TOWN OF NORTH BERWICK
PROPOSED ORDINANCE

Relating to Licensing for Medical Marijuana Establishments

SECTION 1 PURPOSE

The purpose of this Ordinance is to provide for and regulate the issuance of Local Licenses for Medical Marijuana Establishments as defined in the North Berwick Zoning Ordinance and by the State of Maine under the Medical Marijuana Legalization Act, 22 M.R.S.A., as may be amended.

SECTION 2 AUTHORITY

This Ordinance is adopted pursuant to the authority granted by 22 M.R.S.A. § 2421 et seq., as may be amended.

SECTION 3 DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings: Medical Marijuana manufacturing facility, Medical Marijuana Retail Store, Medical Marijuana Testing Facility, Medical Marijuana Commercial Cultivation Facility (indoor and outdoor), and Medical Marijuana Counseling Office. These terms are collectively hereinafter referred to as “Medical Marijuana Establishments.”

SECTION 4 LICENSE FEES

The fee for licenses granted under this Ordinance shall be $1,000.00 per year. The fee shall be doubled for late or after-the-fact applications.

SECTION 5 PROHIBITED ACTIVITIES

A. No Medical Marijuana Establishment shall be established or operated within the Town without first receiving and then maintaining all approvals required under this Ordinance, including, but not limited to, the North Berwick Zoning Ordinance.

B. No Medical Marijuana Establishment shall conduct any activity for which it has not received the required State License and Local License.
SECTION 6  ISSUANCE OF LICENSES FOR MEDICAL MARIJUANA ESTABLISHMENTS

The municipal officers shall have the authority to approve or disapprove applications for licenses for the operation of Medical Marijuana establishments. The annual license fee shall be as provided in Section 4 of this Ordinance.

The provisions of all applicable local ordinances, including without limitation, the North Berwick Zoning Ordinance and the statutes and rules adopted by the State of Maine shall apply to the regulation of Medical Marijuana establishments.

SECTION 7  MEDICAL MARIJUANA ESTABLISHMENTS; LICENSE REQUIRED

A. License Required. No person shall establish or operate any Medical Marijuana establishment without first having obtained a license for the Medical Marijuana establishment from the municipal officers. Each applicant for a license shall complete and file an application on a form prescribed by the Town Clerk, together with a license fee as required in Section 4 of this Ordinance; evidence of any State approvals required to operate the Medical Marijuana establishment; a statement identifying all owners, officers, members, managers, or partners of the applicant; and a description and sketch plan of the premises for which the license is sought.

B. Condition Precedent. Any Medical Marijuana establishment required to be licensed by the State authority created for the purpose of regulating and controlling the licensing of Medical Marijuana establishments pursuant to Title 22 of the Maine Revised Statutes, as amended, must secure a State license from that State authority prior to submitting an application for a license pursuant to this section. A copy of the applicant’s state license application and supporting documentation as filed with the State authority, and any amendments thereto, shall be filed with the application required pursuant to subsection 1, above.
C. **License Issuance.** The municipal officers shall license persons of good moral character to establish or operate a Medical Marijuana establishment, in accordance with the requirements set forth herein.

1. In determining whether to issue or deny a license application, the municipal officers shall consider (i) whether the applicant has failed to provide sufficient evidence of its compliance with applicable zoning ordinance provisions (including performance standards), and other applicable local and state law regulations; (ii) any part of a state inspection or local health inspection; (iii) whether the applicant has failed to provide sufficient evidence of compliance with applicable local and state laws and regulations; (iv) whether the applicant is of good moral character, considering the applicant’s criminal record, if any, and all evidence presented; (v) the applicant’s failure to pay an outstanding fine, penalty or tax owed to the Town; and (vi) the Town’s need for additional Medical Marijuana establishments. In the review of any license application pursuant to this section, the municipal officers may require and solicit review comments concerning the approval considerations identified herein from any public officers, departments, or agencies of the Town. Misinformation or failure to comply with prerequisites of the application constitutes grounds for the denial of a license application.

2. License applications submitted pursuant to this section shall be approved or disapproved at any meeting of the municipal officers, after public notice and hearing.

3. The municipal officers may attach to any license issued pursuant to this section such restrictions and conditions as they deem necessary, appropriate, and reasonably designed to promote the health, safety, and welfare of the public.

4. A license issued under this section shall be effective for one year from the date of approval.
D. License Renewal. Renewal applications from persons having obtained a license under this section shall be submitted to the Town Clerk in accordance with Section 7A. The municipal officers shall annually review all renewal applications for the purpose of determining the status of the applicant’s prior conformance and likelihood of continued conformance with the requirements of this Ordinance, including the requirements of Section 3.A, above, and any restrictions or conditions of the license, and shall decide to either approve or deny the renewal application after public notice and hearing. An application for the renewal of an expired license shall be treated as a new license application if a renewal application is not submitted within thirty (30) days after the expiration or renewal date and shall be subject to the license fees and/or civil penalties set forth in Section 4 and 10.

E. License Suspension and Revocation. The municipal officers may suspend or revoke any license granted under this section if, after notice, and hearing, the municipal officers determine that the license holder is unfit to hold a license. The suspension or revocation of a Medical Marijuana establishment license issued by the State, the failure of a license holder to acquire and maintain all necessary local and State approvals, or the violation by a license holder of any applicable local or state laws and regulations (including without limitation the provisions of North Berwick Zoning Ordinance or applicable building or life safety code requirements) shall be prima facie evidence that the license holder is unfit to hold a license. The municipal officers shall serve written notice of a hearing on revocation on the license holder or leave said notice at the licensed premises at least three days before the time set for hearing. At the hearing, the license holder shall be given an opportunity to hear the evidence in support of the charge against the license holder and to be heard in the license holder’s own defense.

F. Assignment or Transfer. No license issued under this section may be assigned or transferred to another entity. Any change in ownership or change in the officers of an owner shall require a new licenses. Licenses are limited to the premises for which they are issued and are not transferrable to another location. A license holder seeking to operate in a new location must first acquire a license for that location.

G. Substantial Progress. Any license issued under this section shall automatically expire if the licensee does not commence operation of the Medical Marijuana establishment within 90 days from the date of license issuance; provided, however, that the Code Enforcement Officer may grant the licensee one extension of up to 180 days if the licensee demonstrates substantial progress toward commencement of operation. An application for the renewal of an expired license under this subsection shall be treated as a new license application.
SECTION 8  ADDITIONAL LICENSING RESTRICTIONS FOR MEDICAL MARIJUANA RETAIL STORES

Licenses applications for Medical Marijuana retail stores, as that term is defined in the North Berwick Zoning Ordinance are subject to the following additional restrictions:

A.  The number of licenses issued by the municipal officers under this section shall be limited to one (1) licenses.

B.  Available licenses shall be advertised by the Town and such advertisement shall include a deadline for the submission of license applications for Medical Marijuana retail stores. The municipal officers shall conduct a lottery to establish the order in which applications received will be reviewed. Prior to the lottery, the Code Enforcement Officer shall review all applications for timeliness and completeness, provided, however, that the omission by the lottery applicant of a description and sketch plan of the premises for which the license is sought shall not cause the application to be deemed incomplete for purposes of the lottery (but a description and sketch plan of the premises must be provided by the applicant prior to issuance of a license under this section). Any untimely submitted or otherwise incomplete applications shall be excluded from the lottery. Once selected, the applicant will be required to follow the Conditional Use process, to determine if the proposed application is in compliance with the Zoning Ordinance Standards. If approved by the Planning Board, the license is issued. If the Planning Board denies the applicant, another applicant is selected via the lottery process until an approval is granted.

C.  If at any time a license issued under this section expires without timely renewal, is suspended or revoked by the municipal officers, or is terminated or abandoned by the license holder, the municipal officers shall make available the license to new applicants by soliciting new license applications in accordance with subsection 2, above. Any person who submitted an application in response to prior solicitations must submit a new timely and complete application to be included in the new lottery.

SECTION 9  APPEALS

An appeal from any final decision of the municipal officers shall be taken by any party to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.
SECTION 10 VIOLATION AND PENALTIES

The operation of any Marijuana Establishment without the required Local License or in violation of the requirements of this Ordinance shall be a violation of this Ordinance. Violations shall be subject to penalties outlined in 30-A, MRSA, § 4452 for each day the violation continues after notification. Amount of fines shall be set by the Municipal Officers, and inure to the Town of North Berwick.

Any such fine may be in addition to any suspension or revocation imposed in accordance with this ordinance. In any court action, the Town may seek injunctive relief in addition to penalties. The Town shall be entitled to recover its costs of enforcement, including its attorney’s fees.

SECTION 11 SEVERABILITY

The provisions of this Ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

SECTION 12 OTHER LAWS

Except as otherwise specifically provided herein, this Article incorporates the requirements and procedures set forth in the Maine Medical Marijuana Legalization Act, 22 M.R.S.A. § 2421 et.seq., as may be amended. In the event of a conflict between the provisions of this Chapter and the provisions of the Act or any other applicable State or local law or regulation, the more restrictive provision shall control.

SECTION 13 EFFECTIVE DATE

This Ordinance shall take effect pursuant upon approval by vote of the Town meeting and subsequent amendments adopted pursuant to this ordinance.