



Local Regulatory Authority

Under the “opt-in” process of the Adult Use Marijuana Act, commercial testing, manufacturing, cultivation and sale of adult use marijuana is, by default, prohibited until municipalities vote to generally authorize the activity within their jurisdiction. Additionally, the law provides broad home rule authority for municipalities to regulate commercial adult use marijuana activity locally, if they choose to do so. An active license cannot be issued until OMP receives confirmation from the municipality that it has authorized the operation of that type of establishment within its jurisdiction, and the licensee has met all applicable local requirements to the satisfaction of the municipality.

→ General Authorization

No adult use marijuana establishment may obtain an active license to operate unless the municipality in which the establishment is going to be located has voted to authorize its operation. 28-B M.R.S § 402(1)(A). This “general authorization” can only be accomplished by vote of the legislative body - meaning the town meeting vote or town or city council vote. General authorization can take various forms, depending on the extent to which the municipality wants to regulate such establishments locally. If the municipality wants to take a “hands-off” approach to regulation, and let the operation of adult use marijuana be governed by the state licensing process and the market, its legislative body can approve a simple ordinance or warrant article authorizing the operation of some or all types of adult use marijuana establishments (see the link to sample warrant articles above).

→ Types of Local Regulation

Municipalities may also enact additional local requirements by ordinance, if they want to take a more active role in regulating the location, number, and operation of adult use marijuana establishments. By ordinance municipalities have the ability to:

- 1) Limit the number of some or all types of establishments;
- 2) Place restrictions on the location of some or all types of establishments;
- 3) Impose performance standards; or
- 4) Require licenses and payment of reasonable licensing fees.

Municipalities may choose to amend existing land use or zoning ordinances to include certain requirements for adult use marijuana establishments. Municipalities may also choose to enact a stand-alone ordinance governing the operation of adult use marijuana establishments within the municipality.

- **Zoning:** Through zoning ordinances, municipalities have the ability to divide the municipality into districts and apply different regulations for each district. A municipality with zoning may wish to limit adult use marijuana establishments to one or a few districts in the municipality, where such activity is more consistent with surrounding activities. For example, municipalities may want to restrict cultivation facilities to agricultural districts, retail stores to commercial districts, or testing facilities to industrial districts. In Maine, zoning must be done pursuant to and consistent with a comprehensive plan adopted by the legislative body. 30-A M.R.S. §



4352(2). Maine law also establishes special notice and hearing requirements for the adoption or amendment of zoning ordinances. 30-A M.R.S. §§ 4352(9), (10). For additional information on zoning, see [Chapter 7](#) of MMA's Planning Board Manual.

- **Other land use ordinances:** Municipalities are not required to enact zoning ordinances to regulate marijuana establishments. Pursuant to 30-A M.R.S. § 3001, municipalities have broad home rule authority to enact or amend municipal-wide land use ordinances that apply standards to marijuana establishments wherever located in the municipality. Examples of non-zoning land use regulation for adult use marijuana establishments could include, but are not limited to: odor control, pesticide control, performance standards, site plan review, home occupation permits, building permits for new structures, signage restrictions or parking setback requirements.
- **Licensing:** Municipalities have the authority to impose licensing requirements and associated fees on the various types of adult use marijuana establishments. Municipalities can require adult use marijuana businesses or owners to be licensed, either through a general business licensing ordinance, or through marijuana-specific licensing requirements. Any fees established pursuant to this authority must reasonably reflect the municipality's costs associated with the license procedure and enforcement. 30-A M.R.S. § 3702.

Given the various types of municipal governments throughout the state, and the range of options for local regulation of adult use marijuana establishments, there is no "one size fits all" ordinance for adult use marijuana establishments. Any local regulations for adult use marijuana establishments will need to be tailored to accommodate the specific interests and needs of the municipality, so it is strongly recommended that municipalities work with an attorney when developing such regulations. For examples of what some Maine towns and cities have done, see the link to OMP's list of opt-in municipalities and the various sample ordinances in the **Sample Forms** section.

→ Plantations

Plantations do not have general home rule authority to enact ordinances (See 30-A M.R.S. §§ [2001](#), [7051](#), [7059](#); and [1 M.R.S. §72\(13\)](#)). Instead, plantations must be able to refer to specific statutory authorization to regulate a particular subject area. The Adult Use Marijuana Law includes plantations in its definition of "municipality," thereby providing plantations with the specific statutory authority required to enact ordinances regulating adult use marijuana. 28-B M.R.S. § 102(38). However, any planning, zoning, or subdivision regulations in a plantation under the jurisdiction of the Land Use Planning Commission (LUPC) are subject to the Commission's oversight authority. [12 M.R.S. § 685-A\(4-A\)](#). For more on plantation ordinance authority see our [Ordinance Enactment](#) Information Packet.

→ Maine Agriculture Protection Act (a.k.a. "Right to Farm" law) Does Not Apply

Ordinances regulating adult use marijuana establishments are not subject to limitations on local regulation of farmers in the Maine Agriculture Protection Act ([Title 7, Ch. 6](#)) or the state licensing exemption authority provided to municipalities under the Food Sovereignty Law ([Title 7, Ch. 8-E](#)). 28-B M.R.S. § 401.

→ Minimum Requirements



The Adult Use Marijuana Act does establish an express limitation on home rule authority by imposing two minimum requirements for municipal approval of adult use marijuana establishments. 28-B M.R.S § 402(2). All municipalities, even those with nothing more than a warrant article authorizing adult use establishments, must make sure that the establishments operating within the municipality meet the following minimum requirements:

- Municipalities cannot authorize the operation of marijuana establishments less than 1,000 feet away from the property line of a school. Municipalities may adopt an ordinance reducing the distance from schools in which an adult use marijuana establishment may operate to less than 1000 feet, but under no circumstance may that distance be less than 500 feet.
- The applicant must show entitlement to possession of the property in which the adult use marijuana establishment is to operate. This may be evidenced by a lease or rental agreement if the applicant does not own the property.

➔ **Municipal Certification Form**

As mentioned above, OMP will not issue an active license until it receives confirmation directly from the municipality that the conditional licensee is allowed to operate in that municipality. According to the Adult Use Marijuana Act, OMP is responsible for developing a certification form intended to provide such confirmation to OMP. 28-B M.R.S § 205(4)(B). When asked to do so by the conditional licensee, OMP will deliver a certification form directly to the municipal officers, who must complete the form and return it directly to OMP. Towns and plantations in the unorganized and deorganized areas must first certify to the LUPC, which will then return this form to OMP on behalf of the plantation or town. 28-B M.R.S. § 403(3). In general, the certification form will ask the municipality to confirm 3 things:

- The legislative body has voted to “opt-in” to the type of establishment that is the subject of the application;
- The location of that establishment meets the appropriate setback from the property line of a school, and the applicant has shown proof of entitlement to the premises; and
- The applicant has met all applicable local land use, zoning, permitting, or licensing requirements, if any.

➔ **OMP Form Completion; Failure to Act**

A municipality has 90 days to complete the certification form and return it to OMP. If the municipality still needs time to complete all necessary local review and approval processes required of the conditional licensee, then the municipality can notify OMP of this fact before the 90 days have expired to extend the deadline an additional 90 days. If a municipality fails to act on a conditional licensee’s request within the allowed timeframe, it is deemed a denial, which is a final governmental action appealable to Superior Court pursuant to Rule 80B. 28-B M.R.S § 402(5).