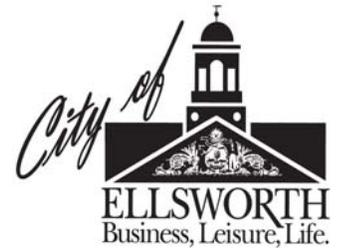


City of Ellsworth
Chapter 14

Licenses and Permits

A true copy –

Attest: Heidi-Noel Grindle
City Clerk



Adopted 10/21/1996
Amended 01/27/1997
Amended 02/24/1997
Amended 03/17/1997
Amended 07/21/1997
Amended 08/18/1997
Amended 11/16/1998
Repealed 08/20/2007

New Ordinance Adopted 08/20/2007
Effective 09/01/2007

Amended 06/16/2008
Amended 08/17/2009
Amended 12/13/2010
Amended 10/17/2011
Amended 04/16/2012 effective 06/16/2012
Amended 09/15/2014
Amended 05/16/2016

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CHAPTER 14 LICENSES AND PERMITS

ARTICLE I

DEFINITIONS

Except as specifically defined herein, all words in this ordinance shall carry their customary dictionary meanings. For the purpose of this ordinance, certain words or terms used herein are to be construed or defined as follows:

Act Upon: To go through the process of deciding whether the application has met the criteria to be approved.

Alcoholic Beverage: All liquors, including but not limited to wine, beer, and spirits.

Amusement: Live music, dancing, entertainment, exhibition, performances, shows, diversions. (No adult activity, see Ordinance 46 "Paid Sexual Contact".)

Amusement (Special): Live music, dancing, entertainment, exhibition, performances, and shows, diversions that include the offering of alcoholic beverages. (No adult activity, see Ordinance 46 "Paid Sexual Contact".)

Arcade: Building or area containing pinball, video, and bagatelle games, including pool and billiards.

Automobile Graveyard: Refer to "Junkyard".

Bagatelle: Coin operated device involving the rolling of balls into scoring areas - refer to "Arcade".

Bed and Breakfast: Refer to "Lodging House".

Boarding Home: Refer to "Lodging House".

Bottle Club: Building or portion thereof where amusement is allowed and a fee is charged. Beverages and/or food may be consumed on premises with associated licenses.

Branch Establishment: A division of a business or other organization.

Business: Any trade, calling, profession, or occupation, which regularly provides goods and/or services within the corporate limits of the City of Ellsworth.

Cardholder, Qualified Patient (medical marijuana): Cardholder means a registered patient or a registered primary caregiver who has been issued and possesses a valid registry identification card.

Cardholder, Qualified Employee (medical marijuana): Cardholder means a principal officer, board member or employee of a dispensary who has been issued and possesses a valid registry identification card.

Class A Establishment: Designated as an establishment requiring Amusement, Lodging House, Liquor and Victualer's License.

Class B Establishment: Designated as an establishment requiring a combination of three of the following licenses: Amusement, Lodging House, Liquor and Victualer's. Combinations may include:

1. Lodging House, Liquor, Victualer's
2. Lodging House, Liquor, Amusement
3. Lodging House, Victualer's, Amusement
4. Victualer's, Liquor, Amusement

Class C. Establishment: Designated as an establishment requiring a combination of two of the following licenses: Amusement, Lodging House, Liquor, and Victualer's. Combinations may include:

1. Amusement and Victualer's
2. Amusement and Liquor
3. Lodging House and Victualer's
4. Lodging House and Liquor
5. Amusement and Lodging
6. Liquor and Victualer

Closing-Out Sales: This licensing procedure governs any sale which states either directly or by implication that the intent of the seller is to dispose of the entire stock of goods with a view to permanently terminate further business after that disposal is complete.

Conditions of Record: For the purpose of this Chapter, this term shall mean any formal written complaint or written violation.

¹Consumer Fireworks:

"Consumer Fireworks" as defined in, Sec. 1. 8 MRSA §221-A, sub-§1-A has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47.

"Consumer Fireworks" does not include the following products as defined by the State Fire Marshal by rule:

A. Missile-type rockets:

A device similar to a skyrocket in size, composition, and effect that uses fins rather than a stick for guidance and stability. Missiles shall not contain more than 20 grams of total chemical composition.

B. Helicopters and aerial spinners:

A tube containing more than 20 grams of chemical composition, with a propeller blade attached. Upon ignition, the rapidly spinning device rises into the air. A visible or audible effect may be produced at or near the height of flight.

C. Sky rockets and bottle rockets:

Cylindrical tube containing not more than 20 grams of chemical composition, as prescribed under section 3.7 and Table 4.3-1 of the *American Pyrotechnics Association* Standard 87-1 with a wooden stick attached for guidance and stability. Rockets rise into the air upon ignition. A burst of color and/or sound may be produced at or near the height of flight.

¹ Added 4/16/2012 effective 6/16/2012

Dance Hall: Building or portion thereof where dancing is allowed. The term shall also include public or private parking lots, streets, or area(s) set aside for dancing - refer to "Amusement and Amusement (Special)".

Dispensary: A Registered Dispensary or Dispensary means a not-for-profit entity registered pursuant to 10-144 CMR Chapter 122 Section 6 consisting of a Medical Marijuana Cultivation Facility, a Medical Marijuana Retail Facility, or a Medical Marijuana Combined Facility (Medical Marijuana Cultivation Facility and a Medical Marijuana Retail Facility as defined:

1. **Medical Marijuana Cultivation Facility (Cultivation Facility):** A not-for-profit facility limited to the acquisition and possession of medical marijuana; cultivation or growing of medical marijuana; manufacturing of medical marijuana; delivering, transporting and transferring of medical marijuana to a Medical Marijuana Retail facility.
2. **Medical Marijuana Retail Facility (Retail Facility):** A not-for-profit facility limited to acquisition and possession of medical marijuana; the selling, supplying or dispensing of medical marijuana and of paraphernalia or related supplies and educational materials to registered patients who have designed the Medical Marijuana Retail Facility to dispense medical marijuana for their medical use and to registered primary caregivers of those patients.

Eating Establishment: Refer to "Victualer's"

Exhibition: A public showing for which a fee may or may not be charged.

Food Establishment (medical marijuana): A dispensary that prepares goods containing marijuana for medical use by a registered patient.

Highway Opening: Refer to "Street Opening".

Hotels: Refer to "Lodging Houses".

Innkeepers: Refer to "Lodging Houses".

Itinerant Vendors: Refer to "Transient Sellers".

²Junkyard/Automobile graveyard –

1. *Junk Yard* - a yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps and sanitary landfills.
2. *Automobile Graveyard* - A place occupied by three (3) or more unregistered, unserviceable, discarded, or junked automotive vehicles, or bodies, engines, or other parts thereof sufficient in bulk to equal two (2) vehicles or bodies, also referred to as a motor junk yard. (But excluding vehicle repair garages where autos are being overhauled or held temporarily pending insurance claims, etc.)

License: As used in this Chapter, this term shall also mean permit and approval from the authority having jurisdiction.

² Added 6/16/08

License Exemptions: Any organization/charity holding a Cert. (IRS 501 (c) (3)) verifying nonprofit status is exempt from the monetary requirements of this Chapter, however still subject to inspections pursuant to Article III Section 304 through 315.

Live Music: People performing live in a musical capacity.

Lodging House: Place providing sleeping accommodations with or without meals and charges a fee, including but not limited to bed and breakfast, boarding houses, hotels, inns and motels.

Lunch Wagons: Establishment selling foods of any sort for consumption on or off premises, mobile in design. Refer to "Victualer."

Mass Gathering: Outdoor events, including but not limited to, exhibitions, festivals, music concerts and fairs where more than 250 persons are reasonably expected to attend.

Marijuana: Marijuana means the leave, 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, and 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.

Medical Use (medical marijuana): 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 patients debilitating medical condition.

Non-Business: Any schools, churches, athletic groups, non-profit organizations, persons fulfilling work under a warranty or professionals performing work within their profession, on an itinerant basis, within the City limits of Ellsworth who are licensed by the State of Maine.

Patient (medical marijuana): Means a person whose physician has provided a written certification to the department for the patient's medical use of marijuana.

Permit: A document or certificate giving permission to operate a business.

Person: Individual, firm, partnership, joint venture, association, corporation, or any other group, organization, entity acting as a unit in the plural as well as the singular number, legal entity, including but not limited to lessee and manager.

Premises: For the purpose of this Chapter, this term shall mean any building, room, structure, mobile unit, or area wherein or whereat the activity takes place.

Public Exhibition: Refer to "Exhibitions."

Registered Patient (medical marijuana): Registered patient means a patient who has a registry identification card issued by the State of Maine.

Regularly: At least once a month.

Special Amusements: Refer to "Amusement (Special)"

Special Event: An event which:

1. Is operated in a temporary structure or in the out-of-doors.
2. Includes, but is not limited to, circuses, fairs, carnivals, festivals, religious revivals, political rallies, vehicle shows and displays, swap meets, rodeos, and similarly recognized temporary activities.
3. Does not include wedding and funeral ceremonies, elections, private yard sales, car washes (fundraising), and activities such as retail sales promotions conducted under an existing business permit that could otherwise be lawfully conducted in accordance with the provisions of the zoning restrictions in the district where such promotion takes place.

Street Opening: Method of excavation and destruction of pavement and its associated gravel surface (shoulders) within a public way. (See Unified Development Ordinance, Article 9 “Street Design and Construction Standards)

Taxicab: A vehicle used for the conveyance of persons for a fee.

Taxicab Driver:A person with an active Maine Driver’s License and legally permitted to operate a taxicab through the City of Ellsworth.

Taxicab Stands: A parking place within but along the shoulder of a public road right- of-way, designated specifically and reserved for the temporary parking of taxicabs for the purpose of loading and unloading passengers and their property.

Traffic Trip Generation: Number of vehicles that visit a location in a peak hour.

Transient Seller: Person(s) with no business office or location within the City of Ellsworth or State of Maine passing through or by the City with only a brief stay.

Vendor: Someone who promotes or exchanges goods or services for money.

Victualer’s: Provider of prepared food, of any sort, for public consumption either on or off premises for a fee.

ARTICLE II
LICENSE/ PERMIT FEE SCHEDULE

TYPE OF LICENSE	TERM OF LICENSE	FEE	AUTHORITY
AMUSEMENT	ONE YEAR	\$35.00	CLK
SPECIAL AMUSEMENT	ONE YEAR	\$35.00	CC/CLK
ARCADES	ONE YEAR (12 devices or less)	\$20.00	CLK
ARCADES	ONE YEAR (over 12 devices)	\$35.00	CLK
BUSINESS PERMIT	INDEFINITELY-OR UNTIL CHANGES OCCUR	\$10.00	CEO
CARNIVAL/CIRCUS	PER DAY	\$110.00	CM
CLASS A ESTABLISHMENT	ONE YEAR	\$100.00	CC/CLK
CLASS B ESTABLISHMENT	ONE YEAR	\$85.00	CC/CLK
CLASS C ESTABLISHMENT	ONE YEAR	\$65.00	CC/CLK
DRIVEWAYS	THIRTY DAYS	NO CITY FEE	CEO/DOT
CLOSING-OUT SALES (Required by State Law)	VALID FOR SIXTY DAYS	\$10.00	CC
CLOSING-OUT SALES (Required by State Law)	SIXTY DAY EXTENSION	\$10.00	CC
CONSUMER FIREWORKS RETAIL SALES LICENSE	ONE YEAR	\$500.00	CC
JUNKYARD/AUTOMOBILE GRAVEYARD/RECYCLING	ONE YEAR (within 100' from highway)	\$200.00	CC/CLK
JUNKYARD/AUTOMOBILE GRAVEYARD/RECYCLING	ONE YEAR (100 + from the highway)	\$55.00	CC/CLK
LIQUOR	ONE YEAR	\$35.00	CC/CLK
LODGING HOUSE	ONE YEAR	\$30.00 + \$2.00/RM	CC/CLK
MASS GATHERING	PER DAY	\$110.00	PC
MEDICAL MARIJUANA DISPENSARY	ONE YEAR	\$1000.00	CC/CLK
MOBIL VENDING UNIT	ONE YEAR	\$45.00	CC/CLK
POLE/WIRE PERMIT	ONE TIME	\$8.00/FILING FEE	CM/PW (already existing)
STREET OPENING	THIRTY DAYS	<u>Minimum fee \$25.00</u>	CM/CEO/PW
TAXICABS	ONE YEAR	\$35.00/TAXI	CLK/PC
TAXI DRIVER	ONE YEAR	\$20/DRIVER	CLK
TAXI STANDS	ONE YEAR	\$110.00/SPACE	CLK
TRANSIENT SELLER	THIRTY DAYS	\$110.00	CLK/CEO
VICTUALER'S	ONE YEAR	\$35.00	CLK
OFF-PREMISE CONSUMPTION	PER EVENT	\$35.00	CLK
BED&BREAKFAST (Less than 5 rooms)		\$35.00	CC/CLK
WRECKER/TOWING SERV.	ONE YEAR	\$110.00	PC/CLK

KEY:

CC = CITY COUNCIL

CM = CITY MANAGER

CEO = CODE ENFORCEMENT OFFICER

CLK = CITY CLERK

PC = POLICE CHIEF

PW = PUBLIC WORKS

**ARTICLE III
GENERAL PROVISIONS**

SECTION 301. ENACTMENT AUTHORITY

This chapter is enacted pursuant to 30-A M.R.S.A. Section 3001 et seq. This chapter expressly applies to licenses and permits requiring "municipal officers" approval.

SECTION 302. LICENSING/PERMITTING AUTHORITY

The City Council and/or their designees shall be the licensing/permitting authority for the City of Ellsworth in accordance with Title 30-A M.R.S.A. Section 3001.

SECTION 303. DELEGATION OF AUTHORITY

A. As agent of the City Council, the City Clerk is hereby authorized and directed to:

1. Receive applications required by Article IV:
2. Distribute applications to appropriate department heads for their inspection(s) and written report;
3. When required, set a public hearing and place request on the next available agenda for Council action; and
4. Issue licenses.

B. As agent of the City Council, the City Highway Foreman is hereby authorized and directed to receive and act upon all applications for driveway and City-street opening permits.

C. As agent of the City Council, the Superintendent of the City Wastewater Treatment Facility is hereby authorized and directed to receive and act upon all applications for hookups to the City sewer system.

D. As agent of the City Council, the Code Enforcement Officer is hereby authorized and directed to receive and act upon all applications for Business Licenses/Permits.

SECTION 304. APPLICATION REQUIREMENTS

Any person required by this ordinance to obtain a license or permit from the City shall make application upon a form provided by the appropriate issuing authority (see attachment A) and shall state facts as may be required. Application(s) must be accompanied by the required fee (refer to Article II) and returned to the issuing authority. The issuing authority will be responsible for obtaining written approvals from applicable department heads, including but not limited to: (1) Fire Chief, (2) Police Chief, (3) Code Enforcement Officer and (4) City Treasurer before license will be issued by licensing authority. Said approvals shall be based upon criteria set forth in this Chapter.

All licenses, new and renewals, requiring public hearings shall be acted upon by the City Council. The City Clerk shall act upon all licenses, new and renewals, not requiring public hearings.

SECTION 305. ACTION CRITERIA

When required, the officials named in Section 304 shall cause inspections to be made and a written report forwarded to the licensing authority verifying that the premises to be used by the proposed activity is in compliance with the following:

A. Current Land Use Ordinance

- B. Current 101 Life Safety Code (As adopted by the State of Maine)
- C. Chapter 14 Fire Prevention Codes and Ordinances
- D. Chapter 59 Consumer Fireworks and Commercial Outdoor Public Fireworks/Pyrotechnics Display Ordinance
- E. Current Electrical Code
- F. Current Building Code
- G. Current Plumbing and Subsurface Wastewater Disposal Rules
- H. Current Sewer/Storm Water Ordinance
- I. Current Maine State Food Code
- J. As a condition of approval, the Police and/or Fire Department may require that Police and/or Fire personnel be present before, during, or after the event, at the applicant's expense.

SECTION 306. PUBLIC NOTICE AND HEARING

A. Upon receipt of a completed application, the City Clerk shall, when required, cause notice of said application to appear for at least two (2) consecutive weeks before the date of the hearing in a weekly newspaper having general circulation in the City of Ellsworth, the cost of which shall be borne by the applicant and paid directly to the City of Ellsworth.

With NEW APPLICATIONS requiring a public hearing, the applicant must adhere to the following:

1. Applicant and/or authorized agent must be present at the public hearing;
2. Non-attendance shall cause the licensing authority to deem the application "incomplete" and no action will be taken;
3. Should Section 306.2 occur, the applicant shall have to reapply for notice and hearing as set forth in Section 304.

With RENEWAL APPLICATIONS requiring a public hearing, the applicant and/or authorized agent is not required to be present. The City Clerk will notify applicants if their appearance is required at the Public Hearing based on non-compliance with one or more of the following sections:

- B. Article III Section 304 APPLICATION REQUIREMENTS
- C. Article III Section 305 APPROVAL CRITERIA
- D. Article III Section 309 CITY COUNCIL ACTION
- E. Article IV Section 407 CONSUMER FIREWORKS RETAIL SALES LICENSE
- F. Article IV Section 410 LIQUOR LICENSE (MALT, VINOUS, SPIRITS)
- G. Article IV Section 413 MEDICAL MARIJUANA DISPENSARY

SECTION 307. TERM OF LICENSE

A. Except as otherwise provided for in this chapter or by State Law, the term of all licenses shall be for one (1) year from the date of issuance and shall run concurrently unless the license(s) is issued for a lesser period.

SECTION 308. TRANSFERABILITY OF A BUSINESS

No license or permit issued under this ordinance shall be transferable. When a business or enterprise is transferred the previous owner's license shall immediately terminate unless otherwise provided by statutes or ordinance. The new owner shall obtain a new license under the terms of this ordinance.

For the purposes of this ordinance, a new owner shall include business or enterprise formerly operated by a tenant or mortgagor, or in the case of a corporation, a new owner or a controlling interest in the corporation. In applying for a permit, a potential new owner shall be permitted to apply for a permit as an owner upon a showing of legal right, title or interest to the business or enterprise.

SECTION 309. CITY COUNCIL ACTION

Upon referral by the City Clerk of a completed application in accordance with Section 304 of this chapter, the City Council shall hold a public hearing to consider the license/permit application. In its consideration to approve or deny said request, the City Council shall determine that the applicant has:

- A. Obtained approvals in accordance with Section 305.
- B. Paid all arrearages of the City personal property taxes and solid waste fees or any other obligations owed to the City, excluding real estate taxes and water and sewer charges. Real estate taxes and water and sewer charges will be collected under Title 36 and Title 38 of the Maine Revised Statutes and the Maine Public Utilities Commission Water Laws and Rules. Other obligations may include monies as aforementioned still owed by previous owners after a transfer of business occurs. Sole Proprietors will also be responsible for outstanding balances remaining in their personal names.
- C. Is in compliance with any requirements for obtaining the license or permit pursuant to this or any other ordinance and any state or federal law.
- D. If the City Council determines the applicant and/or owner has met these requirements, it shall approve the license/permit. If the City Council determines the applicant and/or owner has not met these requirements, it shall deny the license/permit.

SECTION 310. VIOLATIONS:

Any person who operates any activity regulated under this ordinance without a license or permit or who operates a such activity after suspension or revocation of a license or permit, pursuant to this ordinance, may be assessed a penalty of one hundred dollars (\$100.00) for each day the violation continues. In the event the City brings an action for violation of this ordinance and prevails in that action, it shall be awarded its reasonable attorney's fees and costs from the establishment at issue. This section does not preclude the City from exercising any other remedy it may have for violations of this ordinance or for operation of any such activity in a manner contrary to law.

SECTION 311. DENIAL, SUSPENSION AND REVOCATION

- A. The City may deny a Permit or License if the applicant fails to comply with the requirements of this ordinance. A Permit or License issued under the provisions of this ordinance may be revoked by the Code Enforcement Officer for any of the following reasons:

1. If the licensee violates any condition or requirement of licensing under state or federal law or local ordinance.
2. If there is fraud, misrepresentation, or false statement made in the course of applying for a permit, or judicial finding of fraud, misrepresentation, or false statement made to the City in the course of operating the business;
3. If there is judicial finding that the permittee conducted business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or welfare of the public;
4. For failure to comply with terms or conditions of approval as specified in the permit application, such as but not limited to, building permit, sign permits, and development permit; or
5. For failure to abide by conditions imposed by Code Enforcement Officer, Police, and Fire Departments, in connection with a business permit involving a special event.

B. Failure of an establishment to obtain a license when deemed necessary by this ordinance shall be construed as violation and dealt with in the same manner as a denial, suspension or revocation. If an applicant or a permittee has not complied with any of the requirements listed above, or if, through a routine criminal background investigation it is discovered that an applicant or a permittee has a criminal background and that background may jeopardize the welfare and safety of the community, the City may immediately refuse to grant a permit or revoke an existing permit. The applicant or permittee shall receive notice by personal service or if personal service cannot be affected, by certified mail of the refusal or revocation.

The notice shall contain a statement of the reason(s) for the refusal or revocation. Violation, suspension or revocation shall be subject to the following procedures:

1. Upon receipt by the Code Enforcement Officer of a report from any department head or City, state or federal employee or agent charged with issuing, supervising, monitoring, inspecting or otherwise regulating any licensee, that the licensee is violating any law or ordinance respecting such license, the Code Enforcement Officer shall give notice to the licensee of the alleged violation.

The notice of violation from the Code Enforcement Officer shall be delivered to the licensee by a police officer of the City of Ellsworth or some other person authorized to serve process under the laws of the State of Maine. The notice shall state the nature of the alleged violation and the date it was allegedly observed. The violator may appeal any decision pursuant to Section 312. Appeals.

C. In the event the Code Enforcement Officer determines that a violation noted in paragraph (B.1.) has occurred, the Code Enforcement Officer shall promptly take one of the following actions:

1. Deny or revoke the license;
2. Suspend the license until the violation is corrected;
3. Order the license revoked, but suspend the revocation for a reasonable time to allow correction of the violation. If the violation is corrected during that period, the revocation shall be rescinded.

D. Any order by the Code Enforcement Officer shall be issued in writing and state the reasons therefore. In the event the Code Enforcement Officer orders the suspension or revocation of a license pursuant to Section C.1. through C.3. the licensee shall have the right to appeal the suspension or revocation pursuant to Section 312. Appeals.

E. In the event a violation reported pursuant to Section A. or B. above, the Code Enforcement Officer may immediately suspend the license by giving notice thereof to the licensee.

SECTION 312. APPEAL

A. The Board of Appeals shall hear the appeal pertaining to the Code Enforcement Officer suspending or revoking a permit/license de novo at a duly noticed meeting held within thirty (30) days of the date the appeal is filed.

B. Within thirty (30) days from the denial or revocation of a License or Permit the aggrieved party may appeal, pursuant to Article VII of the City of Ellsworth Land Use Ordinance.

SECTION 313. VALIDITY

If any section, subsection, clause or phrase of the Chapter shall be held to be invalid or unconstitutional, such validity shall not affect the remaining provisions of this Chapter and to that end the provisions of this Chapter are hereby declared to be severable.

SECTION 314. EXEMPTION OF FEES

Any organization operated exclusively for educational, religious, charitable public service, fraternal or other non-profit purposes, with the exception of Medical Marijuana Dispensaries, and having a permanent address within the City of Ellsworth may be exempted from the monetary provisions of this ordinance, but still subject to inspection and permit requirements pursuant to Article III Section 304 through 315.

SECTION 315. PENALTIES

Any person, including but not limited to a landowner, a landowner agent or contractor, violating any provision of this ordinance may, upon being found liable, be fined not less than one hundred dollars (\$100.00) for each day such offense continues, and the City's reasonable fees and expenses including attorneys fees. Each offense may constitute a separate offense for each day the violation occurs. Any violation of this ordinance may be deemed to be a nuisance.

ARTICLE IV

REQUIRED LICENSE/PERMIT

SECTION 401. AMUSEMENT (SPECIAL) LICENSE

No person shall operate any establishment within the City which offers and/or allows alcoholic beverages to be consumed on the premises and offers live music, dancing, live entertainment, performance or show without obtaining a license or permit in accordance with Article III Section 304 through 315 of this ordinance and Chapter 37 Special Amusement Permit Ordinance of the Ellsworth Code of Ordinances. A public hearing is required prior to action on the license or permit application or renewal.

SECTION 402. AMUSEMENT LICENSE

No person shall operate any establishment within the City, which offers live music, dancing, live entertainment, performance or show without obtaining a license or permit in accordance with Article III Section 304 through 315.

SECTION 403. ARCADE LICENSE

No person shall keep pinball machines, video games or arcade games of any sort, for public patronage in the City, without first obtaining a license in accordance with Article III Section 304 through 315.

SECTION 404. BUSINESS LICENSE

No person shall directly or indirectly conduct any business or activity or use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license or permit is required under this ordinance without a license or a permit therefore being procured and kept in effect at all times as required by this ordinance or by state statute.

SECTION 405. CARNIVAL/CIRCUS LICENSE

No person shall operate a carnival, or circus, within the City without first obtaining a license in accordance with Article III Section 304 through 315. This license must be obtained no less than twenty-four (24) hours prior to the commencement of the event.

SECTION 406. CLOSING OUT SALES (M.R.S.A 30-A § 3781 et seq.)

No person may offer for sale a stock of goods, wares or merchandise under the designation of "closing-out sale," "going out of business sale," "discontinuance of business sale," "entire stock must go," "must sell to the bare walls" or other designation which states, directly or by implication, an intent of that person to dispose of the entire stock of goods with a view to permanently terminating further business after that disposal is complete, unless the person complies with the following requirements:

A. Inventory license. Before the disposal sale begins, the person must obtain a license to conduct the sale from the City Council or their designee of the municipality in which the sale will be conducted.

1. The person must apply to the City Council or their designee for the license under oath. The application must contain a complete inventory of all items to be included in the sale and must be accompanied by the payment of a license fee set by the City Council or their designee. The applicant must affirm, in writing and under oath, to the City Council or their designee that no merchandise will be included in the stock offered for sale unless the merchandise is in or at the place of business where the sale will take place when the sale opens. Any unusual purchases and additions to the stock of goods, wares or merchandise made within 60 days before the filing of an application for a license is prima facie evidence that the purchases and additions were made in contemplation of the sale.
 - a. If the applicant has been in the same business for which the sale is being conducted for less than 2 years of continuous operation in the municipality, the applicant must also affirm, in writing and under oath, that none of the merchandise was purchased

before the sale opened for the purpose of selling and disposing of that merchandise at the sale.

2. The license is valid for 60 days from the date of issuance, unless revoked under Article III, Subsection 310-312. The validity of the license may be extended for 60 additional days if the licensee provides an affidavit to the City Council or their designee stating that all goods, wares or merchandise listed in the inventory have not been disposed of within the original 60-day period.

B. License issued; records preserved. The City Council or their designee shall immediately issue the license upon compliance with this section. The City Council or their designee shall preserve all applications for licenses and other papers filed in connection with an application as a public record in their office for 5 years. They shall endorse the dates of filing and the granting or denial of the license on those papers and shall make an abstract of any other proceedings taken in connection with the application.

C. Revocation; prior violations; suspension. The City Council or their designee shall revoke any license issued under this subchapter if the licensee is convicted of violating this section. The City Council or their designee may refuse to issue another license to any applicant who has been convicted of violating this section before the date of application. If any person convicted of any violation of this section appeals the decision or sentence of the trial court, that person's license shall be suspended while the appeal is pending in the appellate court.

SECTION 407. CONSUMER FIREWORKS RETAIL SALES LICENSE

No person shall operate any establishment or sell from any establishment Consumer Fireworks within the City of Ellsworth without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on the initial license application or renewal.

- A. The application fee for the initial license and renewal license shall be \$500.00.
- B. Applicant must be 21 years of age or older and provide proof of age with birth date and one government issued picture identification are required.
- C. A separate license is required for each location at which an applicant seeks to sell consumer fireworks.
- D. Application for a license to sell consumer fireworks within the City of Ellsworth shall be submitted with a current valid Federal license to sell consumer fireworks.

Prior to submission of an application to the State Fire Marshal's Office, the applicant must have a valid City of Ellsworth Consumer Fireworks Retail Sales License and a valid Federal license to sell consumer fireworks.

Upon receipt of the State license, the applicant shall submit a copy of the current valid license to the Fire Chief.

SECTION 408. DRIVEWAY PERMIT

A. This procedure is for City roads/sidewalks only State roads are subject to different rules through the Department of Transportation.

B. No person shall cause construction of a driveway within the City without obtaining approval, including but not limited to: (1) Code Enforcement Officer, (2) Highway Foreman and (3) City Manager.

C. Any person required to obtain a City road/sidewalk opening permit shall make application with the Code Enforcement Office. The Code Enforcement Officer, Highway Foreman and City Manager will act upon the application and notify the applicant of their decision.

SECTION 409. JUNKYARD/AUTO GRAVEYARD LICENSE

No person shall operate or allow operation of an automobile graveyard, automobile recycling, or junkyard as defined in 30-A M.R.S.A. Section 3751 et. Seq. without first obtaining a license in accordance with said statute. A public hearing is required prior to action on the license application or renewal.

SECTION 410. LIQUOR LICENSE (Malt, Vinous, Spirits)

A. No person shall operate any establishment within the City which offers/allows alcoholic beverages for sale or consumption, either on or off the premises, without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on a new license application or renewal application for establishments where alcohol is consumed on premises.

B. Applications for licenses to sell or serve alcohol may be denied on any one or more of the following grounds:

1. Noncompliance with Article III Section 305.
2. Applicant/owner has been convicted of any Class A, B or C crime.
3. There have been conditions of record regarding waste disposal, health or safety, or traffic or parking violations on or in the vicinity of the licensed premise and caused by employees or patrons.
4. There have been conditions of record caused by patrons or employees which unreasonably disturb, interfere with or affect the ability of persons or businesses residing in the vicinity of the licensed premise to use their property in a reasonable manner.
5. There have been repeated incidents of breaches of the peace, disorderly conduct, vandalism or other violations of law in the vicinity of the licensed premise and caused by patrons or employees.
6. The applicant has committed a violation of any provision under Title 28-A M.R.S.A., or State of Maine Liquor Enforcement Rules and Regulations.

C. Applications for licenses to sell or serve alcohol may be denied if the proposed use is within three hundred (300) feet of a public or private school, school dormitory, chapel or parish house; provided the exceptions within Title 28-A M.R.S.A §701, "Proximity to Schools" do not apply. The distance must be measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel, or parish house by the ordinary course of travel.

D. The Chief of Police or his designee may cause an investigation to be made of the criminal record of the principal officer(s), shareholders, members, or person(s) to be licensed.

SECTION 411. LODGING HOUSE LICENSE

No person shall operate a lodging house in the City without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to an action on the license application or renewal.

SECTION 412. MASS GATHERING

A. No person or group of persons may sponsor, promote, operate or hold any festival, exhibition, amusement show, fair, theatrical performance, music concert, parade or other activity which 250 or more people are reasonably expected to attend and in which a substantial portion of the entertainment or the people attending will be out-of-doors unless a license is first obtained from the City of Ellsworth.

B. The person or group of persons seeking a mass gathering license must file an application, in accordance with Article III Section 304 through 315, with the Police Chief no less than 45 days before the proposed commencement of the outdoor event and secure the following:

1. A corporate bond from a company authorized to do business in Maine, ensuring prompt cleaning of the grounds after the close of the outdoor event, and ensure prompt payment for all damages caused by an attendee or employee to public or private property in the vicinity resulting from or in connection with the licensed event. The surety shall be to the benefit of the City of Ellsworth and shall allow the City to draw on the funds if actions are not taken within three (3) working days after the event.
2. As a condition of approval, the Police and/or Fire Department may require that Police and/or Fire personnel be present before, during, or after the event, at the applicant's expense.
3. Demonstrate, by means of a written descriptive plan, that adequate facilities will be provided at the site of the outdoor event, in order to protect the health of the people who attend, including:
 - a. Adequate waste disposal facilities;
 - b. Adequate fire fighting equipment and personnel;
 - c. Adequate water supplies;
 - d. Adequate first aid facilities; and
 - e. Adequate communication facilities.
4. Provide notice to the appropriate City, county and state officials as named by the Police Chief.
5. File proof of authority from landowners whose property will be used in holding the outdoor event.
6. Demonstrate in a written descriptive plan that adequate parking space will be available. Permission from any property owner whose property will be used for parking must also be included.

C. Exemptions: All outdoor events, festivals, music concerts, fairs and other large gatherings sponsored and under the direct supervision of the City of Ellsworth including the School Department shall be exempt from the provisions of this ordinance. All such activities conducted as an auxiliary use to normal operation of an approved campground shall also be exempt.

SECTION 413. MEDICAL MARIJUANA DISPENSARY LICENSE

No person shall operate any medical marijuana dispensary establishment within the City of Ellsworth without obtaining a license in accordance with Article III Section 304 through 315. A public hearing is required prior to action on the license application or renewal.

A. Purpose.

1. To regulate dispensaries in a manner that protects the health, safety and welfare of the residents, merchants, and customers; and
2. To assure dispensaries operate with the highest professional and ethical standards.

B. Licensing documents. The following information shall be provided to the City Clerk as part of the annual licensing process:

1. State Certificate of Registration.
2. Letter from the Ellsworth Police Chief confirming: that the security plan and the anti-diversion policy and amendments are on file and found to be acceptable; the receipt of the summary report of incidents and illegal activities for the previous year; and the semi-annual receipt of the employee lists and that the employees were found to be acceptable.
3. Letter from the Ellsworth Fire Chief confirming the receipt of the material safety data sheets and annual updates.

C. Authority to Impose Conditions on License.

The City Council shall have the authority to impose such reasonable terms and conditions on a medical marijuana license as shall be necessary to protect the public health, safety, and welfare, and to obtain compliance with requirements of this Article, other ordinances, and applicable laws.

D. Security Plan. A dispensary shall have a security plan approved by and filed with the Ellsworth Police Department. The policy shall address means of preventing a continuing pattern of offenses against the public peace; drug-related criminal conduct within the premises of the dispensary or the immediate area surrounding the dispensary; and criminal conduct directly related to or arising from the operation of the dispensary. The policy shall include, but not be limited to, the following:

1. 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 to detect unauthorized intrusions.
2. The interior must be equipped with electronic monitoring, video cameras, and panic buttons,
3. Qualified security staff may be required by the Ellsworth Police Chief.
4. The dispensary shall have a policy to consistently and systematically prevent loitering.
5. Surveillance records shall be kept for a minimum 30 days and be available to the City of Ellsworth Police upon requests.
6. A service delivery plan.

E. Incident Reporting. A dispensary shall submit to the City of Ellsworth Police Department a copy of the State of Maine incident report form on the next business day after it discovers a violation of the requirements set out in the State rules regarding the operation of a dispensary. The report must indicate the nature of the breach and the corrective actions taken by the dispensary.

- F. Illegal Activity Reporting.** Any suspected illegal activity involving the operation of a dispensary must be reported to the City of Ellsworth Police Department by the dispensary in a timely manner.
- G. Anti-diversion.** A dispensary shall have an anti-diversion policy designed to prevent diversion of medical marijuana for non-medical uses approved by and filed with the Ellsworth Police Department.
- H. Employees.** A dispensary shall semi-annually provide to the Ellsworth Police Chief a list of all employees. Staff changes shall be reported to the Ellsworth Police Chief or designee within 10 days of hiring.
- I. Chemical.** A dispensary shall maintain a material safety data sheet file with the Ellsworth Fire Department for all chemical stored or used. The list of stored chemical shall be reviewed and updated annually.
- J. Unrestricted Access.** The City of Ellsworth Code Enforcement Officer, Police Chief, Fire Chief or their designees requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access at reasonable time. Failure to cooperate with City inspectors may be grounds to revoke the dispensary's business license, as set forth in this ordinance. During inspection, the City inspectors may identify violations of this ordinance.
- K. Handling of Product.**
1. A cultivation facility shall not possess more than 6 live marijuana plants for each registered patients who have designated the dispensary to cultivate marijuana for the registered patient's medical need.
 2. In addition to the 6 live marijuana plants per registered patient, the cultivation facility shall have plants in varying stages of processing or cultivation in order to ensure that the retail facility is able to meet the needs of its registered patients.
 3. When there is a decrease in the number of patients who have designated the cultivation facility to cultivate marijuana, the cultivation facility shall have 10 business days to adjust to meet this intent of the State law.
 4. Prepared marijuana must be kept under double lock and inventoried daily by two qualified employee cardholders.
 5. Quantities of prepared marijuana must be weighted, logged in and signed out by two qualified employee cardholders.
- L. Consumption.** The consumption or inhalation of marijuana on or within the premises of a dispensary is prohibited.
- M. Medical Marijuana Food Establishment:** A dispensary must obtain a food establishment license, pursuant to 22 M.R.S.A section 2167 and section 420 Victuallers' License of this ordinance.
- N. Denial, Revocation, and Suspension of License.** Notwithstanding any other provision of this Chapter, the following procedures shall apply to the denial, revocation, or suspension of a medical marijuana license.
1. The City may deny a medical marijuana dispensary license application, or suspend or revoke a license for any of the following reasons.

- a) If the licensee violates any condition or requirement of licensing under state or federal law or local ordinance;
 - b) If there is fraud, misrepresentation, or false statement made in the course of applying for a license, or judicial finding of fraud, misrepresentation, or false statement made to the City in the course of operating the dispensary;
 - c) If there is judicial finding that the licensee conducted business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or welfare of the public;
 - d) For failure to comply with terms or conditions of approval as specified in the license application or other approvals or permits such as but not limited to, building permit, development permit, and inspections; or
 - e) For failure to abide by a license condition imposed by the City Council.
2. Prior to suspending or revoking a license, the City Manager, or the City Manager's designee, shall:
- a) Notify the licensee in writing that it is in violation of one or more City regulation with specific reference to regulation alleged to be in violation, and order compliance within ten (10) days of notification.
 - b) If the condition or conditions leading to the notice are not satisfactorily addressed, the City Manager, or the City Manager's designee, shall give the licensee at least seven (7) days' advance notice of a hearing on whether to suspend or revoke the license. The notice shall contain a statement of the reason(s) for the proposed suspension or revocation, and the time and date of the hearing. The notice shall be made by personal service, certified mail to the licensee's address of record, or by other method reasonably calculated to give actual notice.
 - c) At the hearing, the City Manager, or the City Manager's designee, shall present the information regarding the alleged violations to the City Council and the licensee shall have the opportunity to present and question all witnesses.
 - d) Following the hearing, the City Council shall vote on whether to suspend or revoke the license based on the criteria contained in subsection D(1). The Council will issue written findings and conclusions within ten (10) days of the vote to suspend or revoke the license.
 - e) A licensee may appeal the suspension or revocation of a license within thirty (30) days to Superior Court in accordance with M.R.Civ.P. 80B.

SECTION 414. MOBILE VENDING UNITS

No person shall operate any vehicle, including a lunch wagon, a fixed mobile vending unit or roaming vending unit which is used for the sale of any prepared food without first obtaining a license in accordance with Article III Section 304 through 315.

This also includes a restaurant operating for a temporary period in connection with fair, carnival, circus and public exhibition or in a seasonal capacity. Those Mobile Vending Units parked in one spot for seasonal sales, must include in such applications a date for removal of vehicle upon the close of the season.

This removal will be subject to inspection by the Code Enforcement Officer. If the date for removal is not adhered to shall constitute a violation. If it is the intent of the mobile unit to set up business in one particular location, the City will require a notarized statement of approval from the landowner.

SECTION 415. PARADE PERMIT

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit has been obtained from the Chief of Police (Chapter 27 “Parade Ordinance of the City of Ellsworth”)

SECTION 416. POLE AND WIRE PERMIT

A. No person shall install or construct utility above or below ground, along or upon City streets or roads without first obtaining a permit in accordance with 35-A M.R.S.A Section 2503.

B. Designation of Licensing Authority

The Ellsworth City Council hereby designates the City Manager as the licensing authority for the issuance of facilities located on, over, and under the surface of applicable public ways in the City of Ellsworth. All permits shall be issued in accordance with MRSA Title 35-A Section 2501-2520 or as later amended.

SECTION 417. SEWER HOOK-UP PERMIT

No person shall install or connect building sewers or discharge water or wastes into the public sewer system without first obtaining a Sewer Connection Permit in accordance with Chapter 5 "Sewer Ordinance".

SECTION 418. STREET OPENING PERMIT

No person shall grade, excavate, dig or open along or upon any City street or road without first obtaining approval in accordance with conditions stated within the application.

SECTION 419. STREETS, USE OF

A. No person engaged in the sale of goods, wares, or merchandise shall deposit, pile, place or display for purposes of sale or cause or permit to be deposited, piled, placed or displayed for the purpose of sale, any such goods, wares or merchandise upon or overhanging any sidewalk or street without obtaining a permit from the City Council in accordance with Chapter 11 "Use of Streets".

B. Parades refer to Chapter 27 (“Parade Ordinance of the City of Ellsworth”) this permit is under jurisdiction of the Ellsworth Police Department.

SECTION 420. TAXICABS, TAXI DRIVERS, AND TAXI STANDS

No person shall operate any business or vehicle intended for the transport or livery of persons for a fee within the City of Ellsworth without first obtaining a license in accordance with Chapter 8, Taxicab Ordinance. All drivers of taxicabs shall obtain a driver's license in accordance with said Chapter 8. No parking space in the City of Ellsworth shall be used exclusively as a taxi stand unless the owner of the taxicab shall first obtain a permit in accordance with Section 412 of Chapter 7, Traffic Code.

SECTION 421. TOWING LICENSE PERMIT

No person shall operate any business or vehicle intended for the transport of other vehicles for a fee within the City of Ellsworth without first obtaining a license in accordance with Article III Section 304 through 315.

SECTION 422. TRANSIENT SELLER LICENSE

A. No person shall offer for sale any merchandise or service, other than at their place of business, without first obtaining a license in accordance with Section 415.B.

Such license shall be valid and effective for a period of thirty (30) days from the date of issuance, unless revoked, and the validity of such license may be extended for an additional period of thirty (30) days if so approved by the licensing authority.

B. License approval includes but is not limited to:

1. Copy of State License issued in accordance with 30-A M.R.S.A. Section 3001 et seq. and 32 M.R.S.A. Section 468 1.
2. Approvals of Police and Fire Chiefs.
3. Statement containing: name of company, product/service, number of sellers in City, names of sellers, length of time to be in area.
4. If it is the intent of the transient seller to set up business in one particular location, the City will require a notarized statement of approval from the landowner.

C. Off premises consumption catered by a State Licensee of any organization including non-profit which provides alcohol for a fee.

D. This section shall not apply to:

1. Persons selling by lists, catalog, or merchandise for future delivery.
2. Persons selling fish, farm, dairy, orchard or garden products of their own production.
3. Persons selling bark, wood, manure or forest products.
4. Persons selling newspapers or religious literature.

SECTION 423. VICTUALERS'

A. No person shall operate any business intending to prepare or serve food for consumption on or off the premises without first obtaining a license in accordance with Article III Section 304 through 315.

B. Charitable, religious or fraternal organizations holding breakfasts, dinners or suppers shall be exempt from the monetary licensing requirement of this section, but still subject to inspections pursuant to Article III Section 304 through 315.

ARTICLE V

BUSINESS LICENSE/PERMITS

SECTION 501. PURPOSE

Requires the registration of all business activities and enterprises physically located within the City of Ellsworth and to provide the City with necessary information concerning the businesses within the City, including but not limited to the nature of the business operation, the number of employees,

location of business, and emergency contacts, to protect the health, welfare and safety of the City's inhabitants.

SECTION 502. PERMIT (S) REQUIRED

A. It shall be unlawful for any person to operate a business, or to conduct a special event, without complying with the regulations specified in this ordinance and obtaining a business permit from the City of Ellsworth.

B. Non Business enterprises, conducting business like activities on a regular basis are required to obtain a permit. Upon receipt of an application from "Non Business" enterprises the Code Enforcement Officer will review the application and determine if the applicant qualifies for a fee exemption.

C. It shall be unlawful for any person to operate or conduct a business or special event without first obtaining a Business Permit.

SECTION 503. GENERAL REQUIREMENTS

A. A separate permit must be obtained for each branch establishment or location where a business is conducted.

B. When more than one business is operated, transacted or practiced in the same location by the same person, then only one permit shall be required for such business.

C. When more than one business is operated, transacted, or practiced in one location by a person other than the primary person, a separate permit shall be obtained for each person conducting such business.

D. For special events, only the sponsor of the primary event shall be required to obtain business permit. The City Council, however, may require all vendors participating in the event to obtain a permit if it is deemed necessary for preserving the general safety, health, and welfare of the community.

E. This excludes fundraising activities sponsored by schools, churches, athletic groups or nonprofit organizations, which have a minimal impact on surrounding properties.

SECTION 504. ISSUANCE OF BUSINESS PERMITS

A. Upon receipt of a complete business permit application and fee; the Code Enforcement Officer will review, verify, and process the application within 10 days or the permit is automatically approved. The review by the Code Enforcement Officer will also include a review by the Police and Fire Chiefs for compliance with local regulations.

B. If the business permit is issued for a special event, the Code Enforcement Officer, Police, and Fire Chiefs or their designees shall have the right to impose conditions on the permit, including but not limited to, conditions relating to insurance, parking, health and sanitation, hours of operation, permissible noise levels, and other public safety concerns.

SECTION 505. FEES FOR THE BUSINESS PERMIT

A. Applicants applying for a business permit shall pay a one-time fee for an indefinite period of time or until changes occur. Such fee shall be due and payable before the business permit is approved.

B. Business activities that are located in the Development District may be required to pay a Development Fee based on the “Traffic Trip Generation”. The City or a designee shall calculate development Fee based on the number of vehicle “trips”.

SECTION 506. EXEMPTION OF FEES

Any organization operated exclusively for educational, religious, charitable public service, fraternal or other non-profit purposes and having a permanent address within the City of Ellsworth may be exempted from the monetary provisions of this ordinance, but still subject to inspection and permit requirements pursuant to Article III Section 304 through 315.

SECTION 507. EXHIBITION OF PERMIT

Every sponsor of a special event shall post the Business Permit required under this ordinance in a conspicuous location during all hours of the special event.

SECTION 508. LOCATIONS OF RESTRICTIONS

No permittee, hereunder, shall have any exclusive right to any location in a public street, nor shall the permittee be permitted to operate in any congested area where his operations might impede or inconvenience the public.

For the purpose of this ordinance the Police Chief, Fire Chief, Code Enforcement Officer or their designee’s shall be deemed conclusive as to whether public safety would be affected, traffic impeded, and or inconvenienced. No business activity shall be conducted in an area of the City where such business activity is prohibited by the City of Ellsworth Land Use Ordinance.

SECTION 509. PERMIT NOT TRANSFERABLE

No permit issued under the provisions of this ordinance shall be assignable or transferable to any other person.

SECTION 510. CHANGE OF PLACE OF BUSINESS

No permit issued under the provisions of this ordinance shall apply to any business location other than the location designated in the permit application.

SECTION 511. ADOPTION

These regulations are effective as of September 1, 2007.

Flow Chart as it pertains to Business Licenses.

