

RECREATIONAL MARIJUANA PROHIBITION ORDINANCE

- Section 1.** **Title.** This ordinance shall be known and cited as the “Recreational Marijuana Prohibition Ordinance” of the City of Ellsworth.
- Section 2.** **Authority.** The ordinance is adopted pursuant to the Title 30-A M.R.S. §3001 and Title 7 M.R.S. c. 417.
- Section 3.** **Purpose and Intent.** The purpose of this ordinance is to impose a ban on the operation of Retail Marijuana Establishments and Retail Marijuana Social Clubs in the City of Ellsworth to protect the health, safety, and welfare of the people of Ellsworth as these activities constitute a nuisance.
- Section 4.** **Prohibition.** The operation of Retail Marijuana Establishments which includes Retail Marijuana Stores, Retail Marijuana Cultivation Facilities, Retail Marijuana Products Manufacturing Facilities, and Retail Marijuana Testing Facilities; and the operation of Retail Marijuana Social Clubs are prohibited within the City of Ellsworth, and therefore all activities related to the abovementioned retail uses such as, but not limited to, cultivation, possession, extraction, manufacturing, processing, storing, laboratory testing, labeling, transporting, delivering, dispensing, transferring, and distributing are expressly prohibited within the City of Ellsworth.
- Section 5.** **Exemptions.**
- A. **Personal Use of Marijuana.** This ordinance shall not be construed to prohibit the Personal Use of Marijuana per Title 7 M.R.S. c. 417 section 2452.
- B. **Medical Use of Marijuana.** This ordinance shall not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Use of Marijuana Act and the City of the Ellsworth Code of Ordinances, c. 56 Unified Development Ordinance.
- Section 6.** **Effective Date.** This ordinance enacted on the 19th day of December 2016 by the Ellsworth City Council shall take effect immediately.

- Section 7.** **Sunset Provision.** This ordinance automatically expires within two (2) years of the effective date unless it is repealed or reauthorized by the City Council.
- Section 8.** **Relationship with Other Ordinances.** Whenever a provision of this ordinance is inconsistent with another provision of any other ordinance, regulation, or statute, the more restrictive provision shall control.
- Section 9.** **Validity and Severability.** Should any section or provision of this ordinance be declared by the courts to be invalid, such a decision shall not invalidate any other section or provision of this ordinance.
- Section 10.** **Enforcement.**
- A. Any duly designated Ellsworth Police Officer is authorized and shall have the authority to enforce all provisions of this ordinance.
 - B. The City Manager is authorized to order that legal action be taken to enforce the provisions of this Ordinance.
- Section 11.** **Cease Operations Order.**
A Police Officer may issue a written cease operations order directing the occupancy, use, and other activities prohibited under this ordinance to cease immediately, and that the premises be vacated. Upon notice of the cease operations order, all occupancy, use, or other activity subject to the cease operations order shall stop immediately and the premises shall be vacated and closed.
- Section 12.** **Penalty.** Any person violating the provisions of this ordinance may be liable for the penalties set forth below:
- A. Civil Penalties.**
- i. **First Violation.** The maximum penalty for undertaking an activity related to Retail Marijuana Establishments or Retail Marijuana Social Clubs is \$2,500.
 - ii. **Multiple.** The maximum penalty for undertaking an activity related to Retail Marijuana Establishments or Retail Marijuana Social Clubs is \$25,000 when it is shown that there has been a previous conviction of the same person within the past five (5) years for a violation of the ordinance.
 - iii. **Economic Benefit.** The maximum penalty may be increased if the economic benefit resulting from the violation exceeds the applicable penalties. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

iv. **Setting of Penalty.** In setting a penalty, the following shall be considered:

- a. Prior violations by the same party;
- b. The impact caused and/or potential impact posed by the operation of the prohibited activity to the health, safety, and welfare of the people of Ellsworth.
- c. The damage that cannot be abated or corrected; and
- d. The extent to which the violation continued following an order to stop.

B. **Abatement and Mitigation.** The violator may be ordered to correct, abate or mitigate the violations.

C. **Damaged Incurred.** Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss, or damage incurred by the City by reason of such violation.

D. **Attorney Fees.** If Ellsworth is the prevailing party, the City must be awarded reasonable attorney fees, expert witness fees and costs.

Section 13. **Definitions.** The definitions below are per Title 7 M.R.S. c. 417, section 2442.

Marijuana: Means cannabis.

Extraction: The process of extracting marijuana with solvents or gases.

Person: A natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

Retail Marijuana: Cannabis that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment or retail marijuana social club.

Retail Marijuana Cultivation Facility: An entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

Retail Marijuana Establishment: Retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

Retail Marijuana Product: Concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

Retail Marijuana Products Manufacturing Facility: An entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

Retail Marijuana Social Club: An entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

Retail Marijuana Store: An entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

Retail Marijuana Testing Facility: An entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

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