

DAMARISCOTTA ADULT USE MARIJUANA LICENSING ORDINANCE

Approved by Board of Selectmen for November 5, 2019 Ballot

§903.1 - Authority.

This ordinance is enacted pursuant to authority granted under 30-A M.R.S. § 3001, and 28-B M.R.S. § 401.

§903.2 - Purpose.

The purpose of this ordinance is to provide procedures and standards relating to the operation of adult use marijuana establishments and to require their annual licensing.

§903.3 - Definitions.

As used in this ordinance, unless the context otherwise indicates, the following terms have the following meanings.

Adult Use Marijuana: marijuana cultivated, manufactured, distributed or sold by a marijuana establishment for other than medical use.

Adult Use Marijuana Cultivation: the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. "Cultivation" or "cultivate" does not include manufacturing, testing or marijuana extraction.

Adult Use Marijuana Cultivation Facility: a facility licensed under state and local laws to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores. Cultivation facilities are categorized into tiers based on the number of adult plants and usable square footage for cultivation.

Adult Use Marijuana Product: a marijuana product that is manufactured, distributed or sold by a marijuana establishment for other than medical use.

Adult Use Marijuana Store: a facility licensed under state and local laws to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a products manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Adult Use Marijuana Establishment: a cultivation facility, a products manufacturing facility, a testing facility or a marijuana store licensed under state and local laws.

Adult Use Marijuana Manufacturing or Manufacture: the production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not include cultivation or testing.

Adult Use Marijuana Products Manufacturing Facility: a facility licensed under state and local laws to purchase adult use marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package adult use marijuana and adult use marijuana products; and to sell adult use marijuana and adult use marijuana products to marijuana stores and to other products manufacturing facilities.

Adult Use Marijuana Testing Facility: a facility licensed under state and local laws to develop, research and test marijuana, marijuana products and other substances.

Disqualifying Drug Offense: a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more, but does not include (1) An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or (2) An offense that consisted of conduct that would have been permitted under the Maine Adult Use Marijuana Act.

Edible Marijuana Product: a marijuana product intended to be consumed orally, including, but not limited to any type of food, drink or pill containing marijuana or marijuana concentrate.

Marijuana Product: a product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture.

"Marijuana product" does not include marijuana concentrate. Unless otherwise defined in this Ordinance, the terms referred to in this Ordinance shall mean the same as they are defined in the definitions section in 28-B M.R.S. § 102 and when not defined in Statutes as they are referenced in Title 28-B.

§903.4 – Adult Use Establishments allowed; License required.

- (1) Pursuant to 28-B M.R.S. §403, the operation of adult use marijuana establishments is allowed, subject to the restrictions of this ordinance and applicable state and local law.
- (2) No person shall operate an adult use marijuana establishment, nor shall any property owner permit the use of his or her premises to be operated as an adult use marijuana establishment, without a valid license issued by the Town. A separate type of license must be obtained for each establishment located on the same premises. Each license shall be for a period of one year from the date of its issuance. A license must be obtained prior to the opening of an adult use marijuana establishment. Applications for renewal licenses shall be submitted at least ninety (90) days prior to expiration of the existing term. Any licensee that fails to submit a renewal application by the applicable deadline shall not have authority to operate until a license is granted.
- (3) The following adult-use establishments shall be allowed in the Town subject to the limitations in this and other Town Ordinances: testing, manufacturing, cultivation and retail sale of marijuana products not including any edible marijuana products. The sale of edible marijuana products shall not be permitted.

§903.5 – New Applications.

Each applicant for an adult use marijuana establishment license shall complete and file an application on the form provided by the Town Clerk, together with the applicable nonrefundable license fee, as well as the following supporting materials:

- (1) A copy of the applicant's state registration application and supporting documentation, as submitted to the state registration authority.
- (2) Evidence of all state approvals or conditional approvals required to operate an adult use marijuana establishment, including, but not limited to, a state registry identification card or registration certificate.
- (3) If not included in the applicant's state registration application, a description of the form of ownership of the business enterprise together with attested copies of any articles of incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern the entity that will own and/or operate the adult use marijuana establishment.
- (4) If not included in the applicant's state registration application, an affidavit that identifies all owners, officers, members, managers or partners of the applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three (3) years. Supporting documents, including but not limited to motor vehicle operator's license, motor vehicle registration, voter registration or utility bills shall be provided.
- (5) A release for each applicant and for each officer, owner, member, manager or partner of the applicant seeking a license allowing the Town of Damariscotta to obtain criminal records and other background information related to the individual.
- (6) A statement as to the type of establishment, the precise nature of the business, and a description of the nature of all products and services offered to its customers.
- (7) A description of the premises for which the license is sought, including a plan of the premises and a list of all equipment, parts and inventory used in the operation of the adult use marijuana establishment.
- (8) Evidence of an interest in the premises in which the adult use marijuana establishment will be located, together with the form of interest, along with the written consent of the owner of the premises for such use if the applicant is not the owner.
- (9) Evidence of all land use approvals or conditional land use approvals required to operate the adult use marijuana establishment, or applications that have been filed and are pending for the required approvals, including but not limited to building permit, Planning Board conditional or site plan approval, change of use permit and/or certificate of occupancy.

(10) Evidence of all other approvals or conditional approvals required to operate the adult use marijuana establishment, including any applicable food or victualer's license.

(11) Evidence of compliance with the requirements of this ordinance approval.

If the Town Clerk determines that a submitted application is not complete, the clerk shall notify the applicant within ten (10) business days of the additional information required to process the application. If such additional information is not submitted within thirty (30) days of the clerk's request, the application may be denied.

§903.6 - Investigation of applicant, officers, etc.

Upon receipt of an application or of a notice of a change of any of the individuals listed in Section 5 above, the Town shall provide copies of the completed application to the following staff members for purposes of conducting the investigations and issuing reports as listed below:

- (1) The Code Enforcement Officer shall inspect the location or the proposed location to determine whether the applicable ordinances relating to land use issues and building and safety codes issues have been satisfied and shall report findings in writing to the Town Clerk.
- (2) The Fire Chief or his/her agent shall inspect the location or proposed location to determine if all Town ordinances and any other applicable regulations concerning fire, health, and safety have been satisfied and shall report findings in writing to the Town Clerk; and
- (3) The Police Chief or his/her agent shall investigate the application, including the criminal history record information and shall report findings in writing to the Town Clerk.

§903.7 - Action on application.

- (1) Public hearing. The Town Clerk upon receipt of a completed application and upon receipt of the reports required under Section 6 above, shall schedule a public hearing at a regular or special meeting of the Board of Selectmen and shall arrange for public notice of the public hearing to appear in the newspaper of general circulation within the Town of Damariscotta at least six days prior to the date of the scheduled public hearing. The scheduling of the hearing may be delayed if there are more applications than the total number of licenses allocated per Section 903.13. Costs of the hearing notice shall be paid out of the license and processing fee. . This public hearing before the Board of Selectmen is in addition to any public hearing that may be required before the Planning Board in accordance with the Town's Land Use and Site Plan Review Ordinances.
- (2) Board of Selectmen action. The Board, after notice and public hearing, shall determine whether the applicant complies with the requirements of this ordinance.

In issuing or renewing licenses, the Board shall give consideration to:

- A. The character of the applicant
- B. the location of the place of business
- C. The manner in which the business has been operated; and

D. Whether the operation has endangered the safety of persons in or on areas surrounding the place of business.”

Upon determination by the Board that the applicant has met the requirements of this ordinance, the Town Clerk shall be authorized to issue the license.

§903.8 - Status of license—Display.

No license issued under this ordinance may be assigned or transferred to another entity. Any change in ownership or change in the officers of an owner shall require a new license. Licenses are limited to the premises for which they are issued and are not transferable to another location. The license shall be displayed in a conspicuous place in the marijuana establishment for which the license is issued.

§903.9 - Duty to update information.

Any licensee issued a license under this ordinance shall have the duty to maintain updated and accurate information regarding all of the information provided pursuant to the application process within ten days of any change of status. Failure to provide and maintain current and accurate information may result in revocation of the applicant's license.

§903.10 - Standards for approval, denial, revocation.

A license application for an adult use marijuana establishment shall be denied by the Board of Selectmen, and an existing license may be suspended or revoked by the Board of Selectmen after notice and hearing, if the applicant, or any owner of the applicant or licensee:

- (1) Fails to meet the requirements of this ordinance.
- (2) Is not at least twenty-one (21) years of age.
- (3) Is not a resident of the state of Maine.
- (4) Has had a license for a marijuana establishment revoked by a municipality or by the state.
- (5) Has not acquired all necessary state and local approvals prior to issuance of the license including any approvals required by the Planning Board or Code Enforcement Officer.
- (6) Has been convicted of a disqualifying drug offense.
- (7) Has provided false or misleading information in connection with the license application.

§903.11 - Operating Requirements.

In order to obtain a license pursuant to this ordinance, the applicant shall demonstrate to the Board of Selectmen that the following requirements will be met. A licensee shall comply with all of these requirements during the term of the license.

(1) Fixed location.

All licensed premises shall be fixed, permanent locations. Licensees shall not be permitted to operate adult use marijuana establishments in other than the licensed premises, such as at farmer's markets, farm stands or kiosks.

(2) Security.

(a) The licensed premises shall have lockable doors and windows and shall be served by an alarm system that includes automatic notification to private alarm service. Upon notification of an alarm, the licensee or an authorized representative must respond to the premises.

(b) The licensed premises shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording twenty-four hours per day, seven days per week and video shall be retained for a minimum duration fourteen (14) calendar days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.

(c) The licensed premises shall have exterior lights with motion sensors covering the full perimeter of the building(s) in accordance with applicable zoning requirements.

(3) Ventilation.

(a) The licensed premises shall comply with all odor and air pollution standards established by ordinance.

(b) All adult use marijuana establishments shall have an odor mitigation system installed that has been approved by a Maine licensed engineer, indicating that the system will provide odor control sufficient to ensure that no odors are perceptible off the premises.

(4) Compliance with requirements of state and local law.

An adult use marijuana establishment shall meet all operating and other requirements of state and local law. To the extent the state has adopted or adopts in the future any law or regulation governing marijuana establishments that conflicts in any way with the provisions of this ordinance, the more restrictive shall control.

§903.12 - Violations; penalties.

In addition to revocation or suspension of an adult use marijuana establishment license as provided in this ordinance, the violation of any provision of this ordinance shall be punished by a fine of not less than \$500.00 nor more than \$2,500.00 for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this ordinance. All fines and penalties, together with costs of prosecution of violations, which shall include the Town's cost and attorney's fees, shall inure to the benefit of the Town. This section shall be enforced by the Damariscotta Police Chief, the Damariscotta Code Enforcement Officer, and/or their designees. Notice of violations by marijuana establishment licensees of other provisions of this Code shall be provided to the Police Chief, Town officers, and Town Attorney.

§903.13 – Limitations in licenses. Lottery.

No more than the specified quantities of licenses shall be issued.

Adult use Marijuana store:	2
Adult use Cultivation Facilities:	
Tier 1 (≤ 30 adult plants, ≤ 500 sq. ft. plant canopy)	4
Tier 2 (≤ 2000 sq. ft. plant canopy)	3
Tier 3 (≤ 7000 sq. ft. plant canopy)	2
Tier 4 (≤ 20,000 sq. ft. plant canopy)	0
Nursery (≤ 1000 sq. ft. plant canopy)	3
Adult use Marijuana manufacturing facility:	3
Adult use Marijuana testing facility:	no limit

Existing licenses shall be renewed annually, unless revoked under the provisions of this ordinance, upon timely submittal of a renewal application and any required annual fees.

In the event that a greater number of valid license applications (including the applicable fees) are submitted than can be issued within these limitations within a 30 calendar day timeframe after the first conditionally approved license application is submitted, a lottery shall be conducted to randomly determine which qualified applicants shall have the first opportunity to receive the public hearings required to complete the licensing process pursuant to this Ordinance.

§903.14 - License fees; licensing process.

The annual license fees shall be set by the Board of Selectmen as part of the Town's licensing and permit fee schedule. The forms to be used and the administrative procedures required for the implementation of this Ordinance that are not specifically provided for in this Ordinance shall be developed by the Town Manager and approved by the Board of Selectmen.

§903.15 - Severability.

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

§903.16 - Appeals.

An appeal from any final decision of the Board of Selectmen under this ordinance may be taken by any party to Board of Appeals within 30 days of the decision, pursuant to Board of Appeals Ordinance Section 5(A)(3).

Ordinance effective date: January 6, 2020