

**AN ORDINANCE PERTAINING TO MEDICAL MARIJUANA**

**THE CITY OF LEWISTON HEREBY ORDAINS:**

Chapter 22 of the Code of Ordinances of the City of Lewiston, Maine is hereby amended as follows:

**CHAPTER 22**

**BUSINESSES**

**ARTICLE XV. MEDICAL MARIJUANA – DISTRIBUTION AND CULTIVATION**

**Sec. 22-420. Purpose.**

The purpose of this chapter is to implement the Maine Medical Use of Marijuana Act (“Act”) and to protect the public health, safety, and welfare of the residents and patients of the City of Lewiston by prescribing the manner in which the cultivation and distribution of medical marijuana can be conducted in the City. Further, the purpose of this chapter is to:

Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Maine Medical Marijuana Act.

Protect public health and safety through reasonable controls on marijuana cultivation and distribution operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the operation and its personnel, and other health and safety concerns.

Impose fees to cover the cost to the City of licensing the cultivation and distribution of medical marijuana in an amount sufficient for the City to recover its costs of the licensing program.

Adopt a mechanism for the monitoring compliance with the provisions of this chapter.

**Sec. 22-421. Applicability.**

This article shall apply to any registered dispensary and any registered primary caregiver located and doing business in the City of Lewiston, and to any registered patient residing within the city.

**Sec. 22-422. Definitions.**

For purposes of this article, the following definitions shall apply unless the content clearly implies otherwise:

**Cardholder** means a registered patient, a registered primary caregiver or a principal officer, board member, or employee of a registered dispensary who has been issued and possesses a valid registry identification card from the State of Maine.

**Department** means the State Department of Health and Human Services or any successor agency.

**City Department** means any or all of the chief of police, the fire chief, the director of planning and code enforcement and their designees who administer the provisions of this chapter.

**Disqualifying drug offense** means 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. It does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten (10) or more years earlier; or an offense that consisted of conduct that would have been permitted under this chapter.

**Enclosed, locked facility** means a closet, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a cardholder.

**Marijuana** means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

**Marijuana plant** means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

**Medical use** means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patient's debilitating medical condition.

**Multifamily dwelling** means a building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units, and which is not a single-family attached dwelling.

**Patient** means a person whose physician has provided a written certification to the Department for the patient's medical use of marijuana.

**Physician** means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to 32 M.R.S.A. Chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant 32 M.R.S.A. Chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

**Physician's written certification** means a document signed by a physician stating that in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

**Prepared marijuana** means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana plant or other ingredients in goods prepared for human consumption or use.

**Registered dispensary** or dispensary means a not-for-profit entity registered pursuant to State Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

**Registered patient** means a patient who has a registry identification card issued by the State of Maine.

**Registered primary caregiver** or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

**Registered primary caregiver operation** means a registered primary caregiver that cultivates marijuana for 2 or more registered patients pursuant to State law.

**Registry identification card** means a document issued by the department that identifies a person as a registered patient, registered primary caregiver, or a principal officer, board member, or employee of a registered dispensary.

**School** means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

**State Law** means the Act and any rules and regulations issued by the Department under the Act.

**Sec. 22-423. Medical marijuana license required.**

No person shall engage, operate or conduct the business of a registered dispensary or a registered primary caregiver operation in the city unless such person has first acquired a license in accordance with this Article.

**Sec. 22-424. Food establishment license.**

A registered dispensary and a registered primary caregiver must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for medical use for a registered patient.

**Sec. 22-425. Application requirements for registered dispensary.**

This section governs the license application requirements for a registered dispensary. All applications for licenses under this article shall be filed with, and in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the applicant and all other persons having a legal interest in the registered dispensary and the individual(s) hired by the applicant to manage these operations, if any. A photograph and a copy of a valid registry identification card issued by the State of Maine are required for each principal officer, board member, agent and employee of a registered dispensary.
- (2) The location of the premises for which a license is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered dispensary.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
  - (a) The boundary lines of the property for which a license is sought.
  - (b) The location of all existing and proposed buildings and structures.
  - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
  - (d) The location and characteristics of all existing and proposed vegetation to be maintained for required screening.
  - (e) The location and characteristics of all existing and proposed fencing to be maintained for required screening.
  - (f) The location and characteristics of all vehicular entrances and exits serving the property.
- (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered dispensary.
- (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, registered patient services, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, floor plans, etc.
- (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
- (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 15 copies of the license application and all supporting documentation.
- (9) Evidence of registered dispensary incorporation under Title 13B and evidence that the corporation is in good standing with the Secretary of State;

**Sec. 22-426. Background checks.**

The city clerk shall order background checks of each principal officer, board member and employee of a registered dispensary and a registered primary caregiver engaged in the cultivation of marijuana for two or more registered patients. Updated background checks shall be conducted annually at the time of license renewal. Background checks shall be conducted in each state where such individuals have resided since the age of 18.

**Sec. 22-427. Limitation on number of dispensaries.**

Not more than one registered dispensary shall be licensed to operate within the City of Lewiston. The registered dispensary must cultivate and distribute medical marijuana from one location.

**Sec. 22-428. –Requirements for registered dispensary.**

A registered dispensary shall conform to the following provisions:

- (1) It shall comply at all time and in all circumstances with State Law.
- (2) It shall not be located within 500 feet of the property line of a preexisting public or private school;
- (3) It shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (4) Access to the enclosed, locked facility shall be limited to a cardholder who is a principal officer, board member, or employee of a registered dispensary when acting in his or her official capacity
- (5) It shall implement appropriate security and safety measures provisions in accordance with Sec. 22-431 and any city department rules regarding security and safety to the satisfaction of the city department to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (6) It shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana;

**Sec. 22-429. Application requirements for registered primary caregiver operation.**

This section governs the license application requirements for a registered primary caregiver operation. All applications for licenses under this article shall be filed with, and, in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the registered primary caregiver. A photograph and a copy of a valid registry primary caregiver identification card issued by the State of Maine are required.
- (2) The location of the premises for which a permit is sought identified by city tax map number and street address and a copy of the property deed and demonstration of

- right, title or interest for use of the property as a registered primary caregiver operation.
- (3) The dimensions and acreage of the property.
  - (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
    - (a) The boundary lines of the property for which a permit is sought.
    - (b) The location of all existing and proposed buildings and structures.
    - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
    - (d) The location and characteristics of all vehicular entrances and exits serving the property.
  - (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered caregiver operation.
  - (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, security provisions, hours of operation, identification of other required licenses, floor plans, etc.
  - (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
  - (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 3 copies of the license application and all supporting documentation.

**Sec. 22-430. Requirements for registered primary caregiver operation.**

Registered primary caregiver operations shall conform to the following provisions:

- (1) They shall comply at all times and in all circumstances with the provisions of State Law;
- (2) They shall not cultivate marijuana within or on the property of a multifamily dwelling;
- (3) They shall not cultivate marijuana within 500 feet of the property line of a preexisting public or private school;
- (4) They shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered primary caregiver operation, unless the plants are being transported because the primary caregiver is moving;
- (5) They shall comply with security and safety related provisions contained in Sec, 22-431 and any city department rules regarding security and safety;
- (6) They shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana.

**Sec. 22-431. Dispensary and primary caregiver operation security and safety - protections of premises and persons.**

A registered dispensary and registered primary caregiver operation shall implement appropriate security and safety measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana. Security measures to protect the premises, registered patients, registered primary caregivers, and principal officers, board members and employees of the registered dispensary shall include but are not limited to the following:

- (1) On-site parking in accordance with Appendix A, Article XII, Sec. 17(d) of the Code of Ordinances of the City of Lewiston (hereinafter referred to as the Code) shall be provided.
- (2) Exterior lighting shall be provided in accordance with Appendix A, Article XIII, Sec.4 (n) of the Code to deter nuisance activity and facilitate surveillance;
- (3) Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device shall be installed to detect an unauthorized intrusion.
- (4) The interior shall be equipped with electronic monitoring, video cameras, and panic buttons.
- (5) Satisfy all applicable State of Maine and city code requirements such as but not limited to electrical, plumbing, building, ventilation, energy conservation, life safety, mechanical and the environmental performance standards with respect to odors and other environmental considerations as per Appendix A, Article XII, Section 19 of the Code.

**Sec. 22-432. Inspection of Registered Dispensary.**

A registered dispensary is subject to inspection as follows:

- (1) A registered dispensary shall allow the City Department entry without notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered dispensary shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered dispensary may receive written notice of the nature of the violations. The registered dispensary shall notify in writing the representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered dispensary subject to revocation by the City Council.

**Sec. 22-433. Inspection of registered primary caregiver operation.**

A registered primary caregiver operation is subject to inspection as follows:

- (1) A registered primary caregiver operation shall allow the City Department entry upon 24 hours notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered primary caregiver operation shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered primary caregiver operation may receive written notice of the nature of the violations. The registered primary caregiver operation shall notify in writing representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered primary caregiver operation subject to revocation by the city administrator.

**Sec. 22-434 Denial of application.**

The city clerk may deny an application for a license based on the following:

- (1) The applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information; and,
- (2) The determination that the information provided was materially inaccurate or incomplete.

**Sec. 22-435. Disqualifying drug conviction.**

The City shall not approve a license to a registered dispensary or to a registered primary caregiver operation if any principal officer, board member, agent or employee of a dispensary, or the registered primary caregiver, has been convicted of a disqualifying drug offense in Maine or another jurisdiction.

**Sec. 22-436 Revocation of license.**

The city clerk or the City Department shall temporarily suspend the license for a registered dispensary or a registered primary caregiver operation that sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under State Law and for any violations of the provisions contained within this chapter. Grounds for revocation of a license by the city council of a registered dispensary or revocation of a license by the city administrator of a registered primary caregiver operation include the following:

- (1) The dispensary or caregiver is convicted of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana for medical purposes in accordance with these rules.
- (2) A registered caregiver or a registered dispensary cardholder is convicted of a disqualifying drug offense.

- (3) A registered dispensary or registered primary caregiver cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the dispensary or registered primary caregiver to cultivate marijuana; or a registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a patient's registered primary caregiver.
- (4) Failure to cooperate with required inspections.
- (5) Violations of any laws, rules or ordinances that govern the operation of a registered dispensary or registered primary caregiver operation.
- (6) Committing, permitting, aiding or abetting any illegal practices in the operation of a dispensary or primary caregiver operation.
- (7) Conduct or practices that are detrimental to the safety and welfare of registered patients or registered primary caregivers; and,
- (8) Providing information that is materially inaccurate or incomplete.

**Sec. 22-437 License administration for registered dispensary.**

- (1) City council review. License applications for a registered dispensary shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) If the application for a registered dispensary is deemed to be complete, the city clerk will notify the applicant that the registered dispensary must first obtain a conditional use permit from the planning board along with development review approval if required pursuant to Appendix A, Article XIII Sec. 2 of this Code. The conditional use permit must be obtained prior to scheduling a public hearing for the city council to consider the license to establish the proposed registered dispensary. In addition, the department shall provide a recommendation to the city council prior to said public hearing.
- (3) Conditions of license approval. The city council may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
  - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
  - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.
  - (c) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board or by the director of planning, shall be installed and completed to the satisfaction of the city clerk prior to the issuance of any license under this article.

**Sec. 22-438 License administration for registered primary caregiver operation.**

- (1) City clerk review. License applications for a registered primary caregiver operation shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete and if the license should be granted. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) Conditions of license approval. The city clerk and the City Department may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
  - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
  - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.

**Sec. 22-439 Screening requirements.**

A registered dispensary shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Notwithstanding this requirement, plantings or other means may be used to satisfy the requirement for a visual screen of six feet in height.

**Sec. 22-440 Semi-annual meetings with the City Department.**

A minimum of two meetings per calendar year will be conducted at the registered dispensary to allow the applicant and the City Department the opportunity to discuss issues and to establish a good working relationship between the City Department and the dispensary.

**Sec. 22-441 Requirements for registered patients and registered caregivers that do not cultivate marijuana for more than one registered patient.**

A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall conform to the following provisions:

- (1) A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall comply at all time and in all circumstances with the provisions of State Law;
- (2) A registered patient or a registered primary caregiver that cultivates marijuana shall keep the marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana unless the plants are

being transported because the patient is moving or taking the plants to another patient's home.

**Sec. 22-442 Penalty for violation of article.**

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

- (1) Temporary suspension. The city clerk and the City Department is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- (2) Suspension or revocation. The city council may suspend or revoke a license for a registered dispensary in accordance with the provisions of section 22-44 of this chapter. The city administrator may suspend or revoke a license for a primary caregiver operation in accordance with the provisions of section 22-436 of this article.
- (3) Civil penalties. A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city. Notwithstanding the above the chief of police may initiate criminal proceedings relative to individuals engaged in the unlawful distribution, use and cultivation of medical marijuana.

**Sec. 22-443. Confidentiality.**

All applications and supporting information submitted by primary caregivers under this ordinance, and the identity of registered primary caregivers and registered patients, shall be confidential pursuant to the Act, 22 M.R.S.A. §2425(8), and the Maine Freedom of Access law, 1 M.R.S.A. §402(3)(F).

NOTE: Additions are underlined; and deletions are ~~struck out~~.