portland; and

BE IT FURTHER RESOLVED, that the City Council hereby maintains that City of Portland departments, agencies, boards, commissions, officers or employees of the city should avoid using city funds or resources to assist in the investigation, criminal prosecution or the imposition of criminal penalties for the personal use [or sharing without compensation] or possession [and cultivation] for personal use of psychedelic plants known as [to contain] Psilocybin, Psilocyn, Ibogaine [,Mescaline,] and Dimethyltryptamine by adults over age 21; and

BE IT FURTHER RESOLVED that the City Council does not intend to deprioritize the investigation, arrest, prosecution of, and imposition of criminal penalties for selling, ~~giving away, sharing, distributing, transferring,~~ dispensing, or administering of psychedelic plants or fungus or biosynthesized psychedelic plant or fungus drugs to another individual or commercial sales of such substances, or possessing or distributing these substances on school grounds, or operating under the influence of these substances.

² Peyote is specifically excluded from this Resolution in light of its vulnerable ecological status, combined with its religious and cultural significance to Indigenous peoples.



Adam Harr <ash@portlandmaine.gov>

Public comment on Decriminalize Maine proposal

1 message

'E. S. Lowell' via HHS & PS Committee <hhsp@portlandmaine.gov>

Sat, Sep 16, 2023 at 7:28 PM

Reply-To: "E. S. Lowell" <e_s_lowell@yahoo.com>

To: "hhsp@portlandmaine.gov" <hhsp@portlandmaine.gov>

Dear Health and Human Services Committee,

As a longtime Portland resident and voter, I am in favor of de-criminalizing the **non-commercial**, adults-only use of psychedelic plants--with the exception of peyote, which is endangered and should by rights be reserved for the ritual use of Native American peoples.

Therefore, I support the Decriminalize Maine proposal, which would allow adults to make their own personal use of these natural resources without infringing upon the rights of others.

Sincerely,

Elizabeth S. Lowell
30 West Street, Apt. 29
Portland, Maine, 04102-3439

Home phone number: (207) 774-1251 [*landline, with answering machine]



Adam Harr <ash@portlandmaine.gov>

Decriminalize Maine

1 message

Kaitlyn Grassette <kaitlyngrassette@gmail.com>
To: hhsps@portlandmaine.gov

Mon, Jul 10, 2023 at 11:43 AM

Plant medicine has helped people from the beginning of time. Relations and stimulations make it more likely to have people abuse them. Education, research and openly using plant medicine as a tool will be helpful for everyone. Big pharma is not the answer. Turning back to our roots is.. please consider decriminalization. Myself and lots of people I have used plant medicines and have had great success. I find myself being a more out of the box thinker. More creative and grounded. It's also helped me through trauma, teaching me to face it head on and work through it. Over the counter medicines and seeing a psychiatrist didn't help. But I was able to help myself through this channel and now I'm stronger because of it. Please consider my story and words when evaluating this law. Thank you for your time.



Adam Harr <ash@portlandmaine.gov>

Public comment on Decriminalize Maine proposal

1 message

Matthew Pietrykowski <hello@mattpietrydesigns.com>
To: hhsps@portlandmaine.gov

Thu, Sep 14, 2023 at 2:48 PM

Hello,

Prohibition on plants and fungi has done nothing but fear monger and create unreasonable cause for criminal activity. Thousands of years of safe recorded human use proves that the public health and welfare is not at stake from the decriminalizing efforts.

Inaccess to these materials has made research difficult, and made the scientific knowledge surrounding these psychedelic compounds and their potential benefits scarce.

With your help, we can lead the way in new discoveries. You can help to end the negative stigma around those who use these substances. Together, we can bring forth a paradigm shift inspired by preserving nature and protecting our planet.

Thank you for reading this message. I hope you see this movement as one of peace, love, and understanding

Sincerely
Matthew Pietrykowski



Adam Harr <ash@portlandmaine.gov>

Re: Decrim Maine Policy Language

1 message

Kristen Dow <kjd@portlandmaine.gov>

Mon, Aug 21, 2023 at 8:47 AM

To: April Fournier <afournier@portlandmaine.gov>

Cc: Wendy Chapkis <chapkis@maine.edu>, Aaron Parker <edgewoodlandscapes@gmail.com>, Anna Trevorrow <atrevorrow@portlandmaine.gov>, Victoria Pelletier <vpelletier@portlandmaine.gov>, "amcnally@portlandmaine.gov" <amcnally@portlandmaine.gov>, Adam Harr <ash@portlandmaine.gov>

Good Morning,

You can submit all written public comments to hhsps@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Health & Human Service and Public Safety Committee meeting to guarantee their inclusion in the agenda packet. It is also helpful to include a note in the subject line that this is for written public comment.

Thank you,
Kristen

Kristen Dow
Director of Health & Human Services
City of Portland
39 Forest Avenue
Portland, ME 04101
207-874-8633
Pronouns: she, her, hers



Please note that my working hours may be different than yours. Please do not feel obligated to respond outside of your normal work schedule, unless otherwise requested.

On Sun, Aug 20, 2023 at 10:44 PM April Fournier <afournier@portlandmaine.gov> wrote:

Hi Wendy, thanks for checking in. The meeting will actually be on the 19th due to some scheduling conflicts for the 12th.

The meeting will be via zoom and the link will be available as soon as the packet is published the week before. There will be public comment once we have a motion for action. We will have the proposed language for any action we're taking included in the packet when it's published. I'll send along a note as soon as that goes live.

@Kristen, what's the best email to use for public comment for our committee meeting?

Thank you much!

April

On Sun, Aug 20, 2023 at 11:17 AM Wendy Chapkis <chapkis@maine.edu> wrote:

Dear members of the HHS committee and Corporation Council -

We are very much looking forward to the upcoming September 12th HHS meeting where the Decriminalize Maine proposal on botanical psychedelics will once again be discussed and voted on.

We have a few questions to help us prepare for that meeting:

1. While we offered sample language based on Cambridge, MA, we assume that Portland's Corporation Council has made some changes to that. Would it be possible for us to get the proposed new language from Corporation Council before the meeting?
2. Are we correct in assuming that public comment will be allowed at this meeting?

3. Are we correct that the meeting will be held on Zoom (and if so, can we get the Zoom link to share with interested members of the public who wish to give comment)?
4. For those who would prefer to submit written comment, what is the deadline for those submissions and who should they be directed to (the Chair or the entire committee)?
5. Can you let us know what the name of the agenda item will be for people to use if they are offering written comment)?

Thank you so much.

Wendy

Wendy Chapkis

Chair and Professor of Sociology

Professor of Women & Gender Studies

University of Southern Maine

chapkis@maine.edu

On Wed, Jun 28, 2023 at 9:28 AM Wendy Chapkis <chapkis@maine.edu> wrote:

Hi again April,

Aaron Parker (the ED of Decriminalize Maine) and I have a couple of questions as we begin to get word out about the HHS meeting next month and the opportunity for public comment:

Will comment at the July meeting be in person, on zoom or both?

What is the name of the decrim agenda item (for use on written comment)?

Is it beneficial to have written comment well ahead of time?

Thank you for your guidance on this. I look forward to the July discussion of the proposal.

Wendy

Wendy Chapkis

Chair and Professor of Sociology

Professor of Women & Gender Studies

University of Southern Maine

chapkis@maine.edu

On Thu, Jun 8, 2023 at 2:59 PM Wendy Chapkis <chapkis@maine.edu> wrote:

Dear April,

I completely understand the need to prioritize the listening session around the housing/unhoused crisis in Portland. We will look forward to being on the agenda for July and I very much hope we can move the proposed legislation forward to council by August. We will arrange for public comment for the July meeting.

Wendy

Wendy Chapkis

Chair and Professor of Sociology

Professor of Women & Gender Studies

University of Southern Maine

chapkis@maine.edu

On Thu, Jun 8, 2023 at 10:55 AM April Fournier <afournier@portlandmaine.gov> wrote:

Good morning! I wanted to reach out and share that this item has been moved to our July agenda due to the listening session that has been scheduled for HHS staff and the public around camping, asylees and the work we are doing to try and get people housed in place of our regular monthly HHS meeting. This will held at Ocean Gateway.

I know this is not what you were hoping for as we are trying to move this forward, but we are trying to balance new resolution/ordinance work with crisis response.

In July when we take this up we will have a discussion in committee (with public comment) on the item as well as if this will move forward as a resolution or ordinance.

Thank you and happy to answer any questions.

April

On Tue, May 30, 2023 at 11:56 AM Wendy Chapkis <chapkis@maine.edu> wrote:

Here is the language we sent in early March. Let me or Aaron know if you need anything else from us.

Wendy Chapkis

Chair and Professor of Sociology

Professor of Women & Gender Studies

University of Southern Maine

chapkis@maine.edu

On Tue, May 30, 2023 at 11:46 AM April Fournier <afournier@portlandmaine.gov> wrote:

Oh perfect, thank you. Hi Aaron!

Yes if you could resend that would be great, I could only find the flier you had sent in my inbox, but my email is a disaster. Appreciate it!

April

On Tue, May 30, 2023 at 11:45 AM Wendy Chapkis <chapkis@maine.edu> wrote:

Thank you for this welcome news. The draft language we provided the committee a few months back was based on the Cambridge MA policy. Would you like me to resend that? It is very similar to what has been passed in the other dozen or so cities that have approved decriminalization of botanical psychedelics. The key difference between some of the measures is whether peyote is included or excluded. Decriminalize Maine, following the lead of key indigenous organizations, has excluded peyote due to their concerns about over-harvesting. Would it be helpful for us to resend the language we provided for the draft legislation? By the way, Sarah Farrugia is no longer with the organization; the current Executive Director is Aaron Parker who I have included in this email string. Again, I very much appreciate the work you are doing on this.

Wendy

Wendy Chapkis

chapkis@maine.edu

On Tue, May 30, 2023 at 8:31 AM April Fournier <afournier@portlandmaine.gov> wrote:

Hi friends, hope all is well! It's been wild and crazy and busy here, but we're hanging in there! We will be bringing this item forward for discussion at our next HHS meeting on June 13th. I'm talking with our corporation counsel about the policy direction we are looking to pursue to get their opinion and help in crafting an ordinance that would then move out of our committee to go before the full council for consideration.

I noted in my research that there are a few cities who have done this. I'm wondering if you have model cities you would like Portland to follow or suggestions for the policy language you are hoping to enact? This will help me work with our counsel to draft something for our committee's consideration.

Likely what this would look like is we would bring forward the language for our meeting in June and then have action taken in our July meeting, which would also open up public comment at the committee level. If this is passed out of committee we will then get it on an upcoming council agenda likely in August.

The key component of this is getting the specifics for what we want to put in our ordinance to further the discussion. Thanks so much!
April

--

April Fournier
City Councilor, At-Large
[City of Portland](#)
[389 Congress Street](#)
Portland, ME 04101
(207) 332-6764
afournier@portlandmaine.gov

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an email could be released to the public and/or the media if requested.

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--

April Fournier
City Councilor, At-Large
She/Her/Hers
[City of Portland](#)
[389 Congress Street](#)
Portland, ME 04101
(207) 370-7448
afournier@portlandmaine.gov

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an email could be released to the public and/or the media if requested.

Office of Corporation Counsel
Michael Goldman, *Acting Corporation Counsel*
Amy R. McNally, *Associate Corporation Counsel*
Nicole M. Albert, *Associate Corporation Counsel*
Rachel L. Millette, *Associate Corporation Counsel*



TO: Health and Human Services and Public Safety Committee

FROM: Nicole Albert, Associate Corporation Counsel

DATE: September 12, 2023

RE: Proposed changes to Ch 35 of City Code necessitated by new Maine law

On July 6, 2023, H.P. 1205 - L.D. 1088, “An Act to Amend the Adult Use Cannabis Laws” was enacted in Maine. Among other provisions, this law, which will go into effect on October 25, 2023, mandates that municipalities may no longer prohibit delivery of adult use cannabis and adult use cannabis products otherwise authorized under that section of the law. A copy of the legislation, with the pertinent provision highlighted, is attached for your reference.

Because Chapter 35 of the Portland City Code did not previously authorize delivery for adult use retail licensees, I have been working with Chris Beaumont, the City’s Marijuana Compliance Coordinator, with the oversight of Jessica Hanscombe, Director of Permitting and Inspections, to draft proposed changes to Chapter 35 to bring us into compliance with Maine law. Attached please find the redlined version of Chapter 35, which contains the following proposed changes by section:

- **35-2** - Added definition of “Mobile Sales” to distinguish between sales from vehicles and authorized deliveries, which require placing an order with a licensee, which is then delivered.
- **35-24 - Cultivation Licenses**
 - Added (h) which requires an applicant wishing to offer delivery to complete a mobile security form, and provide proof of registration, insurance and driver’s licenses for all employees who could be making deliveries, for safety purposes.
- **35-25 - Manufacturing Licenses**
 - Added (i) which contains the same provisions as 35-24 (h), above.

- **35-26 - Retail and Dispensary Licenses**
 - Added (e) which contains the same provisions as 35-24(h).
- **35-27 - Small Scale Caregiver License.**
 - Added (f) which contains the same provisions as 35-24(h).
- **35-36 - Security Requirements**
 - (b) Mobile Security - because the list of licensees who can offer delivery service is expanded, changed the language to include “authorized deliveries” to cover any licensee who is authorized by law to deliver.
- **35-43 - Additional Retail Store and Dispensary Requirements**
 - (a)(3) - Added specification that all deliveries must be made either to an adult over 21 or to a qualifying medical patient, as specified under Maine law.
 - (f) - added “and delivery” to “fixed location sales”
 - (f)(1) removed this section which previously prohibited deliveries
 - (f)(2) renumbered, removed much of the detail in this section which is now contained in the definition of “Mobile Sales” in section 35-2.
 - (f)(3) renumbered
 - (f)(4) removed, as it is no longer necessary under the new law to specifically allow medical licensees to provide delivery, since delivery is now permitted
 - (j) Annual training. Added any staff who conduct deliveries to the list of employees who must attend annual training.

Given that the changes to the law go into effect on October 25 of this year, we are requesting that the Committee forward the recommended changes to Chapter 35 of the City Code to the City Council for consideration as soon as possible. Staff will be available to answer any questions the Committee might have.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1205 - L.D. 1880

An Act to Amend the Adult Use Cannabis Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 28-B MRSA §105, first ¶, as amended by PL 2021, c. 628, §1 and c. 669, §5, is further amended to read:

The department shall implement and administer a system, referred to in this section as "the tracking system," for the tracking of cannabis plants, adult use cannabis and adult use cannabis products from immature cannabis plant to the point of retail sale, return, disposal or destruction. The tracking system must allow for cannabis plants at the stage of cultivation and upon transfer from the stage of cultivation to another licensee to be tracked by group. The department may implement a tracking system that allows adult use cannabis or adult use cannabis products to be tracked by group.

Sec. 2. 28-B MRSA §105, 2nd ¶, as enacted by PL 2021, c. 628, §1 and amended by c. 669, §5, is further amended to read:

The department shall ensure that the system implemented and administered under this section, whether tracking individually or by group, maintains a detailed record at every stage from immature cannabis plant to the point of retail sale, return, disposal or destruction.

Sec. 3. 28-B MRSA §114 is enacted to read:

§114. Confidentiality

The home address, telephone number and e-mail address of the applicant, employees of the applicant and all natural persons having a direct or indirect financial interest in the applied-for license are confidential.

Sec. 4. 28-B MRSA §501, sub-§3, ¶D, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

D. A nursery cultivation facility may sell to consumers only immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis pursuant to subsection 11 or from the nursery cultivation facility under this paragraph. Sales to consumers ~~by~~ from a nursery cultivation facility:

(1) Must be conducted within a portion of the licensed premises of the nursery cultivation facility that is dedicated to consumer sales of immature cannabis plants, seedlings, cannabis seeds and agricultural or gardening supplies relating to the cultivation of cannabis. A nursery cultivation facility licensee shall ensure that the portion of the licensed premises of the nursery cultivation facility that is dedicated to consumer sales complies with all applicable requirements of this chapter and the rules adopted pursuant to this chapter concerning the operation of cannabis stores; and

(2) Are subject to the sales tax imposed pursuant to Title 36, section 1811 and must be collected and remitted as required by subsection 9.

Sec. 5. 28-B MRSA §501, sub-§10, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

10. Tracking. In accordance with the requirements of section 105, a cultivation facility licensee shall track the adult use cannabis it cultivates from immature cannabis plant to the point at which the cannabis plant or the cannabis produced by the cannabis plant is delivered or transferred to a products manufacturing facility, a testing facility, a cannabis store or another cultivation facility or is disposed of or destroyed. If a cultivation facility receives a return of a cannabis plant, cannabis flower or cannabis trim from a products manufacturing facility, a cannabis store or another cultivation facility, the cultivation facility licensee receiving the return shall track the returned cannabis plant, cannabis flower or cannabis trim to the point at which the return is transferred to a products manufacturing facility, a testing facility, a cannabis store or a cultivation facility or is disposed of or destroyed.

Sec. 6. 28-B MRSA §501, sub-§11 is enacted to read:

11. Delivery service. A tier 1 cultivation facility under section 301, subsection 1, a tier 2 cultivation facility under section 301, subsection 2 and a nursery cultivation facility may sell to consumers through a delivery service operated under the same requirements as for cannabis stores under section 504, subsection 9, but a nursery cultivation facility may sell under this subsection only those items authorized for sale under subsection 3, paragraph D. A cultivation facility authorized to conduct retail sales under this subsection shall ensure that the tax imposed on the sale of adult use cannabis and adult use cannabis products to a consumer pursuant to Title 36, section 1811 is collected and remitted in accordance with the requirements of Title 36, Part 3 and the rules adopted pursuant to Title 36, Part 3.

Sec. 7. 28-B MRSA §502, sub-§13, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

13. Tracking. In accordance with the requirements of section 105, a products manufacturing facility licensee shall track the adult use cannabis it uses in its manufacturing processes from the point the cannabis is delivered or transferred to the products manufacturing facility by a cultivation facility to the point the cannabis or cannabis concentrate or an adult use cannabis product produced using the cannabis or cannabis concentrate is delivered or transferred to another products manufacturing facility, a testing facility or a cannabis store or is disposed of or destroyed. If a products manufacturing facility licensee receives a return of cannabis, cannabis concentrate or an adult use cannabis product from another products manufacturing facility or a cannabis store, the products manufacturing facility licensee shall track the cannabis, cannabis

concentrate or adult use cannabis product until transferred, whether in its original form or as a cannabis product, to another products manufacturing facility or a cannabis store or disposed of or destroyed.

Sec. 8. 28-B MRSA §502, sub-§14 is enacted to read:

14. Return of cannabis plant, flower or trim. Notwithstanding any provision of law to the contrary, a products manufacturing facility licensee may return a cannabis plant, cannabis flower or cannabis trim to a cultivation facility from which the cannabis plant, cannabis flower or cannabis trim was received, as long as the products manufacturing facility licensee tracks the cannabis plant, cannabis flower or cannabis trim until transferred to the cultivation facility and as long as the cultivation facility accepts returns.

Sec. 9. 28-B MRSA §504, sub-§8, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

8. Tracking. In accordance with the requirements of section 105, a cannabis store licensee shall track all adult use cannabis and adult use cannabis products from the point at which the cannabis or cannabis products are delivered or transferred to the cannabis store by a cultivation facility or a products manufacturing facility to the point at which the cannabis or cannabis products are sold to a consumer, are delivered or transferred to a testing facility, are returned to a cultivation facility or a products manufacturing facility from which the cannabis or cannabis products were received or are disposed of or destroyed.

Sec. 10. 28-B MRSA §504, sub-§9, as enacted by PL 2021, c. 667, §3 and amended by c. 669, §5, is further amended to read:

9. Limited delivery service. A cannabis store, cultivation facility or products manufacturing facility may operate a limited delivery service for the delivery of immature cannabis plants, seedlings, adult use cannabis and adult use cannabis products in accordance with the requirements of this subsection. A cannabis store may not deliver adult use cannabis or an immature cannabis plant, seedling or adult use cannabis product to a person under 21 years of age. **A municipality may not prohibit delivery of adult use cannabis and adult use cannabis products authorized under this subsection.**

A. A cannabis store, cultivation facility or products manufacturing facility operating a limited delivery service shall ensure that cannabis store employees engaging in delivery have received training, prescribed by the department by rule, on how to properly verify the age of a person making a purchase for delivery and how to ensure that no deliveries are made to a person under 21 years of age.

B. A cannabis store, cultivation facility or products manufacturing facility operating a limited delivery service may deliver ~~only to a residential dwelling and may not deliver to any residential dwelling located~~ to any location in a municipality, except locations within a safe zone designated by a municipality under Title 30-A, section 3253. A ~~cannabis store operating a limited delivery service may deliver to a residential dwelling in any municipality in the State regardless of whether the municipality has approved the operation of cannabis stores.~~

C. A cannabis store, cultivation facility or products manufacturing facility operating a limited delivery service may deliver to a hotel or business as long as the cannabis store, cultivation facility or products manufacturing facility has received written consent for

delivery to the hotel or business from an authorized employee of the hotel or business and the cannabis store, cultivation facility or products manufacturing facility retains a copy of the written consent. The written consent must be maintained and open to inspection by the department in accordance with section 511.

The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 28-B MRSA §504, sub-§11 is enacted to read:

11. Return of adult use cannabis. Notwithstanding any provision of law to the contrary, a cannabis store licensee may return a cannabis plant, cannabis flower and cannabis trim to a cultivation facility from which the cannabis plant, cannabis flower or cannabis trim was received, or return cannabis or cannabis products to the products manufacturing facility from which the cannabis or cannabis product was received, as long as the cannabis store licensee tracks the return as required in subsection 8 until transferred to the cultivation facility or products manufacturing facility and as long as the cultivation facility or products manufacturing facility accepts returns.

Sec. 12. 28-B MRSA §602, sub-§1, ¶C, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

C. Dangerous yeasts, molds and mildew as specified in rules adopted by the department;

Sec. 13. 28-B MRSA §602, sub-§1-A is enacted to read:

1-A. Testing of returns. Cannabis and cannabis products returned pursuant to section 502, subsection 14 or section 504, subsection 11 must be tested prior to being resold or redistributed. The department may limit the mandatory testing required for returned cannabis and cannabis products by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 14. 28-B MRSA §702, sub-§1, ¶B, as enacted by PL 2017, c. 409, Pt. A, §6, is repealed.

Sec. 15. 28-B MRSA §702, sub-§2, ¶C, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

C. A prohibition on opt-in advertising or marketing that does not permit an easy and permanent opt-out feature; ~~and~~

Sec. 16. 28-B MRSA §702, sub-§2, ¶D, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

D. A prohibition on advertising or marketing directed toward location-based devices, including, but not limited to, cellular telephones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature-; and

Sec. 17. 28-B MRSA §702, sub-§2, ¶E is enacted to read:

E. Specific limitations on signs, advertising and marketing to minimize the appeal of adult use cannabis and adult use cannabis products to persons under 21 years of age.

Sec. 18. 28-B MRSA §702, sub-§3 is enacted to read:

3. Restrictions on signs, advertising and marketing. A licensee may advertise or market the promotion of the licensee's business and adult use cannabis and adult use cannabis products sold by the licensee, including the display of a sign on the licensed premises and off the licensed premises on the exterior of a motor vehicle in accordance with this section.

Sec. 19. 28-B MRSA §703, sub-§1, ¶F, as amended by PL 2021, c. 558, §4, is further amended to read:

F. May not contain more than 10 milligrams of THC per serving of the product and may not contain more than ~~400~~ 200 milligrams of THC per package of the product, with an allowable variance rate of 10%, except that the allowable variance may not be less than 0.6 milligrams or greater than 5 milligrams. In the calculation of the amount of THC allowed under this paragraph, the allowable variance rate must be in addition to the allowable variance rate applicable to a testing facility pursuant to section 602, subsection 3;

Sec. 20. 28-B MRSA §1501, sub-§1, ¶B, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

B. Use, possess or transport at any one time up to 2 1/2 ounces of cannabis or 2 1/2 ounces of a combination of cannabis and cannabis concentrate that includes no more than ~~5~~ 10 grams of cannabis concentrate;

Sec. 21. 28-B MRSA §1501, sub-§1, ¶C, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

C. Transfer or furnish, without remuneration, to a person 21 years of age or older up to 2 1/2 ounces of cannabis or 2 1/2 ounces of a combination of cannabis and cannabis concentrate that includes no more than ~~5~~ 10 grams of cannabis concentrate;

Sec. 22. 28-B MRSA §1501, sub-§1, ¶F, as enacted by PL 2017, c. 409, Pt. A, §6 and amended by PL 2021, c. 669, §5, is further amended to read:

F. Subject to the limitations imposed under paragraph B, purchase up to 2 1/2 ounces of adult use cannabis or 2 1/2 ounces of a combination of adult use cannabis and cannabis concentrate that includes no more than ~~5~~ 10 grams of cannabis concentrate from a cannabis store; and

CHAPTER 35.

CHAPTER 35. MARIJUANA BUSINESSES.

- Art. I. Temporary Adult Use Marijuana Testing Licenses, §35-1**
- Art. II. Administrative Provisions, §35-2 - 35-7**
- Art. III. Regulation of Marijuana Businesses**
 - Div. 1. Applicability §35-8 - 35-11**
 - Div. 2. General License Requirements, §35-12 - 35-23**
 - Div. 3. Specific License Requirements, §35-24 - 35-31**
 - Div. 4. Performance Standards, §35-32 - 35-46**

ARTICLE I. TEMPORARY ADULT USE MARIJUANA TESTING LICENSES

35-1. Temporary Adult Use Marijuana Testing License.

(a) An adult use marijuana testing facility may apply for a temporary license to conduct business so long as all of the following criteria are met:

1. The applicant has received a conditional license from the State of Maine;
2. The testing facility has received site plan approval and/or a building permit for either an adult use or medical marijuana testing facility;
3. The applicant has designated an emergency contact who is available to respond to all emergency contacts by the City within one hour and to non-emergency contact by the City within 24 hours;
4. The facility will have security features 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;
5. The facility will have waste disposal measures sufficient to prevent diversion of marijuana or marijuana product, and to prevent contamination of land, water, and sewer;

6. The facility will mitigate odor in such a manner so as to eliminate the smell of marijuana at the property boundary or at any adjoining use of the property, whichever is closer;
7. The applicant has provided a floor plan for the facility;
8. The applicant has provided an operations plan for the facility; and
9. The applicant has disclosed all chemicals, solvents, and similar substances to be used in the facility.

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

(c) Any temporary license granted under this section will expire six months after the effective date of an ordinance that provides for full licensing of adult use marijuana testing facilities. After the expiration of any temporary license, a testing facility must cease operations unless and until it obtains a full license under the relevant ordinance. The granting of a temporary license under this section shall not automatically entitle an adult use marijuana testing facility to a full license, and an adult use marijuana testing facility must meet all requirements of the relevant ordinance.

(d) Applicants for a temporary license shall pay a \$500 application fee. If the applicant subsequently applies for a full license within the same twelve-month period, the application fee for the full license shall be waived, but the applicant shall be required to pay the licensing fee. Any full license will be dated back to the initial date of the temporary license.

(e) This section will expire six months after the effective date of an ordinance that provides for licensing of adult use marijuana testing facilities.

(Ord. No. 162-19/20, 4-27-2020)

ARTICLE II. 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 on more than one occasion; 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. Disqualifying violations shall not include late payments greater than 30 days of any taxes or fees that occurred during the period of the COVID-19 pandemic between March 30, 2020 and September 30, 2020 provided that all outstanding balances have been paid in full by October 16, 2020.

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.

Mobile sales shall include sales directly from motor vehicles or vessels, tours, catering, or temporary off-site sales (including but not limited to "pop-up" events, farmer's markets, fairs, festivals, concerts, trade shows, or similar). Mobile sales shall not mean authorized deliveries from a licensed businesses.

(Ord. No. 166-19/20, 5-18-2020; Ord. No. 108-20/21, effective 7-1-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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 III 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.

(Ord. No. 166-19/20, 5-18-2020)

35-5. Reserved.

35-6. Reserved.

35-7. Reserved.

(Ord. No. 166-19/20, 5-18-2020)

ARTICLE III. 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.

(Ord. No. 166-19/20, 5-18-2020)

35-9. Reserved.

35-10. Reserved.

35-11. Reserved.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020

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)(3) 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. Notwithstanding the cap in Sec. 35-43(i), and the dispersal requirements in Sec. 35-43(h), all qualified applicants who submit a complete application in the First Round of licensing shall be awarded tentative approval for a marijuana retail license. After the First Round, no additional licenses shall be awarded until the number of licensees falls below the cap, and all new licensees must meet the dispersal requirements and all other requirements of this Code.
4. Applicants with the highest point totals shall be chosen first for tentative approval for a license. Where two or more applicants cannot be awarded tentative approval due to either the 100' dispersal requirement, 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 local approvals or permits necessary to operate. 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. This paragraph shall not be construed to require a licensee to make retail sales.
6. 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.
7. 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. Licensees who have an adult use retail license may convert to a medical marijuana retail license, so long as they meet the requirements for such license and pay the licensing fees. A licensee who chooses to convert its license will be treated as a renewal license, and not a new applicant for purposes of the dispersal requirement. Applicants with a pending application for a medical marijuana retail license may convert to an adult use retail application. Applicants with a pending application for an adult use retail license may convert to an application for a medical marijuana retail application. An applicant who chooses to convert its application will not be treated as a new applicant for purposes of the dispersal requirement outlined in Sec. 35-43.

8. Following the First Round of applications, the City Manager shall accept future applications on a first-come-first-served basis and may maintain a wait list for up to one year. 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, any available license shall be awarded by lottery.

(Ord. No. 166-19/20, 5-18-2020; Ord. No. 105-20/21, 11-9-2020; By Referendum, 11-3-2020; Ord. No. 261-21/22, 8-8-2022)

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. 35-40.
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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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 35-18 above.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

35-21. Reserved.

35-22. Reserved.

35-23. Reserved.

(Ord. No. 166-19/20, 5-18-2020)

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.

(h) If the applicant intends to offer mobile delivery (if permissible under their State license), applicant must complete a mobile security form available through ~~Permitting~~ Permitting and Inspections, and must provide proof of the following:

(1) Copy of Current registration, and motor vehicle insurance for any vehicle which could be used for any mobile operations of the marijuana business;

(2) Copy of valid driver's license for all listed employees who could potentially be conducting mobile operations.

(Ord. No. 166-19/20, 5-18-2020)

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.

(i) If the applicant intends to offer mobile delivery (if permissible under their State license), applicant must complete a mobile security form available through Permitting and Inspections, and must provide proof of the following:

(1) Copy of Current registration and motor vehicle insurance for any vehicle which could be used for any mobile operations of the marijuana business;

(2) Copy of valid driver's license for all listed employees who could potentially be conducting mobile operations.

(Ord. No. 166-19/20, 5-18-2020)

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.

(e) If the applicant intends to offer mobile delivery (if permissible under their State license), applicant must complete a mobile security form available through Permitting and Inspections, and must provide proof of the following:

(1) Copy of Current registration and motor vehicle insurance for any vehicle which could be used for any mobile operations of the marijuana business;

(2) Copy of valid driver's license for all listed employees who could potentially be conducting mobile operations.

(Ord. No. 166-19/20, 5-18-2020)

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.

(f) If the applicant intends to offer mobile delivery (if permissible under their State license), applicant must complete a mobile security form available through Permitting and Inspections, and must provide proof of the following:

(1) Copy of Current registration and motor vehicle insurance for any vehicle which could be used for any mobile operations of the marijuana business;

(2) Copy of valid driver's license for all listed employees who could potentially be conducting mobile operations.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

35-29. Reserved.

35-30. Reserved.

35-31. Reserved.

(Ord. No. 166-19/20, 5-18-2020)

DIVISION 4. PERFORMANCE STANDARDS.

35-32. Applicability.

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

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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. A new or existing intrusion alarm system that is professionally monitored by a third party monitoring company and maintained in good working condition. The intrusion alarm system must include a panic button(s) that has the capability of transmitting its signal via City of Portland AES system directly to the City Dispatch Center.
3. Interior 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.
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, authorized deliveries~~by small scale earegivers~~, 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.

(Ord. No. 166-19/20, 5-18-2020; Ord. No. 261-21/22, 8-8-2022)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

35-43. Additional Retail Store and T Dispensary -Requirements.

~~Retail stores and dispensaries~~ Marijuana businesses 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.

3. Any delivery made under this Article must be to an adult 21 years of age or older or to a qualifying medical patient under Maine law.

(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 and delivery.

~~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.~~

~~21. Mobile sales, deliveries, catering, sales from vehicles or vessels, tours, and similar sales are specifically prohibited.~~

~~32. 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 one hundred (100) feet 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 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.

(i) [Repealed by referendum, 11-3-2020.]

(j) Annual training. Each manager of any marijuana retail store or dispensary, and all front line staff of each marijuana retail store or dispensary and any staff conducting mobile retail deliveries 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) (3).
3. Any new owners must meet all requirements of this Chapter and be approved by the State of Maine.

(Ord. No. 166-19/20, 5-18-2020; By Referendum, 11-3-2020)

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.

(Ord. No. 166-19/20, 5-18-2020)

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.

(Ord. No. 166-19/20, 5-18-2020

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.