

**RECREATIONAL AND MEDICAL MARIJUANA
ORDINANCE AND POLICY FRAMEWORK
July 24, 2017**

The following is a framework for ordinances, regulations and policies being proposed for consideration. This is not intended to represent the actual language to be adopted, rather the desired intent or direction being considered.

The framework is divided into five sections:

- A) Land Use & Development – applicable to both medical and recreational marijuana uses
- B) Licensing – applicable to recreational marijuana uses only
- C) Host Community Benefit Agreement – applicable to recreational marijuana uses only
- D) Personal Use Nuisances – applicable to personal cultivation and use
- E) Administrative Policies – applicable to Town employees and public use of municipal land and buildings.

Each section includes brief, bulleted proposals for approaches, restrictions and/or requirements. The presented bullets are for discussion purposes and not intended to address every necessary detail a draft ordinance or policy will require. The framework is intended to generate discussion and develop consensus around key points to be incorporated into draft ordinances.

A) LAND USE AND DEVELOPMENT

Title 16 To be added to the appropriate zones in 16.3, incorporated as a Separate Section in Title 16 (16.12) or established as an Overlay Zone in 16.3

Purpose

- Supplement to Maine state law. Acknowledge that marijuana remains a Class 1 substance under Federal law. Nothing in this code exempts individuals from Federal Law.
- Provides permission for only those licensed by the State of Maine and Town of Kittery to engage in the commercial cultivation, distribution, manufacturing, testing, and selling of recreational and medical marijuana. It is a violation of state law to operate a marijuana operation without a license.

Applicability

- Applies to all cultivation, manufacturing, distribution, selling, and testing of recreational marijuana other than for personal use.
- Applies to all cultivation, manufacturing, distribution, selling, and testing of medical marijuana other than for personal use or Primary Caregivers.
- All transfers of marijuana in exchange for goods, services, and/or money are prohibited except when performed by a state and local licensed entity.

General Standards

- All commercial recreational and medical marijuana activities must be by a state and local licensed entity.
- All marijuana related odors must remain within the property boundaries. Ventilation must be engineered with an odor management plan adopted and followed.
- No access will be permitted except through controlled access doors.
- Building must have 360 degree video surveillance outside and inside
- Establishments are prohibited within 1,000 feet of schools, parks, and houses of worship.

- Establishments are prohibited adjacent to strictly residentially-zoned properties such as R-RL, R-S, R-KPV, R-U, and R-RLC.
- Building and lot development will be in accordance with the associated zones.
- Signage shall be in accordance with existing Sign code.
- Building, electrical and fire safety requirements shall be in accordance with existing state and local code, MUBEC, and Fire Marshall and state Sprinkler Code requirements.
- Parking requirements will be consistent with existing code. Marijuana retail will follow retail uses; marijuana cultivation, manufacturing, processing and testing will follow light industrial uses.

Permitted or Special Exception Uses

- Recreational retail stores will be allowed in zones B-PK, C-1, C-2, and C-3.
- Medical and recreational cultivation facilities, manufacturing facilities, and testing facilities will be allowed in zones B-PK, C-1, C-2, C-3, and MU.
- Social clubs will be prohibited in all zones.

B) LICENSING

Title 5 Business Licenses and Regulations add 5.10 Marijuana Establishment Licensing

Purpose

- Ensure local recreational marijuana operations are highly regulated and controlled in Kittery.

Applicability

- Applies to all cultivation, manufacturing, distribution, selling, and testing of recreational marijuana other than for personal use.

General Standards and Requirements

- Town Council will be the licensing authority
- A committee comprised of the Town Manager and the Department Heads will review license applications and make recommendations to Town Council.
- There will be four categories of licenses :
 - Retail Store
 - Cultivation
 - Manufacturing
 - Testing
- There will be a limit of 3 active retail store licenses. There will be no limit on the number of licenses for cultivation, manufacturing, and testing.
- A separate license is required for each operation even if the operations are to occur in the same facility or complex.
- There will be a local application fee of \$6,000.
- Only persons 21 years and older or business entities formed under Maine law may apply for a license.
- License holders must
 - Be licensed by the State of Maine.
 - Have right title and interest in the property.
 - Control access to ensure only those 21 and older can enter and only authorized persons can access controlled areas such as storage, cash holding, etc. Adopt and provide access control plans.
 - Maintain the safety and security of the premises and all persons on-site.

- Permit access to police, fire, and code enforcement officials without prior notice for the purpose of investigating complaints and/or license compliance checks.
- Report any and all suspected illegal activity to the Kittery Police within 24 hours. A sign must be posted stating the same in a conspicuous location on the premises.
- Must have a panic button wired to Kittery Police Dispatch within the establishment.
- Adopt policies and procedures to limit the amount of cash on premises at any given time (limit to be defined).
- Install and keep operational a monitored security system and fire alarm system at all times
- Utilize an industry proven ventilation system to prevent marijuana odors from encroaching on adjacent lots and public places. Adopt policies and procedures for ongoing odor control management.
- Adopt an integrated pest management plan to prevent pests, insects, mold, mildew, and plant diseases from spreading beyond the establishment.
- Post a sign in a conspicuous location on the premises stating that marijuana is a Class 1 substance and illegal to cultivate, distribute and possess under Federal law.
- Post in a conspicuous location within the establishment the state license and town license
- Render marijuana-waste inert before disposing through a commercial waste hauler. License holders may compost as long as the composting area is licensed by the State of Maine, the composting area is secured, and no odors leave the composting area.
- Ensure the extraction of THC is not performed using processes that contain butane.
- Enter into a Host Community Agreement with the Town.
- Post a surety bond or escrow.
- License will last for the duration of one calendar year commencing when the license is granted by the Town Council.
- Licenses cannot be transferred to other locations. With the approval of Town Council licenses can be transferred to another individual or entity operating at the licensed establishment. A transfer of a license will be subjected to a \$3,000.
- Due to the limited number of available retail licenses, application for new or available retail stores will be issued through a competitive process. A Request for Proposals will be issued by the Town Manager.
 - Submitted proposals must include certification of bonding and escrow, proof of right title and interest, certification from Central Maine Power that the electrical service can handle the projected load, company or personal history that demonstrates ability to operate in accordance with regulations and laws, business plan, security and access control plan, odor control plan, integrated pest management plan, cash policies and procedures, and other information as may be required to demonstrate the applicant can fulfill the requirements of the license.
 - Entities not selected to receive a license will receive a 50% refund of their application fee.
- Upon granting of a license, a site review will be conducted by the Code Enforcement Officer, Fire Chief and Police Chief and no operations may begin until the site review has been successfully completed.
- Licenses may be suspended or revoked for any violations of the license requirements
 - The license holder will cooperate in the investigation of any and all complaints of violation of state and local laws, and local license requirements.
 - Confirmed violations will be punishable by fines in a graduating manner of \$1,000 to \$5,000.
 - All violation investigation results will be reviewed by a committee comprising of the Town Manager, Police Chief, Fire Chief, and Code Enforcement Officer. Others may be involved as deemed appropriate.

- Two violations in a 12-month period will result in a recommendation to Town Council to temporarily suspend the license and to adopt stipulations required to lift the suspension.
- Those with a suspended license cannot operate until they satisfy all stipulations placed on it.
- More than two violations in a 12-month period will result in a recommendation to Town Council to revoke the license.
- Confirmed violations will be reported to the Town Council within 72 hours.
- Any entity or person who has had their state or local marijuana license revoked is prohibited from obtaining local marijuana license for 2 years from the date of revocation.
- The Town Council has the authority to deny renewal of a license for violations of state and local law, or license requirements.
- Appeals of fines, suspensions and revocations shall be heard by the Board of Appeals.

C) Host Community Benefit Agreement

- Licensees will be required to enter into a Host Community Benefit Agreement. The Host Community Benefit Agreement will require the licensee to provide financial support for the following:
 - Training and associated equipment for Police, Fire, and Code Enforcement staff for the enforcement of state and local laws and regulations related to marijuana use and distribution.
 - Educational curriculum, school-based programs, and public service campaigns designed to address under-age access, public intoxication, operating a vehicle while intoxicated, and other public health and safety issues.
 - Retail marijuana compliance check inspections.
- Each entity having one or more marijuana licenses shall enter into a Host Community Benefit Agreement.
- Host Community Benefit Agreement will require annual payment to the town to offset the impact to the community, subject to state authorization.

D) PERSONAL USE NUSIANCES

8.2 Property Maintenance

- No owner of any lot shall permit noxious odors from marijuana growth, processing, or use to pass beyond the property line and/or prevent the use and quiet enjoyment of adjacent lots and public places.

E) PERSONNEL POLICY

Administrative Policy

- Employee Drug and Alcohol Policy –
 - Employees may not possess, use, sell, distribute, manufacture or be under the influence of alcohol, illegal drugs, or any other substance that affects their behavior or ability to perform their job responsibilities while on duty, on work premises, while driving on Town business, or while representing the Town in connection with their employment.
 - Employees may possess, use, sell, distribute, manufacture or be under the influence of alcohol, legal and illegal drugs, or any other legal and illegal substance that affects their behavior or ability to perform their job responsibilities while on duty, on work premises, while driving on Town business, or while representing the Town in connection with their employment.

- 180 ○ Employees must notify their supervisor if taking a medication or substance prescribed by a
- 181 medical care provider which may impair the employee's ability to perform duties safely.
- 182 ○ Sworn police officers and employees subject to federal Department of Transportation Drug and
- 183 Alcohol Testing are prohibited from using Drug Enforcement Administration Schedule 1
- 184 Controlled Substances such as marijuana.
- 185 • Substance Use Policy - Use of tobacco products, e-cigarettes, and recreational marijuana is prohibited
- 186 inside all municipal buildings, on all town-owned athletic and recreational fields, in town-owned parks,
- 187 and on town owned property within 50 feet of public entrances to municipal buildings.