



TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

KITTERY TOWN COUNCIL

COUNCIL CHAMBERS

June 28, 2021

6:00PM

The public may attend the meeting in person or remotely via Zoom.

Attendees via Zoom will be recognized during the public hearings and public comment portion of the meeting. Please note, the Town is testing its hybrid meeting technology. Every effort will be made to make this run smoothly, however some technical difficulties may occur as the Town implements this new approach. **To register via Zoom:**

https://us02web.zoom.us/webinar/register/WN_bdYsktUwTA2_EFJCwD8xHg

After registering, you will receive a confirmation email containing information about joining the webinar. Webinar participants will be able to submit questions and comments during a public hearing.

The public may submit public comments for the DISCUSSION agenda item via email, US Mail, or by dropping written comments in the Drop Box outside the Town Hall entrance. Emailed comments should be sent to TownComments@kitteryme.org.

Comments received by **noon on the day of the meeting** will become part of the public record and may be read in whole or in summary by the Council Chair.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes
 - June 14, 2021 – Regular Meeting

8. Interviews for the Board of Appeals and Planning Board.
9. a. (060321-1) The Kittery Town Council moves to interview the following candidates for two (2) vacancies on the Board of Appeals for terms to expire 12/31/2024. The applicants are as follows:
 - Robert Gray
 - Robert Kaszynski
 - Colin McGuire
10. All items involving the town attorney, town engineers, town employees or other town consultants or requested offices.
11. PUBLIC HEARINGS
12. a. (060321-2) The Kittery Town Council moves to hold a public hearing on Title 5 and Title 16 – Marijuana.
13. DISCUSSION
 - a. Discussion by members of the public (three minutes per person)
 - b. Chairperson may read written comments into the record.
 - c. Chairperson's response to public comments.
14. UNFINISHED BUSINESS
15. NEW BUSINESS
 - a. Donations/gifts received for Council disposition

(060321-3) The Kittery Town Council moves to accept a donation in the amount of \$50,000 to be deposited into account #4060-43602.
 - b. (060321-4) The Kittery Town Council moves to schedule a public hearing on July 12, 2021 to authorize the Town Manager to enter into a Net Energy Billing Credit Agreement.
 - c. (060321-5) The Kittery Town Council moves to approve the repair of headstones and gravesites in Orchard Grove Cemetery as proposed by the Orchard Grove Sexton, in accordance with 13 MRS §1371.
 - d. (060321-6) The Kittery Town Council moves to appoint Patricia Moore, Assistant

Town Manager as Acting Town Manager from July 12, 2021 through July 16, 2021, while Town Manager is on vacation.

16. COUNCILOR ISSUES OR COMMENTS
17. COMMITTEE AND OTHER REPORTS
 - a. Communications from the Chairperson
 - b. Committee Reports
18. EXECUTIVE SESSION
19. ADJOURNMENT

Posted: June 24, 2021



TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

kamaral@kitteryme.org

Town Manager's Report to the Town Council June 28, 2021

- 1. MS4 Update** – Attached please find the Town's annual report on our Municipal Separate Storm Sewer Systems (MS4) permit and activities. This is required to be shared as part of our permit workplan. The Town currently funds its administration and implementation of the permit requirements through the annual budget, the Capital Improvement program, and grants.
- 2. Short Term Rental Licenses** – In the first year of the Town's Short Term Rental program (2020), Code Enforcement issued 81 licenses (reported in Jan 2021). An additional eight licenses were still in queue, and were issued at the end of January, bringing the total number of licenses for the first-year baseline to 89.

In accordance with Title 5, the number of available licenses increases 8% each year. Therefore, seven additional licenses were made available this calendar year (2021). All seven licenses have been issued. There are approximately 15 applicants on the waiting list for next year. We have collected \$7,450 in license fees since adoption of the ordinance.

The Town has software to help identify properties that are being advertised or listed for short-term rental in Kittery. According to the data, there were 124 listings for short term rentals in May. Any unlicensed properties receive a letter from Code Enforcement informing them of the requirements to obtain a license. The first round of letters was issued in May. Follow-up will continue and enforcement action will be taken as needed.

- 3. Speed Study State Road** – MaineDOT has issued their decision letter following a peer review of the speed limit reduction request for State Road. They affirmed their decision to not reduce the speed limit to 25 mph. The delay in receiving the letter was in part due to their not realizing it was not sent to me until the spring, and then on my end it got buried in my inbox.

MaineDOT has jurisdictional authority over speed limits and determines speed limits based on federal highway safety standards and engineering best practices. In 2018, Town Council directed me to submit a request to MaineDOT to reduce the speed on State Road. The regional engineer determined the current speed limit to be appropriate. In 2019, the Town Council requested MaineDOT reconsider their decision. Chief Engineer Joyce Taylor agreed to have the case peer reviewed. The result was an affirmation of the original decision to not alter the speed on State Road.

- 4. Whipple Sidewalk Update** – The Right of Way process for Whipple Road sidewalks is in full swing. This phase focuses on obtaining easements and legal right of way from the abutting landowners for the sidewalks, utility poles, etc.

Based on the early negotiations with the landowners and appraisals by MaineDOT, right-of-way is expected to increase the project cost \$350,000, bringing the total estimated cost to \$1,241,230. Through discussions with MDOT, we were able to secure an additional \$122,500 from the state for the project. Total Town costs for the project are estimated at \$331,000 with an additional \$96,000

for concrete (instead of asphalt) sidewalks and sharrow markings. The Town has \$250,000 in funding allocated to the project already, and can utilize an additional \$177,000 from the ROW or State Aid to Roads funds.

Presuming the right of way work is completed according to the state's timeline, the utility poles will likely be moved in the fall of this year, and construction of the sidewalk will be completed by summer of 2022.

- 5. Signage at Fort Foster and Seapoint Beach** – Following the Council's adoption of revised animal control ordinances, we are now working on revising the signage at Fort Foster and Seapoint and Crescent beaches. I have assembled a working group including Fort Foster staff, the Animal Control Officer, Parks Commission, and others to help develop a new signage scheme that will eliminate the disparate and contradictory signage around the gate and beaches entrance. The new signage will be welcoming, comprehensive, and visually consistent.

We have finished up the first draft of the text. We will be working with Fossil signs, who do the historic signage in Fort Foster, to design the signs for both locations. Once the design process is complete we will have them manufactured and installed in various locations.

The process will take longer than just putting up more metal signs, but the result will be much more desirable and worth the effort. I appreciate the Council's patience as we work to do this right.

Upcoming Dates:

- Senior Tax Credit Applications Due – July 1, Town Hall and online
- Town Hall Closed in Observance of Holiday – July 5
- Beaches Working Group Applications Deadline – July 6, Town Clerk's Office
- Concerts on Frisbee Commons – Tuesdays, Beginning July 13, 6:30PM, KCC
- Wednesday Nights Movies – Wednesdays, Beginning July 14, 9PM, KCC
- Friday Funnies Comic Series – Fridays, Beginning July 16, 6:30PM, KCC

Respectfully Submitted,



Kendra Amaral
Town Manager



TOWN OF KITTELY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: June 28, 2021
From: Jessa Kellogg, Public Works Inspector
Subject: Update on MS4 General Permit for Stormwater Discharges

EXECUTIVE SUMMARY

The Town of Kittery is subject to the 2013-2018 General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4 General Permit), a federally mandated program under the Clean Water Act administered by the Maine Department of Environmental Protection. One of the permit requirements specifies that certain municipal staff and elected officials be made aware of the MS4 General Permit and its requirements on an annual basis.

Town Councilors review of this Report fulfils the permit requirement for Permit Year 8, which ends 7/1/2021.

BACKGROUND

In 2003 the Town of Kittery became subject to the MS4 General Permit. The 2013-2018 General Permit has been administratively continued and currently we are in Permit Year 8. The Town of Kittery, in partnership with the other statewide regulated municipalities and entities have been working with Maine DEP on a new General Permit that meets current EPA requirements. The MS4 General Permit applies to the "Urbanized Area" of the Town and is designed to reduce the discharge of pollutants from the Town's regulated, separated storm drain system, to protect water quality, and satisfy appropriate requirements of the Clean Water Act.

33 U.S.C 1251 Section 402(p) of the Clean Water Act
40 CFR 122.26 Stormwater discharges (applicable to State NPDES programs)
38 M.R.S.A §413 Maine Water Pollution Control Law

NEW PERMIT EFFECTIVE 7/1/2022

1. A new MS4 General Permit (Permit) was finalized on October 15, 2020 and will go into effect on 7/1/2022.
2. On November 13, 2020 Friends of Casco Bay (FOCB) filed an appeal of the Permit with the Board of Environmental Protection with three requests:

- a. To make the Permit become effective at an earlier date (which has passed)
 - b. To require that regulated MS4s mandate the use of Low Impact Development in to the maximum extent feasible, and
 - c. To require that MS4s take action to correct water quality impairments whenever the MS4 discharges to a water with an EPA approved Total Maximum Daily Load.
3. Though the Permit has been appealed, the Town is still required to comply with the schedule and conditions of the 10/15/2021 Permit until the Board of Environmental Protection rules on the appeal. The hearing for the appeal is anticipated to be scheduled for the summer of 2021.
- a. The Town filed a Notice of Intent to comply with the new Permit and has created a 5-year Plan showing how we will address the new Permit Requirements. The NOI and Plan are available on the Public Works Department's Stormwater/MS4 Program page found here: [Stormwater/MS4 Program | Kittery ME](#)
 - b. The NOI and Kittery's Plan were out for public comment from 4/13/2021 to 5/12/2021 and no comments were received from the public.
 - c. The Maine DEP provided minimal comments, which Town Staff are addressing and will provide an updated Plan back to the DEP within 30 days.

CONTINUED IMPLEMENTATION OF CURRENT PERMIT UNTIL 7/1/2022

Kittery currently teams with 4 other Towns (York, Eliot, South Berwick and Berwick) to address the permit requirements and will continue to do so under a regional contract through Southern Maine Planning and Development Commission (SMPDC). The MS4 Permit requires that Town staff complete many different tasks. Even as Town staff have been preparing the 5-Year Plan for the next permit cycle, they continue to implement the current 5-Year Plan.

The Public Works Department's Stormwater/MS4 Program page ([Stormwater/MS4 Program | Kittery ME](#)) details many of the requirements, and contains a link to the current 5-Year Stormwater Plan as well as the draft 5-year plan for the next permit.

BUDGET DISCUSSION

If the Board of Environmental Protection rules in favor of the FOCB Appeal, there will be additional cost implications to the Town to update ordinances to include Low Impact Development. On behalf of the York County (including Kittery) and Portland area communities that are regulated under the Permit, the SMPDC has applied for grant funding to create a model Low Impact Development Strategies ordinance. Creation of a model ordinance for LID strategies will ensure more consistent application of LID across Maine.

There should not be any cost implications to the Town related to the impaired waters portion of the FOCB Appeal, because there is only one impaired water with a Total Maximum Daily Load (TMDL), which was approved by EPA in 1999, and the impairments are not related to

stormwater discharges. The Town has actively worked with the Spruce Creek Association to obtain grant funding to help correct its non TMDL water quality impairments in Spruce Creek. This work will continue regardless of the outcome of the Appeal.

There are a few other additional costs to the Town to address the new permit requirements that are not part of the appeal:

- Town staff will have to sample stormwater outfalls that flow during dry weather to assess if there are any pollutants, but Town staff have been diligent in addressing most issues associated with flowing outfalls, so we do not anticipate a significant additional cost because of this new requirement.
- There are other ordinance changes coming up related to Sediment and Erosion Control inspections which will occupy the Planning Board.



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

December 14, 2020

Kendra Amaral
Town Manager
200 Rogers Road
Kittery, Me 03904

RE: Speed Zones on Haley Rd and State Road

Dear Ms. Amaral:

In talking with Joyce Taylor, she had mentioned that you had not received any information on the speed zone review of the two roadways listed above. I apologize, I thought the Region Traffic Engineer was going to pass this on.

On 9/25/2019, I sent one of my engineers from Augusta down to Kittery to perform an independent review of the speed zones along these two roadways. He went to the sites and collected data. MaineDOT uses a program called USLIMITS2 to help us in setting the speed limits on any given roadway. This program helps us maintain consistency when setting speed limits. It takes account many factors, including actual vehicle operating speed, geometrics of the road, number of crashes along roadway segments and number of access points (driveways, businesses, side roads, etc). After the independent review, it was decided to leave the current speed limits in place.

Once again, I apologize for not getting this information to you sooner. If you have any questions, please feel free to contact me at 207-624-3632 or via email at stephen.landry@maine.gov.

Sincerely,

A handwritten signature in black ink that reads "Stephen Landry".

Stephen Landry
State Traffic Engineer

Title 5 - Short Term Rental Licenses
Report Date: June 28, 2021

	Licenses
Baseline Established	89
8% Increase for 2021	7
Total Annual Licenses Available for 2021	96
Total Licenses Issued as of Report Date	96
Remaining Licenses Available as of Report Date	0

Owners by State								
	CA	DC	MA	ME	NH	TN	VA	Total
B-L1				2				2
MU-BI				3				3
MU-KF			2	3	6			11
R-KPV				17	2			19
R-RL			2	11				13
R-RLC	1			6	2	1	1	11
R-S			1	5	1			7
R-U		1		25	2			28
R-V				2				2
Total	1	1	5	74	13	1	1	96
% of Total	1%	1%	5%	77%	14%	1%	1%	

Owner State: ME	
Licenses Issued	
KITTERY	
B-L1	2
MU-BI	3
MU-KF	3
R-RL	7
R-S	5
R-U	25
R-V	2
Kittery Point	
R-KPV	17
R-RL	3
R-RLC	6
York	
R-RL	1
Total	74

KITTERY TOWN COUNCIL Unapproved Minutes

June 14, 2021 Council Chambers

6:00PM

1 1. Call to Order

2 Chair Thomson called meeting to order at 5:58 p.m.

3 2. Introductory

4 3. Pledge of Allegiance

5 4. Oath of Office to Newly Elected Officials

6 Karen Estee the Town of Clerk of Kittery gave the oath to the two new Councilors
7 Cameron Hamm, and Mary Gibbons Stevens.

8 5. Roll Call

9 Councilors present: Chair Jeffrey Thomson, Jeffrey Pelletier, George Dow, Vice Chair
10 pro tempore Judith Spiller, Cyrus Clark, Cameron Hamm, and Mary Gibbons Stevens.

11 6. The Kittery Town Council moves to elect a Vice-Chairperson

12 Chair Thomson nominated Judith Spiller for Vice Chair, seconded by Councilor
13 Pelletier.

14 Motion Carried 7-0-0

15 7. Agenda Amendment and Adoption

16 Chair Thomson made a change under New Business item b. (060221-3) The Kittery
17 Town Council moves to accept the resignation of Suzanne Dwyer Jones from the Board
18 of Appeals, to include Cameron Hamm's resignation.

19 Chair Thomson cast one vote to accept the agenda as amended.

20 8. Town Manager's Report

21 The Town Manager reported on: June 2021 Election, Independence Day Celebration,
22 Library Building Project Update, Weed Control, and the Promotion of Jay Durgin.

23 Upcoming Dates: Independence Day Celebration on June 26, 2021 at 9AM, located at
24 the Thresher Memorial Park (behind Town Hall), the Senior tax credit applications are
25 due on July 1, 2021, applications located at the Town Hall and online. The Town Hall is
26 closed in observance of holiday on Monday, July 5, 2021, concerts on Frisbee
27 Commons are on Tuesdays, beginning July 13, 2021 at 6:30PM, at the Kittery
28 Community Center, Wednesday Night Movies are on Wednesdays, beginning July 14,

29 2021 at 9PM at the Kittery Community Center and Friday Funnies Comic Series are on
30 Fridays, beginning July 16, 6:30PM at the Kittery Community Center.

31 9. Acceptance of Previous Minutes

- 32 • May 24, 2021 Regular Meeting
- 33 • June 7, 2021 Special Meeting

34 Chair Thomson cast one vote to approve the May 24, and June 7, 2021 minutes as
35 presented, Vice Chair Spiller, Councilor Pelletier, Councilor Clark, and Councilor Dow
36 approved, Councilor Hamm, and Councilor Gibbons Stevens abstained.

37 10. Interviews for the Board of Appeals and Planning Board

38 11. All items involving the town attorney, town engineers, town employees or other town
39 consultants or requested offices.

40 12. PUBLIC HEARINGS

41 a. (060221-1) The Kittery Town Council moves to hold a public hearing on a new
42 Victualer's License application from Randy Small, 303 Chases Pond Road, York,
43 Maine, 03909, for Lobstah on the Go, mobile food unit located at 43 Government
44 Street, Kittery, Maine.

45 Vice Chair Spiller moved to approve, seconded by Councilor Clark.

46 Motion Carried 7-0-0

47 13. DISCUSSION

48 a. Discussion by members of the public (three minutes per person)

49 The Chair of the Kittery Planning Board, Leroy Dunkelberger, 100 Sandpiper Lane,
50 Kittery, Maine read a letter that the Planning Board asked him to draft for the Council
51 and the legislative representatives of Kittery in reference to LD95, LD489, and LD1312.

52 b. Chairperson may read written comments into the record.

53 Suzanne Johnson, 13 Cromwell Street, Kittery, Maine wrote a letter expressing her
54 concerns with disturbing live Periwinkles at Seapoint Beach, fireworks, and short-term
55 room rentals.

56 c. Chairperson's response to public comments.

57 Chair Thomson, and the Town Manager discussed if such a letter should only come
58 from the Town Manager's office or both the Planning Board and the Town Manager's
59 office.

60 The consensus was the Town Manager's office and the Planning Board would send
61 letters to the legislative representatives of Kittery.

62 Chair Thomson addressed Suzanne Johnson's concerns.

63 14. UNFINISHED BUSINESS

64 15. NEW BUSINESS

65 a. Donations/gifts received for Council disposition.

66 (060221-2) The Kittery Town Council moves to approve the following sponsored
67 spaces for the Rice Public Library. E-Commons – Given by Kennebunk Savings Bank

68 Moved by Councilor Dow, seconded by Vice Chair Spiller.

69 Motion Carried 7-0-0

70 b. (060221-3) The Kittery Town Council moves to accept the resignation of Suzanne
71 Dwyer Jones and Cameron Hamm from the Board of Appeals.

72 Moved by Chair Thomson, seconded by Councilor Dow.

73 Motion Carried 7-0-0

74 c. (060221-4) The Kittery Town Council moves to discuss appointments of Council
75 members to on-going Council Committees.

76 **Chairperson** - Jeffrey Thomson sworn in 11/9/2020

77 **Vice Chair** Judith Spiller as of 06/14/2021

78 **Capital Improvement Committee (1 Council Rep)**

79 VACANT

80 **Climate Adaptation Committee**

81 Judith Spiller

82 Cameron Hamm

83 **Comprehensive Plan Implementation Committee (1 Council Rep)**

84 Council Chairperson - Jeffrey Thomson

85 Council Vice Chair - Judith Spiller

86 **Economic Development Committee (1 Council Rep)**

87 George Dow

- 88 **Education Scholarship Selection Committee (2 Council Reps)**
89 Cameron Hamm
90 Jeffrey Pelletier
91 **Kittery Community Center Board of Directors (1 Council Rep)**
92 Jeffrey Pelletier
93 **Trustees of Trust Funds (Council Chair serves as ex-officio member)**
94 Chairperson - Jeffrey Thomson
95 **Kittery Land Issues Committee (1 Council Rep)**
96 Judith Spiller
97 **Disbursement Warrant for Town Employee Wages (Primary, Secondary, Tertiary)**
98 Jeffrey Thomson
99 Cyrus Clark
100 Jeffrey Pelletier
101 **Disbursement Warrant for Town Expenses (Primary, Secondary, Tertiary)**
102 Cyrus Clark
103 Jeffrey Thomson
104 Mary Gibbons Stevens
105 **School Warrant for General Disbursements (Primary, Secondary, Tertiary)**
106 Jeffrey Pelletier
107 Jeffrey Thomson
108 Cyrus Clark
109 **Library Building Committee (Ad Hoc) (2 Council Reps)**
110 Mary Gibbons Stevens
111 Jeffrey Pelletier
112 **Celebration Committee (1 Council Rep)**
113 Jeffrey Thomson
114 **Library Advisory Board (1 Council Rep)**
115 Judy Spiller
116 **Housing Committee (1 Council Rep)**
117 Former Councilor Matt Brock - Serving as Council Rep.

118 Chair Thomson moved to approve the additions to the Town Council Standing ADHOC
119 and Committee list as of June 14, 2021, seconded by Councilor Dow.

120 Motion Carried 7-0-0

121 d. (060221-5) The Kittery Town Council moves to affirm the ARP Fund Allocation.

122 The Town Manager gave an overview the ARP Fund Allocation.

123 Councilor Gibbons Stevens moved to endorse the strategy outlined in the Town
124 Manager's memo dated June 14, 2021 for an allocation of the ARP Funds to be
125 received by the Town of Kittery, seconded by Councilor Dow.

126 Motion Carried 7-0-0

127 e. (060221-6) The Kittery Town Council moves to approve a renewal Victualer's
128 License application from Scott Ramsey, 3 Libby Lane, Cape Neddick, Maine 03902
129 for BBQ Betty's Smokehouse mobile food unit.

130 Moved by Councilor Dow, seconded by Vice Chair Spiller.

131 Motion Carried 7-0-0

132 f. (060221-7) The Kittery Town Council moves to approve a renewal Liquor License
133 application from Warren's Lobster House, 11 Water Street, Kittery, Maine.

134 Moved by Councilor Dow, seconded by Vice Chair Spiller.

135 Motion Carried 7-0-0

136 g. (060221-8) The Kittery Town Council moves to appoint a Councilor along with the
137 Chair of the Shellfish Conservation Committee, to interview Tim Carven for a three-year
138 term to expire 12/31/2024.

139 Chair Thomson moved to appoint Councilor Gibbons Stevens to conduct the interview,
140 seconded by Vice Chair Spiller.

141 Motion Carried 7-0-0

142 h. (060221-9) The Kittery Town Council moves to endorse the goals of the State of
143 Maine's 2020 Climate Action Plan and pledges to work towards achieving those goals
144 through a Town climate action plan.

145 Vice Chair Spiller gave an overview of the Town climate action plan.

146 Councilor Dow moved the endorsement, seconded by Councilor Clark.

147 Motion carried 7-0-0

148 i. (060221-10) The Kittery Town Council moves schedule their summer meetings to
149 July 12, 2021 and August 9, 2021.

150 Moved by Chair Thomson, seconded by Vice Chair Spiller.

151 Motion Carried 7-0-0

152 j. (060221-11) The Kittery Town Council moves to discuss a process for developing
153 recommendations to address fires at Seapoint and Crescent Beaches.
154 At the May 24, 2021 Council meeting the Council discussed developing a working
155 group, Chair Thomson and the Town Manager decided the working group would be
156 composed of two abutters of the beaches, three citizens, the Town Manager, the Police
157 Chief, the Fire Chief, and Vice Chair Spiller.

158 Chair Thomson moved to establish a working group to address fires at Seapoint and
159 Crescent Beaches, seconded by Councilor Clark.

160 Motion Carried 7-0-0

161 16. COUNCILOR ISSUES OR COMMENTS

162 Councilor Pelletier wanted to welcome Councilor Hamm, and Councilor Gibbons
163 Stevens to the Council.

164 Councilor Dow welcomed Councilor Hamm, and Councilor Gibbons Stevens to the
165 Council. He also spoke about the 2021 Traip Academy graduation at Fort Foster.

166 Councilor Clark welcomed Councilor Hamm, and Councilor Gibbons Stevens to the
167 Council.

168 Councilor Gibbons Stevens wanted to thank the residents of Kittery for electing her to
169 the Council, she also thanked everyone that worked at the election.

170 Councilor Hamm wanted to thank the residents of Kittery for electing him to the Council,
171 he also thanked the election workers and is looking forward to getting to know his fellow
172 Councilors.

173 Vice Chair Spiller welcomed the new Councilors. Chair Spiller thanked the Town
174 Manager and Chair Thomson for their hard work during the past few months. She also
175 asked for an update on the sidewalk project on Whipple Road.

176 Chair Thomson wanted thank the new Councilor members Cameron Hamm, and Mary
177 Gibbons Stevens for running for Town Council, stating Public Service is a noble goal.
178 He also mentioned J1 visa foreign workers are arriving, and reminds the residents of
179 Kittery that John Paul Jones Park is a no dog zone.

180 17. COMMITTEE AND OTHER REPORTS

181 a. Communications from the Chairperson

182 b. Committee Reports, Vice Chair Spiller gave an update on the Climate Adaptation
183 Committee and stated the Committee is supporting a proposal from the Kittery Climate
184 Action Now Committee for a one-year pilot program at the Transfer station with Mr. Fox,
185 so residents can bring their compostable items to the Transfer station.

186 The Council is in support of the Kittery Climate Action Now proposal.

187 18. EXECUTIVE SESSION -

188 k. (060221-12) The Kittery Town Council moves to go into Executive Session with
189 the Town Manager in accordance with M.R.S Title1§405 (6) (D) to discuss
190 labor contracts.

191 Vice Chair Spiller moved to go into Executive session at 7:17 p.m., seconded by
192 Councilor Dow.

193 Motion Carried 7-0-0

194 Chair Thomson moved to come out of Executive session at 7:46 p.m., seconded by
195 Councilor Dow.

196 Motion Carried 7-0-0

197 19. ADJOURNMENT

198 Councilor Dow moved to adjourn at 7:47 p.m., seconded by Vice Chair Spiller.

199 All were in favor.

Submitted by Kim Tackett

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website.



JAN 15 2020
ju

TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Bob Gray

RESIDENCE: 14 MANSON RD KITTERY ME 03904

MAILING (if different) SAME

E-MAIL ADDRESS: dochoh1@comcast.net

PHONE #: (H) 207-439-9613 (W) _____ (C) 207-337-4689

Please check your choices and list in order of priority by marking 1,2,3, etc.:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Board of Trustees of Trust Funds |
| <input type="checkbox"/> Comprehensive Plan Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee | <input type="checkbox"/> Economic Development Committee |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Kittery Port Authority |
| <input type="checkbox"/> Planning Board | <input type="checkbox"/> KCC Board of Directors |
| <input type="checkbox"/> Kittery Climate Adaptation Committee | <input type="checkbox"/> Library Advisory Committee |
| <input type="checkbox"/> Kittery Celebration Committee | Other _____ |

EDUCATION/TRAINING: H.S. EXTENSIVE OJT & JOB SPECIFIC TRAINING

RELATED EXPERIENCE (Including other Boards and Commissions) 42 years ENGINEERING

ENG. MANAGEMENT, SPECIFICATION & TEST PLAN WRITING, REVIEWING &

IMPLEMENTATION - PRESIDENT KITTERY HISTORICAL & NAVAL Soc. TOWN CELEBRATION COMMITTEE

PRESENT EMPLOYMENT: RETIRED

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY Yes No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): NONE

REASON FOR APPLICATION TO THIS BOARD: COMMUNITY INVOLVEMENT

I HAVE HAVE NOT ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Bob Gray
SIGNATURE OF APPLICANT

1/15/2020
DATE



TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED

DEC 10 2018

BY: *MEM @ J. Blaw*

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Robert J. Kaszynski

RESIDENCE: 4 COVE LANDING : KITTERY, ME 03904

MAILING (if different) _____

E-MAIL ADDRESS: rkasz@comcast.net PHONE #: (Home) ²⁰⁷ 439-1768 (Work) ^{cell 663} 566-0360

Please check your choice:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Mary Safford Wildes Trust |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee | <input checked="" type="checkbox"/> Economic Development Committee |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Open Space Committee |
| <input checked="" type="checkbox"/> Port Authority | <input checked="" type="checkbox"/> Planning Board |
| <input type="checkbox"/> Personnel Board | <input type="checkbox"/> Other _____ |

EDUCATION/TRAINING: BA degree; US Army (LT E); US Postal Inspector

RELATED EXPERIENCE (Including other Boards and Commissions) _____

Past: Board of Appeals member; Personnel Board member

PRESENT EMPLOYMENT: Retired (Federal Law Enforcement)

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY Yes No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): NONE

REASON FOR APPLICATION TO THIS BOARD: Community Involvement + Assistance

I HAVE ___/HAVE NOT ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Please read the back of this application before signing.

Robert J. Kaszynski
SIGNATURE OF APPLICANT

12-6-18
DATE

Original App



TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Colin McGuire

RESIDENCE: 26 Whipple Rd. Kittery, ME 03904

MAILING (if different) _____

E-MAIL ADDRESS: colin@mcguireforkittery.com

PHONE #: (H) _____ (W) 207-766-7545 (C) 207-939-4963

Please check your choices and list in order of priority by marking 1,2,3, etc.:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Board of Trustees of Trust Funds |
| <input type="checkbox"/> Comprehensive Plan Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Education Scholarship Committee | <input type="checkbox"/> Economic Development Committee |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Kittery Port Authority |
| <input type="checkbox"/> Planning Board | <input type="checkbox"/> KCC Board of Directors |
| <input type="checkbox"/> Kittery Climate Adaptation Committee | <input type="checkbox"/> Library Advisory Committee |
| <input type="checkbox"/> Kittery Celebration Committee | Other _____ |

EDUCATION/TRAINING: Various Technical Trainings, Attended University of Kansas & University of Nebraska

RELATED EXPERIENCE (Including other Boards and Commissions) _____

25 Years as an Entrepreneur, Complex Project Management, Contract Review and Modification,
Negotiation w/ Vendors, Auditors & Personnel. Former board member of Southern Maine Chapter of ISSA (Information Systems Security Association)

PRESENT EMPLOYMENT: Network Engineer(IT)

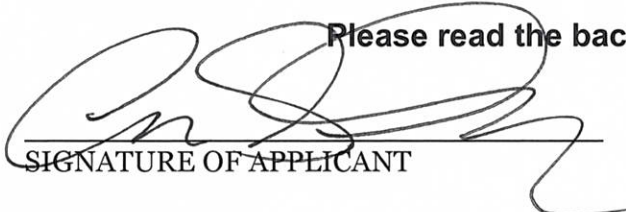
ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY Yes No

ANY KNOWN CONFLICT OF INTEREST (please read back of application): _____
None

REASON FOR APPLICATION TO THIS BOARD: Offer my skills and time to the town of Kittery

I HAVE /HAVE NOT ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED. *✓ Via Channel 22*

Please read the back of this application before signing.


SIGNATURE OF APPLICANT

06-21-2021
DATE



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

REPORT TO TOWN COUNCIL

Meeting Date: June 7, 2021
Updated: June 28, 2021
From: Kendra Amaral, Town Manager
CC: Dutch Dunkelberger, Planning Board Chairperson
Subject: Title 5 and Title 16 Marijuana Businesses
Councilor Sponsor: Chairperson Jeffrey Thomson

BACKGROUND

The Kittery Town Council has been discussing marijuana businesses since the State legalized adult-use marijuana in 2016. Between 2016 and 2019, the Town developed a framework for potential licensing in town, placed a non-binding referendum on the ballot regarding marijuana businesses, and presented a series of informationals on adult-use marijuana.

In November of 2019, the Council requested the staff resume work on developing ordinances for possible adult-use marijuana in Kittery. The Working Group was re-established and met on Feb 25, 2020. Shortly after resuming working group meetings, COVID-19 hit, diverting staff attention to pandemic-focused operations.

The Town received a certified petition in November of 2020 to enact a licensing ordinance for adult-use and medical marijuana businesses. The petition had a fatal flaw in that it only sought to enact an ordinance to allow for licensing a marijuana business. It did not address the prohibition of the use in for all zones Title 16 (Land Use Code). In accordance with Council direction, we have worked with the petitioner to develop an alternative licensing ordinance, and a corresponding land use ordinance that could be pursued through a normal ordinance process rather than an election

A draft ordinance was developed, working with the Town Attorney and the petitioner's attorney. The draft Title 16 land use ordinance amendment was presented to the Planning Board for recommendation. They held a public hearing that stretched over two meetings. They made edits to the proposal and recommended it unanimously to the Council.

TITLE 5 AND TITLE 16 PLANNING BOARD RECOMMENDATION

On March 15, Town Council held a workshop with the Planning Board to discuss the recommended draft Title 16 amendment. On March 22, 2021 the Council voted to turn back the draft ordinance amendment to the Planning Board specifically to look further into:

- Not allow retail in the C-2 zone due to traffic concerns;
- Limit C1 and MU zones to retail only;
- Adopt the 1,000-foot buffer to schools;
- Limit the number of cultivation and manufacturing facilities to 5;
- Require engineered traffic studies for retail; and

- Create clear separation between major and minor home occupations for caregivers to allow minor occupations going forward and eliminate major home occupations for medical caregivers.

The Planning Board held two additional meetings on the draft ordinance amendment. They made additional adjustments to the draft and unanimously voted to recommend the revised draft to the Town Council.

The current version of the Title 16 proposal specifically:

- Prohibits cultivation facilities in the C-1 and MU zones;
- Adopts a consistent 500-foot buffer from public and private schools;
- Engineered traffic studies are already called for in Title 16 and can be requested, when not required, by the Planning Board;
- Eliminated the Medical Caregiver Home Occupation and created a Medical Caregiver Home Establishment that is to be reviewed and permitted by the Planning Board (rather than the Board of Appeals) and ensures the operation is truly a home occupation and not a medical or adult use storefront masquerading as a home occupation;
- Introduces a 1,500-foot buffer between marijuana operations; and
- Adjusted and added performance standards.

The Planning Board declined to recommend a prohibition of retail marijuana in the C-2 zone. Limitations on the number of licenses for retail stores is handled in Title 5, which is outside of the Planning Board's purview.

Changes to the proposed ordinances that are significantly different from the Workshop version have been highlighted in yellow.

STAFF RECOMMENDATIONS

All who have been involved in the development and review of this ordinance are rightly concerned about marijuana cultivation and manufacturing preempting redevelopment in the C-1 and MU areas where the Town is hoping to see mixed-use affordable housing developments. The Staff also share the Planning Board's and Council's concerns with traffic impacts along the more congested areas. The Planning Board recommendations generally address these issues, though Staff recommend a few different solutions; as noted below.

Draft Title 5 and Title 16 have been reviewed by the Town Attorney for consistency with state law and for advice regarding implementation challenges experienced elsewhere in the state.

Staff have updated Title 5 to address any inconsistencies with the proposed Title 16 amendment.

The Planning Board added an annual review process for Medical Caregiver Home Establishments. The process is duplicative of the Title 5 license renewal process. Staff are recommending handling this through the annual licensing process (Title 5) only. Therefore, staff have removed from the recommended Title 16 amendment the annual renewal section for Home Establishments.

The Planning Board amended the minimum duration of video surveillance storage from 30 days to 45 days. The 45 days is technologically unfeasible and creates a potentially fatal hurdle for applicants, and has been challenged and amended elsewhere in the state. There is no arguable public safety request or need

for 45 days of surveillance data being stored. Staff recommend reverting back to the 30 days originally proposed.

Staff are recommending deletion of the 1,500-foot buffer between marijuana businesses recommended by the Planning Board. The Planning Board inserted this buffer in response to the traffic and clustering concerns raised during the Council Workshop and their tour of a facility in Eliot.

The Town currently does have buffer provisions in Title 16 for storage facilities and gas stations. These were put in place after the uses were already present in Town. However, retail marijuana is a new use and therefore the implementation of the buffer creates a uniquely complex roll-out.

Title 5 restricts the number of retail licenses to five; and the expectation will be that all five licenses will be applied for (and a subsequent wait list created) immediately upon enactment of the ordinance. Applicants will be placed in a “race” to get licensed first, or at least before any other proposed business within 1,500 feet of their facility. If another entity does get approved, it automatically disqualifies the other applicants who may be well into their application process. Normal delays in the review process, unique to each application, can expose the Town to accusations of gaming the system to block out an applicant based solely on how another applicant is moving through the process. We have been advised against including a buffer.

The Planning Board has the ability to address traffic through their requirement to have a traffic study that incorporates other traffic data and activity along the connecting road. For example, Route 236 traffic has been studied significantly and that data should be incorporated into any traffic analysis of turning movements and traffic control devices (signalization) for buildout along that route; regardless of the business type. The Planning Board should be aggressive about requiring traffic control devices when warranted, and err on the side of requiring traffic control devices when the traffic study indicates something is “on the edge” of needing them. Traffic control design and infrastructure should be a mitigation tool used for all land use permits regardless of the business use or adjoining road.

Though it is recognized that it may be less than desirable to have certain marijuana operations clustered along busy roads. Conversely, clustering may have a positive impact on the general economic growth and buildout for the Town as a whole, by not artificially encouraging marijuana businesses to spread throughout all the available zones.

Given the challenges, mitigating tools through traffic studies, and unknowns of how the buildout will occur, the Staff are recommending the 1,500 buffer between marijuana uses be removed. If the Council is interested in adding more retail licenses in the future, the Council and Planning Board may want to revisit the buffer matter.

ATTACHMENTS

- Title 5 and Title 16 Draft Ordinance Amendments
- Title 5 and Title 16 Enactment
- Town Attorney Memo on Petition and Petition Comparison

TITLE 5 - BUSINESS LICENSES and REGULATIONS
and
TITLE 16 – LAND USE CODE
MARIJUANA OPERATIONS

1. ADD Title 5.11 Marijuana Businesses as follows:

CHAPTER 5.11 Marijuana Businesses

5.11.1. Purpose and Authority

The purpose of this Title is to set forth procedures and standards for the issuance of local licenses for Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments in order to protect public health, safety and welfare.

5.11.2. Definitions

As used in this Title, the terms below are defined as indicated. All other terms used in this Title, if not defined below, are the same definition as set forth in 22 MRS § 2422 (for medical marijuana businesses), 28-B M.R.S. § 102 (for adult use marijuana businesses), or the Land Use and Development Code, Title 16 of the Kittery Town Code.

Applicant means a person who has submitted an application for licensure as a Marijuana Business pursuant to this Chapter.

Licensed Premises means the premises specified in an application for a license pursuant to this Title or within a license issued pursuant to this Title.

Licensee means a person licensed pursuant to this Title.

Licensing Authority means the Town Council or Town Manager as designated in this Title to be the issuer of the particular type of Marijuana Business license.

Marijuana Business means an Adult Use Marijuana Store, Medical Marijuana Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Cultivation Facility, Marijuana Manufacturing Facility, or Marijuana Testing Facility, all as defined in the Town of Kittery Land Use Ordinance.

Marijuana Retail Store means a Medical Marijuana Registered Dispensary, Medical Marijuana Caregiver Retail Store or an Adult Use Marijuana Store.

Medical Marijuana Registered Caregiver Home Establishment means a permitted medical marijuana registered caregiver business operating within a primary dwelling unit.

Owner means a person whose beneficial interest in a Marijuana Business is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of the Marijuana Business and/or has a controlling interest in the Marijuana Business.

Person means 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

30 include any governmental organization.

31 Premises means the physical location at which a Marijuana Business is to conduct its business.

32 State License means any license issued by the State Licensing Authority.

33 State Licensing Authority means the authority created or designated by the state for the purpose of regulating
34 and controlling licensing for Marijuana Businesses.

35 Town Manager means the Town Manager of the Town of Kittery or designee.

36 **5.11.3. License Requirement**

37 A Marijuana Business or Medical Marijuana Registered Caregiver Home Establishment may not begin or
38 continue operations unless it has and is in possession of a license issued pursuant to this Title. Marijuana
39 Registered Caregivers that hold an approved land use permit (major home occupation approval) and/or are
40 operating as of the effective date of this Section must submit a completed application within 30 days of the
41 effective date, and have a grace period of 60 days after the effective date to receive a license, which may be
42 extended by order of the Council if justified due to the anticipated timeline of the review process.

44 **5.11.4. Licensing Authority**

45 All Medical Marijuana Registered Caregiver Home Establishment license applications, whether new or
46 renewal, must be reviewed and may be approved by the Town Manager. All other initial license applications
47 are to be reviewed and may be approved by the Town Council after public hearing. The Town Manager is
48 the Licensing Authority for renewal licenses, as specified in Section 5.11.5.E.

49 **5.11.5. Licensing Procedures**

50 The review procedures described below are the same for initial license applications as well as renewals,
51 unless otherwise indicated. In reviewing license applications, the Licensing Authority and any consulting
52 Town officials may consider the approval standards under this Title as well as other applicable local, state or
53 federal laws and, for license renewals, the Licensee's record of compliance with the same.

54 A. Application. License applications must be submitted to the Town in writing using a form prepared by
55 the Town for the purpose and must include all information required by this Title and by the form.
56 Applications for initial licensure of Marijuana Retail Stores may not be accepted until the applicant has
57 been pre-certified in accordance with Section 5.11.10.B.

58 B. Initial Review. The Town Manager is responsible for the initial investigation of the application to
59 ensure compliance with the requirements of this Title and to obtain recommendations from other Town
60 officials as required.

61 C. License Conditions. The Licensing Authority has the authority to impose any conditions on a license
62 that may be reasonably necessary to ensure compliance with the requirements of this Title or to address
63 concerns about operations. Failure of any Licensee to comply with such conditions are considered a
64 violation of the license and of this Title.

65 D. Staff Review. No license may be granted by the Licensing Authority until the Town Manager, Police
66 Chief, Fire Chief, Code Enforcement Officer, and other staff as deemed appropriate by the Town

67 Manager, have all made positive recommendations regarding the Applicant’s ability to comply with this
68 Title or any other applicable Town ordinance, Planning Board conditions of approval, or state or federal
69 law enforced by such officials.

70 E. Renewal. For renewal licenses, the application, fee and review process are the same as for initial
71 licenses except that the Town Manager is the Licensing Authority. If any reviewing staff member finds
72 that new conditions should be attached to the renewal license or that the renewal license should be
73 denied, the renewal application must be forwarded to the Town Council for final action. Renewal
74 licenses for Marijuana Retail Stores may be granted by the Town Manager only upon a finding that the
75 Store has in the past license term been operating in accordance with this Title as well as with the
76 Store’s previously submitted Operations Plan.

77 F. Type of License. Licenses may be approved only for the type(s) of use identified in the application. A
78 Licensee who intends to expand or convert the Licensed Premises to a different type of use that is not
79 specifically approved in a license must obtain a new license for that use.

80 G. State Approvals. Any Licensee that is required to obtain approval from the State of Maine will provide
81 the Town copies of all necessary approvals prior to operating the licensed business.

82 H. Inspection. Any Licensee must, prior to operating the licensed business, contact the Town to request an
83 inspection to determine the compliance, as built, with the requirements of this Title, any conditions of
84 licensure, and the submitted Operations Plan (if applicable). Any municipal official with authority to
85 make recommendations, grant licenses or enforce this or other municipal ordinances regarding
86 Marijuana Businesses or Medical Marijuana Registered Caregiver Home Establishments has authority
87 to enter the premises of an Applicant or Licensee without notice during operating hours to make any
88 inspection reasonably necessary to ensure continued compliance with all applicable Town ordinances.

89 I. License term. Each license issued under this Title is valid for the term of license granted by the State
90 License Authority (“the license year”), or otherwise for one (1) year from the date of issuance.
91 Applications for renewal licenses should be submitted no fewer than 60 days prior to expiration of the
92 existing term to allow for timely processing. Any Licensee who fails to apply for a renewal license
93 prior to expiration of the existing term does not have authority to operate until a renewal license is
94 granted. A late fee of 10% of the total license fee will be assessed to applications submitted 1 to 30
95 days past expiration of the existing license, and 20% will be assessed for applications submitted
96 thereafter. Any Marijuana Retail Store which fails to obtain a renewal license within 30 days following
97 expiration of the existing term forfeits its license, unless the applicant timely submitted the application
98 and the delay is due to circumstances not within the applicant’s control.

99 J. Forfeiture. A License is forfeited if the Licensee:

100 1. Fails to obtain a renewal license within thirty (30) days of expiration of an existing license;

101 2. Makes any other active use of the Licensed Premises other than for the licensed business
102 operation; or

103 3. Is not actively operating the licensed business for a period exceeding six (6) consecutive
104 months, except that the Licensing Authority may, upon written request from the Licensee, allow for
105 a suspension of use of up to one year if the suspension in use is caused by damage to the Licensed

106 Premises, renovation, repair, active attempts to sell the Licensed Premises as a turnkey business
107 operation, or other bona fide circumstances out of the Licensee’s control.

108 **5.11.6. Application Submission Requirements**

109 Each applicant for a license must complete and file an application on the form provided by the Town,
110 together with the applicable license fee. If multiple types of business operations are to be conducted on a
111 single Premises, the applicant must pay the application fee for each type of business. Applications must
112 include:

113 A. Proof of the Applicant’s right, title, or interest in the Premises, such as a deed, lease, sublease, (must
114 include lease and authorization for sublease, if applicable) or purchase and sale agreement.

115 B. A copy of the Applicant’s State License application and supporting documentation, as submitted to the
116 State Licensing Authority, if a State License is required.

117
118 C. Evidence of all state approvals or conditional approvals required to operate the business, including, but
119 not limited to, a State License as defined by this Title, caregiver registration, a State retail certificate, or a
120 State health license.

121 D. If not included in the Applicant’s State License application, attested copies of any articles of
122 incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern
123 the entity that will own and/or operate the business.

124
125 E. If not included in the Applicant’s State License application, an affidavit on a form to be provided by the
126 Town that identifies all owners, officers, members, managers or partners of the Applicant, their
127 ownership interests, and their places of residence at the time of the application and for the immediately
128 preceding three (3) years.

129 F. A release for each Applicant and for each officer, owner, member, manager or partner of the Applicant
130 seeking a license allowing the Town of Kittery or its officials to obtain criminal records and other
131 background information related to the individual.

132 G. Evidence of all land use approvals or conditional land use approvals required to operate the business,
133 including, but not limited to building permit, special exception approval, site plan review approval,
134 and/or a change of use permit. Where site plan approval is required, evidence of submission of a
135 complete site plan review application is sufficient, but any license issued is conditioned upon site plan
136 approval and issuance of any necessary building or occupancy permits.

137 H. Evidence of all other local approvals or conditional approvals required to operate the business, including
138 any applicable food or victualer’s license. If the Marijuana Business or Medical Marijuana Registered
139 Caregiver Home Establishment is not in use as of the date of license application, the applicant must list
140 any licenses required and issuance of such licenses will be made a condition of the Marijuana Business
141 License.

142 I. A description of the premises for which the license is sought, including a plan of the premises.

143 J. A copy of any state or municipal license held for any other Marijuana Business, including any home
144 occupation, owned or operated by the Applicant or by any officer, owner, subsidiary, member, manager
145 or partner of the Applicant, as well as any notices of violation received from the state or municipality for
146 such Marijuana Business and proof that any violation has been resolved.

147 K. Certification from the Fire Chief that the location of the Marijuana Business or Medical Marijuana
148 Registered Caregiver Home Establishment on the subject Premises will not pose an undue risk of fire or
149 other safety hazard.

150 L. For Marijuana Retail Stores, an Operations Plan, describing the Applicant's:
151 1. Security plan;
152 2. Provisions to ensure against loitering and using marijuana and marijuana products on or near the
153 Premises;
154 3. Protocols for hiring and training employees;
155 4. Experience and training in the State of Maine's seed-to-sale tracking system;
156 5. Protocols for odor control and disposal of waste marijuana or marijuana products; and
157 6. Protocols for ensuring the safety and security of product.
158 7. Fire Suppression annual certification

159 If the Town determines that a submitted application is not complete, the Town must notify the applicant of
160 the additional information required to process the application. If such additional information is not
161 submitted within thirty (30) days of the Town's request, the application may be denied.

162 **5.11.7 Transfer of Ownership**

163 A license for a Marijuana Business may be transferred to another owner if an updated application form and
164 ownership affidavit are provided to the Town and all persons listed on the affidavit successfully pass
165 background checks and otherwise meet the criteria of this Title. See Section 5.11.10.E regarding transfer of
166 licenses for Marijuana Retail Stores.

167 **5.11.8 Transfer of Location**

168 Marijuana Business and Medical Marijuana Registered Caregiver Home Establishment licenses are limited to
169 the Premises for which they are issued and are not transferable to a different location. A Licensee who seeks
170 to operate in a new location must acquire a new license for that location.

171 **5.11.9 Limit on and Special Procedures for Marijuana Retail Stores**

172 A. Limit on marijuana retail store licenses. The total number of licenses issued for Marijuana Retail Stores
173 may not exceed five.

174 B. Pre-application required. Applications for initial licensure of Marijuana Retail Stores will not be
175 accepted for processing unless and until the applicant has successfully completed a pre-application
176 process as set forth here.

177 1. Pre-application forms will be available starting on the effective date of this Title. Applicants
178 seeking licensure as a Marijuana Retail Store must complete the form and return it to the Town
179 along with the following supporting documentation:
180 a. Completed, signed and notarized ownership affidavit

- 181 b. Pre-application fee
- 182 c. Evidence of right, title and interest in the Premises (deed, purchase and sale agreement, lease
- 183 and/or sublease)
- 184 d. Evidence demonstrating the applicant’s financial capacity to build out (if applicable) and
- 185 operate the Marijuana Retail Store (e.g., bank letter, letter of credit, loan commitment)
- 186 e. Evidence demonstrating that the applicant has applied for conditional licensure from the State
- 187 of Maine
- 188 2. Upon receipt of a pre-application, the Town must note the date and time of the receipt and,
- 189 without unreasonable delay, process the application to determine whether all required fields have
- 190 been filled and all required supporting documentation has been provided. If the Town
- 191 determines that a submitted pre-application is not complete, it must notify the applicant of the
- 192 additional information required to process the pre-application. If such additional information is
- 193 not submitted within thirty (30) days of the Town’s request, the pre-application will be rejected.
- 194 3. The Town Manager must evaluate complete pre-applications and certify the eligibility of
- 195 applicants if they meet the following standards:
- 196 a. The applicant has demonstrated right, title and interest in the Premises;
- 197 b. The applicant has demonstrated adequate financial capacity to build out (if applicable) and
- 198 operate the retail store.
- 199 c. The Premises is located in a zone in which Marijuana Retail Stores are permitted.
- 200 d. The applicant has applied for or received conditional license approval from the State of Maine
- 201 for the subject Marijuana Retail Store.
- 202 4. The Town Manager must issue a written decision to the applicant indicating whether it has met
- 203 the standards for pre-application certification. Applications for licensure may be submitted as
- 204 soon as the certification decision is issued.
- 205 C. Priority. License applications for Marijuana Retail Stores will not be received or processed until the date
- 206 announced by the Town as the first day license applications will be accepted. Any license applications
- 207 received by mail prior to the announced date will be returned to the sender. Licenses for Marijuana
- 208 Retail Stores will be assigned priority based upon the date and time a completed pre-application was
- 209 received by the Town. The first five (5) certified applicants will be invited to provide completed license
- 210 applications within thirty (30) days of certification, which will be processed in accordance with Section
- 211 5.11.6
- 212 D. Waiting list procedures. If a license for a Marijuana Retail Store becomes available, the Town will
- 213 invite the pre-certified applicant with the next priority to apply for licensure. If such applicant does
- 214 not submit an application within thirty (30) days from invitation, the Town must proceed to the next
- 215 applicant. Applications will not be processed from the waiting list if there have been any material
- 216 changes to ownership, as indicated on the ownership affidavit, or where there is a change to location
- 217 of the Premises.
- 218
- 219 E. Change in ownership of Marijuana Retail Store. In the event of a proposed change in ownership of a
- 220 Marijuana Retail Store (including a material change of members of an LLC or partnership), the new
- 221 owner(s) must apply for a new license within thirty (30) days following the date of the transfer by
- 222 submitting a full, completed / updated application package to the Town. The application is subject to

223 the same application process as new licenses and, after initial staff review, will be presented to the
224 Town Council for consideration if the proposal involves a change in majority ownership or control of
225 the Marijuana Retail Store. If the new owner does not apply for a new license within said thirty (30)
226 day period, the license will be considered forfeited. The license may not be transferred if any active
227 use other than for the licensed Marijuana Retail Store has been made of the Licensed Premises prior
228 to or within the thirty (30) days following the transfer of ownership.

229 **5.11.10 Denial, Revocation or Suspension of a License**

230 A license application for a Marijuana Business or Medical Marijuana Registered Caregiver Home
231 Establishment must be denied by the Licensing Authority, suspended by the Town Manager, or after notice
232 and hearing revoked by the Town Council, if the Applicant, or any Owner of the Applicant or Licensee:

233 A. Fails to meet the requirements of this Title.

234 B. Is not at least twenty-one years of age.

235 C. Has had a license required for the Marijuana Business or Medical Marijuana Registered Caregiver
236 Home Establishment suspended or revoked by the Town, by a municipality in the State of Maine, or
237 by the State of Maine.

238 D. Is in violation of this or any ordinance or has unpaid penalties assessed by a court, related to the
239 Marijuana Business or Medical Marijuana Registered Caregiver Home Establishment.

240 E. Has not acquired all necessary state and local approvals (other than final state approval) prior to
241 issuance of the license.

242 F. Fails to meet zoning or other requirements of the Land Use and Development Code.

243 G. Has been convicted of a criminal violation arising out of operation of a Marijuana Business.

244 H. Has, within ten years prior to the date of the application, been convicted of selling marijuana, alcohol,
245 or any scheduled drug to a minor.

246 I. Has provided false or misleading information in connection with the license application.

247 **5.11.11 Approval and Operating Requirements**

248 In order to obtain and retain a license pursuant to this Title, the Applicant/Licensee must demonstrate
249 that the following requirements are met. The Licensee must comply with each of these requirements
250 during the term of the license:

251 A. Display of License. The current License must be displayed at all times in a conspicuous location
252 within the Premises.

253 B. Premises. All Licensed Premises must be fixed, permanent locations. Licensees are not permitted
254 to operate Marijuana Establishments in other than the Licensed Premises, such as at farmer's
255 markets, farm stands or kiosks.

256 C. Loitering. The facility owner/operator must make adequate provisions to prevent patrons or other
257 persons from loitering on the Premises. It is the Licensee’s obligation to ensure that anyone found to be
258 loitering or using marijuana or marijuana products in the parking lot or other outdoor areas of a
259 Licensed Premises is ordered to leave.

260 D. Other laws. A Marijuana Business or Medical Marijuana Registered Caregiver Home Establishment
261 must meet all operating and other requirements of state and local law. To the extent the State of Maine
262 has adopted or adopts in the future any law or regulation governing marijuana businesses that conflicts
263 in any way with the provisions of this Title, the more restrictive provisions control.

264 E. Changes to operations. Marijuana Businesses and Medical Marijuana Registered Caregiver Home
265 Establishment must operate in accordance with all material representations made in the approved
266 license application and Operations Plan (if applicable). If the Licensee is required to notify the State of
267 a change related to the Marijuana Business, the Licensee must promptly provide the Town with a copy
268 of such notification. If the Town determines that the change is not in accordance with the requirements
269 of this Title, or requires additional conditions of approval, the change must be forwarded to the Town
270 Council for consideration.

271 5.11.12 Appeals

272 A. The following appeals may be decided by the Town Council in a *de novo* hearing in
273 which it will hear evidence on the application and make its own findings of fact and conclusions of
274 law:

- 275 1. Appeal of the Town Manager’s denial of an application.
- 276
- 277 2. Appeal by any aggrieved party having legal standing of any decision by the Town Manager to grant a
278 license under this Title.
- 279
- 280 3. Appeal by a Licensee challenging conditions attached to a License, to which the Licensee objects.

281 Appeals must be filed with the Town Clerk within thirty (30) days of the date of the decision subject to
282 appeal. The Town Council must hold the hearing on the appeal and render a decision within thirty (30)
283 days of the date of the appeal, unless all parties consent to a delay.

284 B. Appeals from any decision of the Town Council under this Title may be made only to York County
285 Superior Court within thirty (30) days of the date of the decision being appealed.

286 5.11.13 Enforcement and Penalties

287 The operation of any Marijuana Business or Medical Marijuana Registered Caregiver Home Establishment
288 without the required license or in violation of the requirements of this Title is a violation of this Title. The
289 Town Manager must enforce the provisions of this Title. A violation of any provision of this Title is a
290 civil violation, and a civil penalty of \$250 to \$2,500 applies and may be assessed for each day that the
291 violation continues. The penalty for operating a Marijuana Business or Medical Marijuana Registered
292 Caregiver Home Establishment without a valid license is \$2,500 per day for Marijuana Retail Stores and
293 \$500 per day for other Marijuana Businesses or Medical Marijuana Registered Caregiver Home
294 Establishments. The Town Manager may suspend the license, and the Town Council may revoke the
295 license after notice and hearing.

296 **5.11.14 Other Laws**

297 Except as otherwise specifically provided herein, this Title incorporates the requirements and procedures
 298 set forth in the Maine Marijuana Legalization Act, 28-B M.R.S. Chapter 1, as may be amended and the
 299 Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended. In the event of a
 300 conflict between the provisions of this Title and the provisions of said Acts or any other applicable state
 301 or local law or regulation, the more restrictive provision must control.

2. ADD Marijuana Business License Fees to Appendix A as follows:

<u>Marijuana Retail Store – Preapplication fee</u>	<u>\$750</u>
<u>Marijuana Retail Store – License fee</u>	<u>\$6,000</u>
<u>Marijuana Cultivation Facility</u>	
<u>Tier 1</u>	<u>\$750</u>
<u>Tier 2</u>	<u>\$1,500</u>
<u>Tier 3</u>	<u>\$2,000</u>
<u>Tier 4</u>	<u>\$3,000</u>
<u>Marijuana Manufacturing Facility</u>	<u>\$ 3,000</u>
<u>Marijuana Testing Facility</u>	<u>\$ 3,000</u>
<u>Medical Marijuana Caregiver Home Establishment</u>	<u>\$ 100</u>
<u>Transfer of license – other than Marijuana Retail Stores</u>	<u>\$750</u>

3. AMEND Title 16.2 Definitions for marijuana operations as follows:

302 ~~MARIJUANA MEDICAL USE—The cultivation, manufacturing, or distribution of cannabis by a medical~~
 303 ~~marijuana cultivation facility, a medical marijuana dispensary, a medical marijuana testing facility, or a~~
 304 ~~primary caregiver, as defined in § 16.2.2 of this Code. This definition is not intended to restrict a caregiver~~
 305 ~~that is a licensed hospice provider, long term nursing care facility or convalescent care facility from~~
 306 ~~distributing cannabis to their qualifying patients, per 22 M.R.S., Maine Medical Use of Marijuana Act.~~

307 ~~MARIJUANA RETAIL USE—The cultivation, manufacture, distribution or selling of cannabis by a retail~~
 308 ~~marijuana establishment or retail marijuana social club, as referenced in 7 M.R.S.~~

309 ~~MEDICAL MARIJUANA CULTIVATION FACILITY—A facility registered in accordance~~
 310 ~~with 22 M.R.S. § 2428 that cultivates and manufactures marijuana or related supplies for a registered medical~~
 311 ~~marijuana dispensary under common management and operating under the same state and local license(s).~~

312 ~~MEDICAL MARIJUANA DISPENSARY—A not for profit entity registered under 22 M.R.S. § 2428 that~~
 313 ~~acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses~~
 314 ~~marijuana or related supplies and educational materials to qualifying patients who have designated the~~
 315 ~~dispensary to cultivate marijuana for their medical use, and the primary caregivers of those patients.~~

316 ~~MEDICAL MARIJUANA QUALIFYING PATIENT or PATIENT~~—A person who has been
317 ~~diagnosed by a medical provider as having~~—a debilitating medical condition and who possesses a valid
318 ~~written certification regarding medical use of marijuana, as defined under 22 M.R.S. § 2422.~~

319 ~~MEDICAL MARIJUANA TESTING FACILITY~~—A public or private laboratory that:

320 ~~A.~~—Is licensed, certified or otherwise approved under 22 M.R.S. § 2423-A to analyze contaminants in,
321 ~~and the potency and cannabinoid profile of, samples; and~~

322 ~~B.~~—Is accredited pursuant to standard International Standards Organization/International Electrotechnical
323 ~~Commission 17025 of the International Organization for Standardization by a third-party accrediting body~~
324 ~~or is certified, registered, or accredited by an organization approved by the state.~~

325 MARIJUANA, ADULT USE STORE means a facility licensed under 28-B MRS Chapter 1 to purchase
326 adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, and to sell adult use
327 marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

328 MARIJUANA BUSINESS means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical
329 Marijuana Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
330 Facility, or Marijuana Testing Facility.

331 MARIJUANA CULTIVATION FACILITY means a facility licensed by the State of Maine to purchase
332 marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to
333 sell marijuana, marijuana seedlings, plants and seeds to products manufacturing facilities, marijuana stores,
334 caregivers or other cultivation facilities.

335 Tier 1: Up to 500 square feet of plant canopy

336 Tier 2: Up to 2,000 square feet of plant canopy

337 Tier 3: Up to 7,000 square feet of plant canopy

338 Tier 4: Up to 20,000 square feet of plant canopy

339 MEDICAL MARIJUANA CAREGIVER RETAIL STORE means a store that has attributes generally
340 associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours,
341 accessibility to the public and sales of goods or services directly to a consumer, and that is used by a
342 registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

343 MARIJUANA MANUFACTURING FACILITY means (1) a registered tier 1 or tier 2 manufacturing
344 facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 MRS
345 §2423- F; or (2) a facility licensed under M.R.S. 28-B, Subchapter 2 to purchase marijuana from a cultivation
346 facility or another products manufacturing facility; to manufacture, label and package marijuana and
347 marijuana products; and to sell marijuana and marijuana products to marijuana stores and to other products
348 manufacturing facilities.

349 MARIJUANA TESTING FACILITY means a public or private laboratory that is authorized and accredited
350 in accordance with state law for the research and analysis of marijuana, marijuana products or other
351 substances for contaminants, safety or potency.

352 MEDICAL MARIJUANA REGISTERED CAREGIVER means a person or an assistant of that person
353 registered in accordance with state law to provide care for a qualifying patient in accordance with state
354 law and licensing and is registered with the state in accordance with state law.

355 MEDICAL MARIJUANA REGISTERED CAREGIVER HOME ESTABLISHMENT (HOME
356 OCCUPATION) means a ~~permitted~~ medical marijuana registered caregiver business ~~and licensing and is~~
357 ~~registered with the state in accordance with state law~~ operating within ~~at~~ the caregiver's primary dwelling unit.

358 MEDICAL MARIJUANA REGISTERED DISPENSARY means an entity registered under 22 M.R.S. §
359 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or
360 dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying
361 patients and the caregivers of those patients.

4. ADD Medical Marijuana Registered Caregiver Home Establishment as a Special Exception Use to ALL Zones.

362 Medical Marijuana Registered Caregiver Home Establishment

5. AMEND Title 16.3 Land Use Zone regulations to allow marijuana operations in certain zones.

363 § 16.3.2.11 **Commercial (C-1, C-2, C-3).**

364 (1) C-1 special exception uses.

365 (p) Marijuana Business, except a Marijuana Cultivation Facility, or if,

366 [NOTE: (NOT PART OF DRAFT ORDINANCE) STAFF ARE NOT RECOMMENDING THE
367 FOLLOWING PROVISION]

368 i. Not located within 1,500 feet of another Marijuana Business unless:

369 a. the nature of the Marijuana Businesses are functionally distinct and mutually dependent;

370 b. the Marijuana Businesses are located on the same lot of record; and

371 c. the Marijuana Businesses are under common ownership

372 (2) C-2 special exception uses.

373 (q) Marijuana Business, if:

374 [NOTE: (NOT PART OF DRAFT ORDINANCE) STAFF ARE NOT RECOMMENDING THE
375 FOLLOWING PROVISION]

376 i. Not located within 1,500 feet of another Marijuana Business unless the nature of the Marijuana

377 a. Businesses are functionally distinct and mutually dependent;

378 b. the Marijuana Businesses are located on the same lot of record; and

379 c. the Marijuana Businesses are under common ownership

380 (3) C-3 special exception uses.

381 (q) Marijuana Business, if:

382 **[NOTE: (NOT PART OF DRAFT ORDINANCE) STAFF ARE NOT RECOMMENDING THE**
383 **FOLLOWING PROVISION]**

384 i. Not located within 1,500 feet of another Marijuana Business unless: [

385 a. the nature of the Marijuana Businesses are functionally distinct and mutually dependent;

386 b. the Marijuana Businesses are located on the same lot of record; and

387 c. the Marijuana Businesses are under common ownership

388 § 16.3.2.13 **Mixed-Use MU.**

389 C. Special exception uses.

390 19. Marijuana Business, except a Marijuana Cultivation Facility, or if:

391 **[NOTE: (NOT PART OF DRAFT ORDINANCE) STAFF ARE NOT RECOMMENDING THE**
392 **FOLLOWING PROVISION]**

393 i. Not located within 1,500 feet of another Marijuana Business unless:

394 a. the nature of the Marijuana Businesses are functionally distinct and mutually dependent;

395 b. the Marijuana Businesses are located on the same lot of record; and

396 c. the Marijuana Businesses are under common ownership

6. ADD Marijuana Businesses to Title 16 Design and Performance Standards for Built Environment as follows:

397 **§16.8.29 Marijuana Businesses**

398 **16.8.29.1 General**

399 This section regulates Marijuana Businesses as defined uses within the Town of Kittery. The permitting
400 standards outlined here must be adhered to for all Marijuana Businesses, in addition to other applicable
401 standards in this and other ordinances or state law.

402 **16.8.29.2 Standards**

403 Marijuana Businesses must meet the following standards:

404 A. Marijuana Businesses may not locate within **500 feet** of a public or private school measured from the
405 **exterior wall** of the Marijuana Business in a straight line to the property line of the protected use.
406 Marijuana Businesses may not locate within 250 feet of a State-Licensed daycare of any size, measured
407 from the exterior wall of the Marijuana Business to the property line of the protected use. This section
408 does not prohibit the activity of a caregiver or other authorized individual from administering medical

409 marijuana to a qualified patient who is located within one of these protected areas.

410 B. Marijuana Businesses may not have any odor of marijuana detectible beyond the area controlled by the
411 business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land.
412 Odors must be controlled by whatever best practices exist.

413 C. Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose of this section
414 hoop houses or outdoor tunnels must not be considered as an indoor growing facility and are prohibited
415 for marijuana cultivation by a Marijuana Business.

416 D. The design of any building containing a Marijuana Business must conform to the standards within this
417 Title and the Town of Kittery Design Handbook.

418 E. The area of any Marijuana Business accessible to customers must be no less than 400 nor more than
419 2,000 square feet.

420 F. Parking must conform to Article X.

421 G. Any building containing a Marijuana Business must be protected by fire suppression measures and fire
422 alarms to the satisfaction of the Fire Chief and in accordance with all applicable building codes.

423 H. The Owner of any Marijuana Business, at the time of application for a building permit, must provide an
424 affidavit from a master electrician or electrical engineer certifying that the electrical components can
425 meet the electrical load demands of the use.

426 I. Security.

427 ~~The Licensed Premises must have lockable doors and windows and be served by an alarm system which~~
428 ~~includes automatic notification to the Kittery Police Department.~~

429 1. The Licensed Premises must have video surveillance capable of covering the exterior and interior of
430 the facility. The video surveillance system must be operated with continuous recording twenty-four
431 hours per day, seven days per week and video retained for a minimum duration of thirty (30) days.
432 Such records must be made available to law enforcement agencies when investigating a criminal
433 complaint.

434 J. The Licensed Premises must have an approved wastewater discharge plan in accordance with Title 13.

435 K. The Licensed Premises must have exterior lighting that conforms with this Title and the Town of Kittery's
436 Design Handbook. The Planning Board, at its discretion, may require motion sensors covering the full
437 perimeter of the building(s).

7. ADD Medical Marijuana Registered Caregiver Home Establishment to Title 16 Design and Performance Standards for Built Environment as follows:

438 §16.8.30 Medical Marijuana Registered Caregiver Home Establishment

439 16.8.30.1 General

440 A. A Medical Marijuana Registered Caregiver Home Establishment may not conduct activities that would
441 qualify the use as a Medical Marijuana Registered Dispensary, Adult Use Marijuana Store, Medical
442 Marijuana Caregiver Retail Store, Marijuana Manufacturing Facility or Marijuana Testing Facility.

443 B. Any Medical Marijuana Registered Caregiver legally operating with Town approval as a Home
444 Occupation as of the Effective Date of this Section, but otherwise not meeting the definition of a Medical
445 Marijuana Registered Caregiver Home Establishment, may continue to operate provided it has a valid
446 Medical Marijuana Registered Caregiver Home Establishment license from the Town and any applicable
447 State License, and is maintained in accordance with this Title. Such operations may not be built, used or
448 occupied in any way that constitutes a material difference from any representations in either the approved
449 application, Findings of Fact, or approval conditions for the Major Home Occupation. If majority
450 ownership of such an operation is transferred to any other person(s), the business must be brought into
451 conformance with the definition and standards applicable to a Medical Marijuana Registered Caregiver
452 Home Establishment, or may be permitted and licensed as any other type of Marijuana Business allowed
453 on the property.

454 16.8.30.2 Standards

455 A Medical Marijuana Registered Caregiver Home Establishment must meet the following standards, except
456 that a Medical Marijuana Registered Caregiver legally operating with Town approval as a Major Home
457 Occupation as of the Effective Date of this Section is not required to meet these standards to the extent
458 the Major Home Occupation application, as approved, specifically allowed activities, uses or
459 development that are not in conformance with these standards.

461 A. Manufacturing of medical marijuana products may occur only in zoning districts where a Marijuana
462 Manufacturing Facility is permitted.

463 B. A Medical Marijuana Registered Caregiver Home Establishment is restricted to a dwelling unit serving as
464 the primary residence of the Registered Caregiver. Proof of primary residence will be determined by
465 voter registration, vehicle registration, property tax bill and/or other documentation acceptable to the
466 Town.

467 C. The Registered Caregiver must provide documentation demonstrating ownership of the dwelling unit or a
468 lease agreement permitting the registered caregiver to operate a Medical Marijuana Registered Caregiver
469 Home Establishment.

470 D. A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use of the
471 property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the total floor area
472 available within the dwelling unit.

473 E. A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients,

474 provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C §2423-A.

475 F. Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and must be by
476 appointment only.

477 G. A Medical Marijuana Registered Caregiver Home Establishment may not have more than three (3)
478 employees.

479 H. There must be adequate parking on the lot to accommodate the property's residents in accordance with
480 this Title and zone-specific standards of this Title; provided that at a minimum the site must include two
481 parking spots plus one spot for each employee.

482 I. A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such
483 that they are not detectable by reasonable means at the property lines. Odors must be controlled by
484 whatever best practices exist.

485 J. A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a cumulative
486 total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants, and unlimited
487 seedlings. Cultivation may occur indoors, outdoors, or both.

488 K. The installation and displaying of signage advertising the presence of a Medical Marijuana Registered
489 Caregiver Home Establishment on a lot is prohibited.

**8. ADD Marijuana Business and Medical Marijuana Registered Caregiver Home Establishment
Application and Review as follows:**

490 §16.10.3.8.1 Marijuana Businesses and Medical Marijuana Registered Caregiver Home
491 Establishments

492 A. The Planning Board is the reviewing authority for all applications for new Marijuana Business
493 applications.

494 §16.10.11 Medical Marijuana Registered Caregiver Home Establishment

495 §16.10.11.1 General

496 A. Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of registered
497 caregivers operating within their jurisdiction. The regulation of registered caregivers as provided for
498 herein is not intended to proscribe their operation, but rather to promote the health, safety and welfare of
499 the Town of Kittery by ensuring that a registered caregiver home establishment is compatible with both
500 the area it is situated and the community as a whole.

501 §16.10.11.2 Permit required.

502 A. An applicant seeking Planning Board approval for a Medical Marijuana Registered Caregiver Home

- 503 Establishment must submit a complete application with the following furnished documents:
- 504 i. Proof of property ownership or lease agreement in the Town of Kittery;
- 505 ii. Proof of residency in Town of Kittery as determined by voter registration, vehicle registration or
- 506 other documentation deemed acceptable to the Town;
- 507 iii. All relevant State of Maine license information demonstrating the applicant as a valid registered
- 508 caregiver;
- 509 iv. A site plan that depicts all proposed outdoor growing areas. The Planning Board may require a site
- 510 plan designed by a licensed surveyor or civil engineer registered in the State of Maine.
- 511 v. A floor plan of the building showing the existing and proposed layout and square footage.
- 512 vi. Narrative describing the nature of the registered caregiver operation.

513 B. An application will be approved or approved with conditions if the Planning Board makes a positive

514 finding based on the information presented that the proposed Medical Marijuana Registered Caregiver

515 Home Establishment demonstrates compliance with §16.8.30.2 Standards.

516 **[NOTE: (NOT PART OF THE DRAFT ORDINANCE) PLANNING BOARD RECOMMENDED AN**

517 **ANNUAL PERMITTING PROCESS FOR HOME OCCUPATION WITHIN TITLE 16. THE**

518 **RECOMMENDATION IS DUPLICATIVE OF TITLE 5 RENEWAL PROPOSAL AND WOULD**

519 **ESTABLISH AN UNNECESSARY BURDEN FOR HOME ESTABLISHMENTS. STAFF HAVE**

520 **REMOVED THE DUPLICATION]**

9. REMOVE Marijuana Caregiver as an allowable Home Occupation as follows:

521 § 16.8.22.3 Major home occupation standards.

522 C. Prohibited uses. The following uses are categorically prohibited as major home occupations: motor

523 vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard;

524 auto salvage yard; ~~marijuana retail use Marijuana Business; and marijuana medical use Medical Marijuana~~

525 ~~Registered Caregiver Home Establishment except the activities of a primary caregiver registered under 22~~

526 ~~M.R.S. § 2425.~~

**KITTERY TOWN CODE –
TITLE 5 AND TITLE 16
MARIJUANA BUSINESSES**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers
7 that authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the Town of Kittery seeks to allow well-regulated medical and adult-use marijuana
11 cultivation, manufacturing, caregiver, and retail operations in Kittery; and

12 **WHEREAS**, the Town of Kittery seeks to establish the land use zones where such uses are
13 allowed, and establish performance standards for their built environment; and

14 **WHEREAS**, the Town of Kittery seeks to support medical caregiver home occupations, while
15 addressing compliance of existing home occupations that are operating as retail storefronts; and

16 **WHEREAS**, the Town of Kittery seeks to establish an annual licensing process for all marijuana
17 businesses to ensure adherence to state law, the Town’s performance standards, and safe
18 operating practices of these businesses;

19 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
20 CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS AN ADDITION TO TITLE 5,
21 BUSINESS LICENSES AND REGULATIONS, MARIJUANA BUSINESSES AND
22 AMENDMENTS TO TITLE 16, LAND USE and DEVELOPMENT CODE, MARIJUANA
23 BUSINESSES AND MEDICAL CAREGIVER HOME ESTABLISHMENTS OF THE TOWN
24 CODE, AS PRESENTED.

25 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
26 20____, by: _____ {NAME} Motion to approve by Councilor
27 _____ {NAME}, as seconded by Councilor _____ {NAME} and
28 passed by a vote of _____.

29 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
30 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

31 **Attest:** {NAME}, _____ Town Clerk

Stephen E.F. Langsdorf
slangsdorf@preti.com
Direct Dial: 207.623.5300

M E M O R A N D U M

TO: Kittery Town Council

FROM: Stephen E.F. Langsdorf, Town Attorney

DATE: June 23, 2021

RE: **Marijuana Regulation Ordinance**

As I understand it, you are scheduled to hold a public hearing regarding an ordinance regulating the marijuana businesses in town at the next Council meeting.

If you enact the ordinance, the petition will be moot and no special town election will move forward.

If you do not enact the ordinance, it will be necessary to invoke Article XI of the Charter because there is a petition pending. As the Town Attorney, I ruled that the petition must be delayed temporarily while you considered a similar ordinance, to avoid the confusion of two similar ordinances moving forward at the same time.

If you do not enact the ordinance, a public hearing on the petitioner's version of the ordinance will need to be held at the meeting following your vote; and a special election held within 60 days thereafter. The public will be voting on the language of the petition ordinance. It is not the same as the ordinance you have been working on and does have different provisions.

§ 11.01. General authority.

- (1) Initiative. The qualified voters of the town have the power to propose ordinances to the council and, if the council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a town election.
- (2) Referendum. Voters of the town have the power to require reconsideration by the council of any adopted ordinance and, if the council fails to repeal an ordinance so reconsidered, to approve or reject it at a town election.

§ 11.02. Petition for enactment of ordinances.

- (1) Voters of the town may at any time propose the enactment of any lawful ordinance by filing a petition stating the complete text of such ordinance, and signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election with the town clerk. The council shall call a public hearing in the manner prescribed in § 2.14, subsection 2, to be held within 30 days from the date of the filing of such petition with the town clerk, and within 60 days after said public hearing hold a special town election for the purpose of submitting to a referendum vote the question of adopting such ordinance, unless prior to the election, such ordinance is enacted by the council in the manner prescribed for ordinances in general. Such ordinance takes effect in the same manner as ordinances of the same kind adopted by the council, provided a majority of those voting thereon have voted in the affirmative.
- (2) Any such proposed ordinance must be examined by an attorney for the town before it is submitted to the voters. The attorney is authorized to correct the form of such proposed ordinance for the purpose of avoiding repetitions, illegalities and unconstitutional provisions, and to assure accuracy in its text and references and clarity and precision in its phraseology, but may not materially change its meaning and effect.

§ 11.03. Petition for overrule of action of council.

If, within 30 days after the enactment of any ordinance a petition signed by a number of qualified voters of the town totaling not less than 10% of the number of qualified voters of the town who cast votes in the previous gubernatorial election is filed with the town clerk requesting its referral to a referendum, the council shall call a

public hearing as provided in § 2.14, subsection 2, to be held within 30 days from the date of the filing of such petition with the town clerk, and shall within 14 days after said public hearing call a special town election for the purpose of submitting to a referendum vote the question of repealing such ordinance. Pending action by the voters of the town, the referred ordinance is suspended upon certification of the petition by the town clerk until it has received a vote of the majority of the legal votes cast on said question.

§ 11.04. Form of ballot.

The form of the ballot for the proposed ordinance (or repeal of ordinance) must be substantially as follows:

"Shall the proposed ordinance (or repeal of ordinance) a copy of which is printed herein or attached hereto, be adopted (or repealed)?

Yes _____ No _____

(The voters must indicate their opinion of the same as required by the ballot instructions.)

Title 5 and Title 15 - Marijuana Comparison of Petition Ordinances to Draft Town Ordinances

The Petition appears to be a copy of a previous version of the Town's Draft Ordinance. Specifically, the February and March versions, issued prior to Town Council remanding it back to the Planning Board. Below is analysis on how the Petition version differs from the current Draft Town version:

TITLE 5 - Licensing

1. Medical Marijuana Caregiver
 - Petition: remains a home occupation with approval issued by Board of Appeals
 - Town: Medical Marijuana Registered Caregiver Home Establishment is created as a new category for caregivers that wish to operate out of their homes and is approved by Planning Board. Prohibits new "caregiver home occupations" that are home occupations in name only.
2. Pre-application process
 - Petition: does not include revisions to availability of application and process for accepting/establishing order for limited license pre-applications
 - Town: clarifies process based on anticipated challenges with initial implementation.
3. License Fees
 - Petition: No fees for licenses
 - Town: Includes the following licensing fees:
 - Marijuana Retail Store – Preapplication fee \$750
 - Marijuana Retail Store – License fee \$6,000
 - Marijuana Cultivation Facility
 - Tier 1 \$750
 - Tier 2 \$1,500
 - Tier 3 \$2,000
 - Tier 4 \$3,000
 - Marijuana Manufacturing Facility \$ 3,000
 - Marijuana Testing Facility \$ 3,000
 - Medical Marijuana Caregiver Home Establishment \$ 100
 - Transfer of license – other than Marijuana Retail Stores \$750

TITLE 16 – Land Use and Development Code

1. Registered Caregiver Home businesses
 - Petition: definition of "Marijuana Business" includes both Medical Marijuana Registered Caregiver and Medical Marijuana Registered Caregiver (home occupation) making home-based businesses comply with design and performance standards specified for Marijuana Businesses unless noted otherwise
 - Town: Marijuana Business excludes home-based businesses; defines home-based businesses as Medical Marijuana Registered Caregiver Home Establishment and establishes separate design and performance standards

2. Cultivation Facilities in C-1 and Mixed Use

- Petition: allows cultivation facilities in C-1 and Mixed-Use zones
- Town: prohibits cultivation facilities in C-1 and Mixed-Use zones

3. School and Daycare buffers

- Petition: Marijuana businesses must be 1,000 feet from any public or private school and 250 feet from a state-licensed daycare
- Town: Marijuana Businesses must be 500 feet from any public or private school

4. Registered Caregiver Home operations

- Petition: allows for up to 1,000 square feet of floor area to be used
- Town: allows for the larger of 400-square feet or 40% of the dwelling unit to be utilized

**TITLE 5 - BUSINESS LICENSES and
REGULATIONS and TITLE 16 – LAND USE CODE
MARIJUANA OPERATIONS**

1. ADD Title 5.11 Marijuana Businesses as follows:

CHAPTER 5.11 Marijuana Businesses

5.11.1. Purpose and Authority

This Ordinance is enacted pursuant to authority granted under 30-A M.R.S. § 3001, 22 M.R.S. § 2429-A(14) and 28-B M.R.S. § 402. The purpose of this Ordinance is to set forth procedures and standards for the issuance of local licenses for Marijuana Businesses in order to protect public health, safety and welfare.

5.11.2. Definitions

As used in this Ordinance, the terms below shall be defined as indicated. All other terms used in this Ordinance, if not defined below, shall have the same definition as set forth in 22 M.R.S. § 2422 (for medical marijuana businesses), 28-B M.R.S. § 102 (for adult use marijuana businesses), or the Land Use and Development Code, Title 16 of the Kittery Town Code. Applicant means a Person who has submitted an application for licensure as a Marijuana Business pursuant to this Chapter. Effective Date shall mean thirty (30) days following enactment of this Ordinance. Licensed Premises means the premises specified in an application for a license pursuant to this Ordinance or within a license issued pursuant to this Ordinance. Licensee means a Person licensed pursuant to this Ordinance. Licensing Authority means the Town Council or Town Manager as designated in this Ordinance to be the issuer of the particular type of Marijuana Business license. Marijuana Business includes an Adult Use Marijuana Store, Medical Marijuana Caregiver Retail Store, Medical Marijuana Caregiver Retail Store, Medical Marijuana Caregiver (home occupation), Marijuana Cultivation Facility, Marijuana Manufacturing Facility and Marijuana Testing Facility, all as defined in the Town of Kittery Land Use Ordinance. Marijuana Retail Store includes a Medical Marijuana Caregiver Retail Store or an Adult Use Marijuana Store. Owner means a person whose beneficial interest in a Marijuana Business is such that the person bears risk of loss, other than as an insurer, and has an opportunity to gain profit from the operation or sale of the Marijuana Business and/or has a controlling interest in the Marijuana Business. Person means 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. Premises means the physical location at which a Marijuana Business is to conduct its business. State Conditional License means any conditional licensed issued by the State Licensing Authority. State License means any license issued by the State Licensing Authority. State Licensing Authority means the authority created or designated by the State for the purpose of regulating and controlling licensing for Marijuana Businesses. Town Manager means the Town Manager of the Town of Kittery or their designee.

5.11.3. License Requirement

A Marijuana Business shall not begin or continue operations operate unless it has and is in possession of a license issued pursuant to this Ordinance. Marijuana Businesses that hold an approved land use permit and/or are operating as of the Effective Date shall submit a completed application within 30 days of the Effective Date, and shall have a grace period of 60 days after the effective date to receive a license, which may be extended by order of the Council if justified due to the anticipated timeline of the review process.

5.11.4. Licensing Authority

All Medical Marijuana Caregiver (home occupation) license applications, whether new or renewal, shall be reviewed and may be approved by the Town Manager. All other new license applications shall be reviewed and may be approved by the Town Council after public hearing. The Town Manager shall be the Licensing Authority for renewal licenses, as specified in Section 5.11.5.E. Renewals shall not be treated as new applications. Renewals shall be governed by the Ordinance in effect at the at the time that the initial application was submitted to the Town.

5.11.5. Licensing Procedures

The review procedures described below shall be the same for initial license applications as well as renewals, unless otherwise indicated. In reviewing license applications, the Licensing Authority and any consulting Town officials may consider the approval standards under this Ordinance as well as other applicable local, state or federal laws and, for license renewals, the Licensee's record of compliance with the same.

A. Application. License applications shall be submitted to the Town in writing using a form prepared by the Town for the purpose and must include all information required by this Ordinance and by the form. The Town shall make such license application forms available to the public starting on the seventh (7th) day prior to the Effective Date. Applications for initial licensure of Marijuana Retail Stores shall not be accepted until the applicant has been pre-certified in accordance with Section 5.11.10.B.

B. Initial Review. The Town Manager shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Ordinance and to obtain recommendations from other Town officials as required.

C. License Conditions. The Licensing Authority shall have the authority to impose any conditions on a license that may be reasonably necessary to ensure compliance with the requirements of this Ordinance or to address concerns about operations. Failure of any Licensee to comply with such conditions shall be considered a violation of the license and of this Ordinance.

D. Staff Review. No license shall be granted by the Licensing Authority until the Town Manager, Police Chief, Fire Chief and Code Enforcement Officer have all made positive recommendations regarding the Applicant's ability to comply with this Ordinance or any other applicable Town ordinance or state or federal law enforced by such officials.

E. Renewal. For renewal licenses, the application, fee and review process shall be the same as for initial licenses except that the Town Manager shall be the Licensing Authority. If any reviewing staff member finds that new conditions should be attached to the renewal license or that the renewal license should be denied, the renewal application shall be forwarded to the Town Council for final action. Renewal licenses for Marijuana Retail Stores shall be granted by the Town Manager only upon a finding that the Store has in the past license term been operating in accordance with this Ordinance as well as with the Store's previously submitted Operations Plan.

F. Type of License. Licenses shall be approved only for the type(s) of Marijuana Business(es) identified in the application. A Licensee who intends to expand or convert the Licensed Premises to a type of Marijuana Business that is not specifically approved in a license must obtain a new license for that use.

G. State Approvals. Any Licensee that is required to obtain approval from the State of Maine shall provide the Town copies of all necessary approvals prior to operating the licensed business.

H. Inspection. Any Licensee other than a Medical Marijuana Caregiver (home occupation) shall, prior to operating the licensed business, contact the Town to request an inspection to determine the Marijuana Business' compliance, as built, with the requirements of this Ordinance, any conditions of licensure, and the submitted Operations Plan (if applicable). Any municipal official with authority to make recommendations, grant licenses or enforce this or other municipal ordinances regarding Marijuana Businesses shall have authority to enter the premises of an Applicant or Licensee without notice during operating hours to make any inspection reasonably necessary to ensure continued compliance with all applicable Town ordinances.

I. License term. Each license issued under this Ordinance shall be valid for the term of license granted by the State License Authority ("the license year"), or otherwise for one (1) year from the date of issuance. Applications for renewal licenses should be submitted no less than 60 days prior to expiration of the existing term to allow for timely processing. Any Marijuana Business Licensee which fails to apply for a renewal license prior to expiration of the existing term shall not have authority to operate until a renewal license is granted. A late fee of 10% of the total license fee shall be assessed to applications submitted 1 to 30 days past expiration of the existing license, and 20% shall be assessed for applications submitted thereafter. Any Marijuana Retail Store which fails to obtain a renewal license within 30 days following expiration of the existing term shall forfeit its license, unless the applicant timely submitted the application and the delay is due to circumstances not within the applicant's control.

J. Forfeiture. A Marijuana Business License shall be forfeited if the Licensee:

1. Fails to obtain a renewal license within thirty (30) days of expiration of an existing license;
2. Makes any other active use of the Licensed Premises other than for the licensed Marijuana Business; or
3. Does not make an active use of the licensed Marijuana Business for a period exceeding six (6) consecutive months, except that the Licensing Authority may, upon written request from the Licensee, allow for a suspension of use of up to one year if the suspension in use is caused by damage to the Licensed Premises, renovation, repair, active attempts to sell the Licensed Premises as a turnkey Marijuana Business, or other bona fide circumstances out of the Licensee's control.

5.11.6. Application Submission Requirements

Each applicant for a Marijuana Business license shall complete and file an application on the form provided by the Town, together with the applicable license fee. If multiple types of Marijuana Businesses are to be conducted on a single Premises, the applicant shall pay the application fee for each type of business. Applications shall include:

- A.** Proof of the Applicant's right, title, or interest in the Premises, such as a deed, lease, sublease, (must include lease and authorization for sublease, if applicable) or purchase and sale agreement.
- B.** A copy of the Applicant's State License application and supporting documentation, as submitted to the State Licensing Authority, if a State License is required.
- C.** Evidence of all State approvals or conditional approvals required to operate the Marijuana Business, including, but not limited to, a State Conditional License as defined by this Ordinance, caregiver registration, a State retail certificate, or a State health license.
- D.** If not included in the Applicant's State License application, attested copies of any articles of incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern the entity that will own and/or operate the Marijuana Business.
- E.** If not included in the Applicant's State License application, an affidavit on a form to be provided by the Town that identifies all owners, officers, members, managers or partners of the Applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three (3) years. The Town shall make available such affidavit forms starting on the seventh (7th) day prior to the Effective Date of this Ordinance.
- F.** A release for each Applicant and for each officer, owner, member, manager or partner of the Applicant seeking a license allowing the Town of Kittery or its officials to obtain criminal records and other background information related to the individual. The Town shall make available such release forms starting on the seventh (7th) day prior to the Effective Date of this Ordinance.
- G.** Evidence of submission of applications for all land use approvals or conditional land use approvals required to operate the Marijuana Business, including, but not limited to building permit, special exception approval, site plan review approval, and/or a change of use permit. Where such approval is required, evidence of submission of a complete application is sufficient, but any license issued shall be conditioned upon approval and issuance of any necessary building or occupancy permits and any other necessary approvals.
- H.** Evidence of all other local approvals or conditional approvals required to operate the Marijuana Business, including any applicable food or victualer's license. If the Marijuana Business is not in application as of the date of license application, the applicant shall list any other licenses required and issuance of such licenses will be made a condition of the Marijuana Business License.

I. A description of the premises for which the license is sought, including a plan of the premises.

J. A copy of any state or municipal license held for any other Marijuana Business owned or operated by the Applicant or by any officer, owner, subsidiary, member, manager or partner of the Applicant, as well as any notices of violation received from the state or municipality for such Marijuana Business and proof that any violation has been resolved.

K. Certification from the Fire Chief that the location of the Marijuana Business on the subject Premises will not pose an undue risk of fire or other safety hazard.

L. For Marijuana Retail Stores, an Operations Plan, describing the Applicant's:

1. Security plan;
2. Provisions to ensure against loitering and using marijuana and marijuana products on or near the Premises;
3. Protocols for hiring and training employees;
4. Protocols for odor control and disposal of waste marijuana or marijuana products; and
5. Protocols for ensuring the safety and security of product.
6. Fire Suppression annual certification

If the Town determines that a submitted application is not complete, the Town shall notify the applicant of the additional information required to process the application. If such additional information is not submitted within thirty (30) days of the Town's request, the application may be denied, unless the delay is due to circumstances beyond the applicant's control, such as a Town process.

5.11.7 Transfer of Ownership

A license for a Marijuana Business may be transferred to another Owner if an updated application form and ownership affidavit are provided to the Town and all persons listed on the affidavit successfully pass background checks and otherwise meet the criteria of this Ordinance. See Section 5.11.10.E regarding transfer of licenses for Marijuana Retail Stores.

5.11.8 Transfer of Location

Marijuana Business licenses are limited to the Premises for which they are issued and shall not be transferable to a different location. A Licensee who seeks to operate in a new location shall acquire a new license for that location.

5.11.9 Existing Medical Marijuana Caregiver (Home Occupation) Any Medical Marijuana Caregiver (home occupation) that holds an approved land use permit and is operating as of the Effective Date shall submit an application within thirty (30) days of the Effective Date.

5.11.10 Limit on and Special Procedures for Retail Stores

A. Limit on retail licenses. The total number of licenses issued for Marijuana Retail Stores shall not exceed five, excluding any licenses issued to existing Medical Marijuana Caregiver (home occupation) pursuant to Section 5.11.9. The Town Council is hereby granted the authority to increase the number of licenses issued, at its discretion.

B. Pre-application required. Applications for initial licensure of Marijuana Retail Stores will not be accepted for processing unless and until the applicant has successfully completed a pre-application process as set forth here.

1. Pre-application forms shall be made available starting on the seventh (7th) day prior to the Effective Date.

2. Applicants seeking licensure as a Marijuana Retail Store shall complete the form and return it to the Town along with the following supporting documentation:

- a. Completed, signed and notarized ownership affidavit;
- b. Pre-application fee;
- c. Evidence of right, title and interest in the Premises (deed, purchase and sale agreement, lease and/or sublease);
- d. Evidence demonstrating that the applicant has a State Conditional License from the State of Maine; and
- e. Completed application, in accordance with section 5.11.6 above.

C. Receipt of Pre-Application. Upon receipt of a pre-application, the Town shall note the date and time of the receipt and, without unreasonable delay,

process the application to determine whether all required fields have been filled and all required supporting documentation has been provided. If the Town determines that a submitted pre-application is not complete, they shall notify the applicant of the additional information required to process the pre-application. If such additional information is not submitted within thirty (30) days of the Town's request, the pre-application will be rejected.

1. The Town Manager shall evaluate complete pre-applications and certify the eligibility of applicants if they meet the following standards:

- a. The applicant has demonstrated right, title and interest in the Premises;
- b. The applicant has demonstrated adequate financial capacity to build out (if applicable) and operate the retail store.
- c. The Premises is located in a zone in which Marijuana Retail Stores are permitted.
- d. The applicant has received State Conditional License approval from the State of Maine for the subject Marijuana Business.

2. The Town Manager shall issue a written decision to the applicant indicating whether it has met the standards for pre-application certification. Applications for licensure may be submitted as soon as the certification decision is issued.

D. Priority. Licenses for Marijuana Retail Stores shall be assigned priority based upon the date and time a completed pre-application was received by the Town. For clarity as to priority, the Town shall receive applications one at a time. At the time of receipt of each pre-application, the Town shall keep a Priority Log Record of priority assignments, including each applicant's name and address, the time and date the pre-application was received by the Town and the priority number assigned to each application. At the time of receipt of the pre-application, the Town shall provide each applicant with a paper receipt including the corresponding log entry (including the name of the applicant, date and time the pre-application was received and priority number assigned to the application). The first five (5) certified applicants will be invited to move forward with the application process within thirty (30) days of certification, which will be processed in accordance with Section 5.11.6.

E. Waiting list procedures. If a license for a Marijuana Retail Store becomes available, the Town shall invite the pre-certified applicant with the next priority to apply for licensure. If such applicant does not submit an application within thirty (30) days from invitation, the Town shall proceed to the next applicant. Applications shall not be processed from the waiting list if there have been any material changes to ownership, as indicated on the ownership affidavit, or where there is a change to location of the Premises.

F. Change in ownership of Retail Marijuana Store. In the event of a proposed change in majority control or ownership of a Marijuana Retail Store (including a change in majority or control of members of an LLC or partnership), the new owner(s) shall apply for an amended license within thirty (30) days following the date of the transfer by submitting a full, completed / updated amended application package to the Town. The amended application shall be subject to the same application process as new licenses and shall, after initial staff review, be presented to the Town Council for consideration if the proposal involves a change in majority ownership or control of the Marijuana Retail Store. If the new Owner does not apply for an amended license within said thirty (30) day period, the license will be considered forfeited. The license may not be transferred if any active use other than for the licensed Marijuana Retail Store has been made of the Licensed Premises prior to or within the thirty (30) days following the transfer of ownership.

5.11.11 Denial, Revocation or Suspension of a License. A license application for a Marijuana Business shall be denied by the Licensing Authority, suspended by the Town Manager, or after notice and hearing revoked by the Town Council, if the Applicant, or any Owner of the Applicant or Licensee:

- A. Fails to meet the applicable requirements of this Ordinance.
- B. Is not at least twenty-one years of age.

C. Has had a license required for the Marijuana Business suspended or revoked by the Town, by a municipality in the State of Maine, or by the State.

D. Is in violation of this or any Town ordinance or has unpaid penalties assessed by a court, related to the Marijuana Business.

E. Has not acquired all necessary state and local approvals (other than final State approval) prior to issuance of the license.

F. Fails to meet zoning or other requirements of the Land Use and Development Code.

G. Has been convicted of a criminal violation arising out of operation of a Marijuana Business.

H. Has, within ten years prior to the date of the application, been convicted of selling marijuana, alcohol, or any scheduled drug to a minor.

I. Has provided false or misleading information in connection with the license application.

5.11.12 Approval and Operating Requirements

In order to obtain and retain a license pursuant to this Ordinance, the Applicant/Licensee shall demonstrate that the following requirements are met. The Licensee shall comply with each of these requirements during the term of the license:

A. Display of License. The current License shall be displayed at all times in a conspicuous location within the Premises.

B. Premises. All Licensed Premises shall be fixed, permanent locations. Licensees shall not be permitted to operate Marijuana Business in other than the Licensed Premises, such as at farmer's markets, farm stands or kiosks.

C. Loitering. The facility owner/operator shall make adequate provisions to prevent patrons or other persons from loitering on the Premises. It shall be the Licensee's obligation to ensure that anyone found to be loitering or using marijuana or marijuana products in the parking lot or other outdoor areas of a Licensed Premises is ordered to leave.

D. Other laws. A Marijuana Business shall meet all operating and other requirements of state and local law. See also 5.11.6.

E. Changes to operations. Marijuana Businesses shall operate in accordance with all material representations made in the approved license application and Operations Plan (if applicable). If the Licensee is required to notify the State of a change related to the Marijuana Business, the Licensee shall promptly provide the Town with a copy of such notification. If the Town determines that the change is not in accordance with the requirements of this Ordinance, or requires additional conditions of approval, the change shall be forwarded to the Town Council for consideration.

5.11.13 Appeals

A. The following appeals may be decided by the Town Council upon a de novo hearing in which it will hear evidence on the application and make its own findings of fact and conclusions of law:

1. Appeal of the Town Manager's denial of an application.
2. Appeal by any aggrieved party having legal standing of any decision by the Town Manager to grant a license under this Ordinance.
3. Appeal by a Licensee challenging conditions attached to a License, to which the Licensee objects. Appeals must be filed with the Town Clerk within thirty (30) days of the date of the decision subject to appeal. The Town Council shall hold the hearing on the appeal and render a decision within thirty (30) days of the date of the appeal, unless all parties consent to a delay.

B. Appeals from any decision of the Town Council under this Ordinance shall be made to York County Superior Court within thirty (30) days of the date of the decision being appealed.

5.11.14 Enforcement and Penalties

The operation of any Marijuana Business without the required license or in violation of the requirements of this Ordinance shall be a violation of this Ordinance. The Town Manager shall enforce the provisions of this Ordinance. A violation of any provision of this Ordinance shall be a civil violation, and a civil penalty of \$250 to \$2,500 shall apply and may be assessed for each day that the violation continues. The penalty for operating a Marijuana Business without a valid license shall be \$2,500 per day for Marijuana Retail Stores and \$500 per day for other Marijuana Businesses. The Town Manager may suspend the license, and the Town Council may revoke the license after notice and hearing.

5.11.15 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.

5.11.16 Other Laws

Except as otherwise specifically provided herein, this Ordinance incorporates the requirements and procedures set forth in the Maine Marijuana Legalization Act, 28-B M.R.S. Chapter 1, as may be amended and the Maine Medical Use of Marijuana Act, 22 M.R.S. Chapter 558-C, as may be amended. In the event of a conflict between the provisions of this Ordinance and the provisions of said Acts or any other applicable state law or regulation, the more restrictive provision shall control. In the event of a conflict between any provision(s) of this Ordinance and any provision(s) of any other preexisting Town ordinance, the conflicting provision(s) in this Ordinance shall control.

2. ADD Marijuana License Fees to Appendix A as follows:

Marijuana Retail Stores — Preapplication fee \$750

Medical Marijuana Cultivation Facility

Tier 1 — \$750

Tier 2 — \$1,500

Tier 3 — \$2,000

Tier 4 — \$3,000

Medical Marijuana Manufacturing Facility \$ 3,000

Medical Marijuana Retail Store \$ 6,000

Medical Marijuana Testing Facility \$ 3,000

Medical Marijuana Caregiver \$1,000

Medical Marijuana Caregiver (home occupation) \$ 500

Transfer of license — other than Marijuana Retail Stores \$750

3. AMEND Title 16.2 Definitions for marijuana operations as follows:

MARIJUANA MEDICAL USE — The cultivation, manufacturing, or distribution of cannabis by a medical marijuana cultivation facility, a medical marijuana dispensary, a medical marijuana testing facility, or a primary caregiver, as defined in § 16.2.2 of this Code. This definition is not intended to restrict a caregiver that is a licensed hospice provider, long-term nursing care facility or convalescent care facility from distributing cannabis to their qualifying patients, per 22 M.R.S., Maine Medical Use of Marijuana Act.

MARIJUANA RETAIL USE — The cultivation, manufacture, distribution or selling of cannabis by a retail marijuana establishment or retail marijuana social club, as referenced in 7 M.R.S.

MEDICAL MARIJUANA CULTIVATION FACILITY — A facility registered in accordance with 22 M.R.S. § 2428 that cultivates and manufactures marijuana or related supplies for a registered medical marijuana dispensary under common management and operating under the same state and local license(s).

MEDICAL MARIJUANA DISPENSARY — A not-for-profit entity registered under 22 M.R.S. § 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients who have designated the dispensary to cultivate marijuana for their medical use, and the primary caregivers of those patients.

MEDICAL MARIJUANA QUALIFYING PATIENT OR PATIENT — A person who has been diagnosed by a medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana, as defined under 22 M.R.S. § 2422.

MEDICAL MARIJUANA TESTING FACILITY — A public or private laboratory that:

A. Is licensed, certified or otherwise approved under 22 M.R.S. § 2423-A to analyze contaminants in, and the potency and cannabinoid profile of, samples; and
B. Is accredited pursuant to standard International Standards Organization/International Electrotechnical Commission 17025 of the International Organization for Standardization by a third-party accrediting body or is certified, registered, or accredited by an organization approved by the state.

ADULT USE MARIJUANA STORE - A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign,

regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a state licensed individual and or business entity authorized to offer or receive marijuana plants, flowers or harvested marijuana, packaged marijuana and any other derivatives or concentrates of the marijuana plants or flowers for direct sale to adult consumers who are 21 years or older in age.

MARIJUANA BUSINESS - An Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing Facility, Marijuana Testing Facility, Medical Marijuana Registered Caregiver or Medical Marijuana Registered Caregiver (Home Occupation)

MARIJUANA CULTIVATION FACILITY - A facility licensed by the State of Maine to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana, marijuana seedlings, plants and seeds to products manufacturing facilities, marijuana stores, caregivers or other cultivation facilities.

Tier 1: Up to 500 square feet of plant canopy

Tier 2: Up to 2,000 square feet of plant canopy

Tier 3: Up to 7,000 square feet of plant canopy

Tier 4: Up to 20,000 square feet of plant canopy

MEDICAL MARIJUANA CAREGIVER RETAIL STORE - A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants, flowers or harvested marijuana and any other derivatives of the marijuana plants or flowers for sale to qualified patients.

MARIJUANA MANUFACTURING FACILITY - (1) a registered tier 1 or tier 2 manufacturing facility, as designated by state law, or a person authorized to engage in marijuana extraction under 22 MRS §2423- F; or (2) a facility licensed under M.R.S. 28-B, Subchapter 2 to purchase marijuana from a cultivation facility or another products manufacturing facility; to manufacture, label and package marijuana and marijuana products; and to sell marijuana and marijuana products to marijuana stores and to other products manufacturing facilities.

MARIJUANA TESTING FACILITY - A public or private laboratory that is authorized and accredited in accordance with state law for the research and analysis of marijuana, marijuana products or other substances for contaminants, safety or potency.

MEDICAL MARIJUANA REGISTERED CAREGIVER - A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law.

MEDICAL MARIJUANA REGISTERED CAREGIVER (HOME OCCUPATION) - Medical Marijuana Registered Caregiver (Home Occupation). A person or an assistant of that person that provides care for a qualifying patient in accordance with state law and licensing and is registered with the state in accordance with state law and in accordance with the Home Occupation permitting and operational standards of this Ordinance.

4. AMEND Title 16.3 Land Use Zone regulations to allow marijuana operations in certain zones.

§ 16.3.2.11 Commercial (C-1, C-2, C-3).

(1) C-1 special exception uses.

(p) Marijuana Business

(2) C-2 special exception uses.

(q) Marijuana Business

(3) C-3 special exception uses.

(q) Marijuana Business

§ 16.3.2.13 Mixed-Use MU.

C. Special exception uses.

19. Marijuana Business

5. ADD Marijuana Businesses to Title 16 Design and Performance Standards for Built Environment

§16.8.29 Marijuana Businesses

This section regulates Marijuana Businesses, as defined uses within the Town of Kittery. The permitting standards outlined here shall be adhered to for all Marijuana Businesses, in addition to other applicable standards in this and other ordinances or state law.

A. Any Marijuana Business in operation as of the Effective Date of this Section and permitted by the Board of Appeals as a Home Occupation pursuant to Article XXII, but otherwise

meeting the definition of a Medical Marijuana Caregiver Retail Store, may continue to operate as long as a license is received and maintained in accordance with this Ordinance. Such operations may not be built, used or occupied in any way that constitutes a material difference from any representations in the approved application and Findings of Fact, and/or approval conditions for Home Occupation.

B. Marijuana Businesses shall not locate within 1,000 feet of a public or private school measured from the main entrance or any customer entrance door of the Marijuana Business in a straight line to the property line of the protected use. Marijuana Businesses shall not locate within 250 feet of a state-licensed daycare of any size, measured from the exterior wall of the Marijuana Business to the property line of the protected use. This section shall not prohibit the activity of a caregiver or other authorized individual from administering medical marijuana to a qualified patient who is located within one of these protected areas.

C. Marijuana Businesses shall not have any odor of marijuana detectable beyond the area controlled by the business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land. Odors shall be controlled by whatever best practices exist.

D. Marijuana grown by any Marijuana Business shall be grown indoors only except that Medical Marijuana Registered Caregivers and Medical Marijuana Registered Caregivers (home occupation) shall be permitted to grow marijuana outdoors, and such growing shall be limited to a maximum of 30 plants outdoors and be in accordance with applicable State law. Medical Marijuana grown by Medical Marijuana Caregivers shall be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot unless the business is also permitted as a Marijuana Cultivation Facility. A Medical Marijuana Caregiver (Home Occupation) in operation as of the Effective Date of this section shall be permitted to maintain the grow area in existence as of the Effective Date of this section.

E. Medical Marijuana Registered Caregiver and Medical Marijuana Registered Caregiver (Home Occupation), when required by state law to be licensed to manufacture, may only manufacture medical marijuana products in zoning districts where Marijuana Manufacturing Facilities are permitted.

F. Medical Marijuana Registered Caregiver (Home Occupation) shall at all times meet all permit and operational requirements for a home occupation and the additional license requirements for a Medical Marijuana Registered Caregiver (Home Occupation). Medical Marijuana grown by Medical Marijuana Caregiver (Home Occupation) in basements and accessory structures shall be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot for all caregivers cultivating on the lot.

G. The design of any building containing a Marijuana Business shall be visually compatible with other types of buildings in the immediately surrounding neighborhood, in terms of similarity of building materials, building size, building height and architecture.

H. The area of any Marijuana Business accessible to customers shall be no less than 400 nor more than 2,000 square feet.

I. Parking shall conform to Article IX and Adult Use Marijuana Store and Medical Marijuana Caregiver Retail Stores shall be deemed consistent with the definition of Retail Stores and financial institutions use, in the application of section 16.8.9.4 D, for "Off-street parking standards," as such is in effect as of the date the petition for this Ordinance was submitted to the Town for referendum.

J. Any building containing a Marijuana Business shall be protected by fire suppression measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all applicable building codes.

K. The Owner of any Marijuana Business shall provide an annual affidavit from a master

Shall the proposed ordinance for licensing marijuana businesses, a copy of which is printed herein, or attached hereto, be adopted? Yes or No?

(Continued from page 4)

electrician certifying that the electrical components can meet the electrical load demands of the use.

L. Security.

1. The Licensed Premises shall have lockable doors and windows and shall be served by an alarm system which includes automatic notification to the Kittery Police Department.

2. The Licensed Premises shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording twenty-four hours per day, seven days per week and video shall be retained for a minimum duration of thirty (30) days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.

3. The Licensed Premises shall have exterior lighting with motion sensors covering the full perimeter of the building(s).

4. Medical Marijuana Registered Caregiver (home occupation) uses shall not be required to meet paragraphs 2 and 3.

Registrar use only	SIGNATURE	DATE SIGNED	ACTUAL STREET ADDRESS (Not P.O. Box)	MUNICIPALITY (Where Registered)	NAME PRINTED
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SUMMARY OF PROPOSED ORDINANCE

This proposed Ordinance seeks to authorize the elected council of the Town of Kittery to regulate and license marijuana businesses in the Town of Kittery

CIRCULATOR'S OATH

I hereby make oath that I am the Circulator of this petition; that I personally witnessed all of the signatures to this petition; and, to the best of my knowledge and belief, each signature is that of the person whose name it purports to be.

Signature of Circulator _____ Printed Name _____

Signature of Notary _____ Printed Name _____

Subscribed to and sworn before me on this date: _____ (Date must be completed by Notary)

Date my Notary Commission expires: _____

REGISTRAR'S CERTIFICATION

Municipality _____ TOTAL VALID _____ TOTAL INVALID _____

I hereby certify that the names of all the petitioners listed as valid appear on the voting list as qualified to vote for Governor.

Signature of Registrar: _____

Date petition certified: _____

(See back for Legal Language)

Rice Public Library Corporation



June 22, 2021

Dear Kittery Town Council:

Please accept this gift of \$50,000 from Kennebunk Savings Bank, via the Rice Public Library Corporation.

Kennebunk Savings Bank is sponsoring the E-Commons in the Rice Building, as noted in our previous request to approve this sponsorship.

Thank you for your support of the Rice Public Library and the wonderful expansion and renovation project.

Best regards-

Dianne Fallon
Rice Library Campaign Chair

Cc: Rachel Dennis, RPLC President
Lee Perkins, Director, Rice Public Library

TO VERIFY AUTHENTICITY, SEE REVERSE SIDE FOR DESCRIPTION OF THE 11 SECURITY FEATURES

RPL CORPORATION
8 WENTWORTH STREET
KITTERY, ME 03904

KENNEBUNK SAVINGS BANK
KITTERY BRANCH
KITTERY, ME 03904

52-7450/2112

3724

6/18/2021

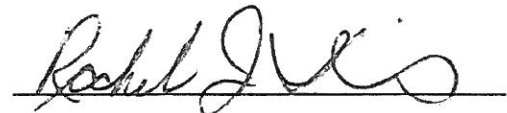
PAY TO THE ORDER OF Town of Kittery

\$ **50,000.00

Fifty Thousand and 00/100

DOLLARS

Town of Kittery
200 Rogers Road
Kittery, ME 03904



MEMO Library Renovation

AUTHORIZED SIGNATURE



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329

REPORT TO TOWN COUNCIL

Date: June 28, 2021
From: Kendra Amaral, Town Manager
Subject: Net Energy Billing Credit Program – 20 Year Agreement
Councilor Sponsor: Chairperson Jeffrey Thomson

EXECUTIVE SUMMARY

The Town of Kittery, working with five other communities in York County to advance a net energy billing credit effort that gains the Town access to solar energy, generated in Maine, while lowering electricity costs for the Town. This program is being developed under the State of Maine's Net Energy Billing Credit program.

Following a competitive procurement process, the collaborative selected Encore Renewable Energy. Encore offers a viable project, with predictable and beneficial savings, and proposal terms that include the Town retaining the Renewal Energy Credits.

The contract is under negotiation now and is expected to be ready to be executed mid-July.

PROPOSED SOLUTION/RECOMMENDATION

Approve the Town Manager to enter into the twenty-year agreement for the net energy billing credits.

ATTACHMENTS

- Solar Energy Presentation
- Draft Enactment

Solar Energy for Kittery

with the Southern Maine Solar
Collaborative

Karina Graeter, Sustainability Coordinator





Key Terms

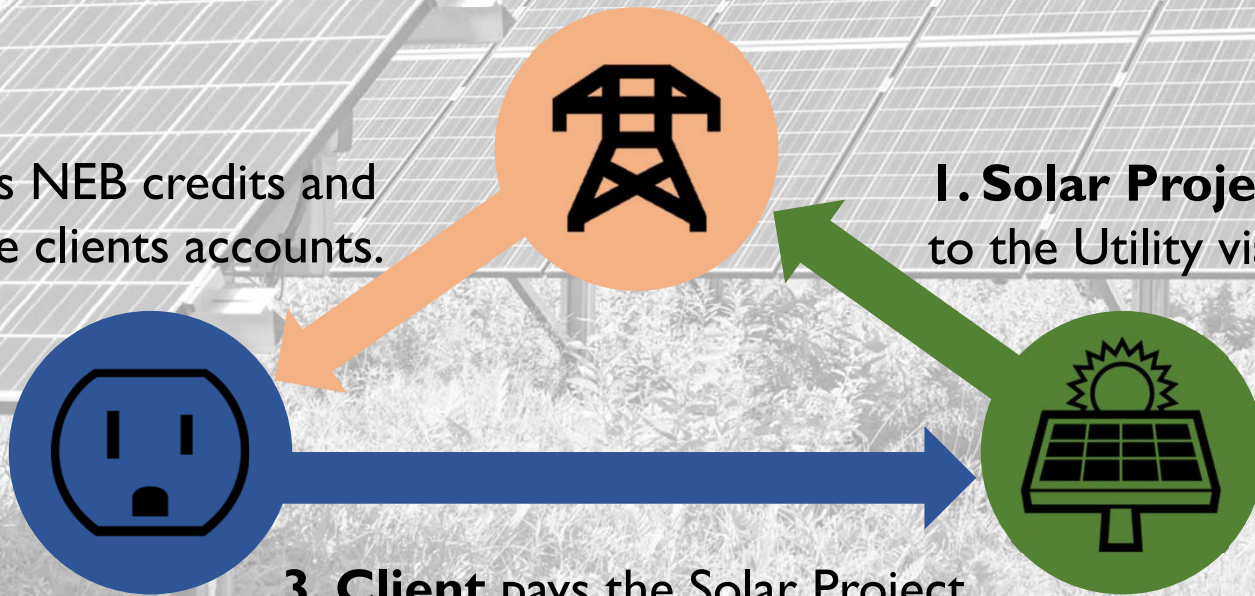
- **Utility:** investor owned electricity transmission and distribution company (Central Maine Power)
- **Renewable Energy Credit (REC):** the environmental attributes associated with generation from a renewable energy facility (1 REC = 1 MWh of generation)
- **Net Energy Billing:** program authorized under LD 1711
 - **Net energy billing rate** – value (\$) per MWh of generation issued by the utility from a qualified project (solar or wind farm)
 - **Net energy billing credits (NEBCs):** credits issued on your utility bill based on the net energy billing rate and volume of power allocated
 - **Net energy billing credits Agreement (NEBCA):** legal agreement to purchased credits
 - Secure contracts gives developers the ability to finance a new solar project.

Municipalities have opportunity to purchase discounted solar energy credits through the Maine Net Energy Billing (NEB) program

2. Utility issues NEB credits and applies them to the clients accounts.

1. Solar Project delivers electricity to the Utility via the electricity grid

3. Client pays the Solar Project Developer for the credits at a discount rate.





Typical NEBCA structure

- Third party ownership: finances, constructs, owns and operates the solar facility somewhere within the utility service territory
- Allocation: amount of solar farm generation the buyer would like to procure
 - Depends on buyer's needs, anywhere from 20% - 80% of electricity usage
- Buyer enters into a NEBCA: typical 20 year contract term (consistent with legislation)

REC ownership: can be optional to the buyer

- Project owner can retain the RECs
- Customer can retain ownership of RECS
 - RECs may be retired to meet municipality's carbon emission goals
 - RECs may be sold (Lots of price volatility, but typically worth \$20-\$30 per 1 MWh REC)



Southern Maine Solar Collaborative

A multi-town effort to negotiate a Net Energy Billing Credit Agreement (NEBCA) for all (OOB, Kennebunkport, Ogunquit, Fryeburg, Waterboro, and Kittery)

1. Single RFP for a solar developer to enter into NEBCAs with all municipalities
2. One bid selected, with standard contract agreed on for all municipalities
3. Municipalities negotiate and sign final NEBCAs individually with developer



Bids Summary

- 7 Proposals Submitted
- 9 Offers for Price of Discounted Net Energy Billing Credits (NEBCs)
 - **Percent discount:** relative to NEBC rate
 - 5 offers ranging from 15% – 27.5% discount
 - **Fixed rate:** same rate for NEBCs over the 20-year term
 - 4 offers ranging from \$0.0927 – \$0.1042 per kwh



Bidders

- **Ameresco:** publicly traded international corporation
- **Ampion:** Not a developer but a market contractor
- **Citizens:** For profit subsidiary of nonprofit Citizens Energy Corporation
- **Encore:** New England-based B corporation
- **EDPR:** publicly traded international corporation
- **Hep:** US subsidiary of publicly traded German corporation
- **US Solar:** MN-based privately held corporation



Bid Evaluation

Company:	
SMSC Solar Bid Evaluation	Suggested Weight (%)
Category	
Financial benefits (70)	
Risk	22
Cost	42
RECs	4
Company info (18):	
Company financial strength	4
Maine experience/understanding of ME energy laws	8
Similar project experience	8
Responsiveness to RFP	1
Other (12):	
Commercial operation date/Project approval status	5
Education: outreach/online performance monitoring access	3
Site/environmental impact/greenfield, brownfield?	1
Location in member community?	1
Use of local labor/ suppliers	1
Total	100

Bid Finalist: Encore Renewable Energy

- 27.5% discount (highest discount offered)
- Renewable Energy Credits (RECs) included
- Energy from 2 solar farms in Athens, Maine
- Solar farms are furthest along in development pipeline and not subject to large delays with CMP
- NE company with Maine experience (Cape Elizabeth, Augusta, CES solar consortium)
- Experience net metering with municipalities and schools



Kittery savings estimates:
Purchases NEBCs to compensate for 77% of electricity spending

Net savings:

TOWN OPERATIONS: \$66,300 per year
SCHOOL OPERATIONS: \$26,000 per year
\$1.1M over 20 years!

General NEBCA Terms

- **20-year contract** between Town & Encore Renewable Energy
- **27.5% discount** every year, with **RECs included**
- **Early Termination** if:
 - Projects are not completed on time
 - Projects fail to produce electricity adequately
 - Town is not able to appropriate the funds
- **If Encore sells projects:** Contracts would transfer in full to new owner.

Next Steps

- Finalize NEBCA with Encore Renewable energy
- Start receiving NEBCs once solar farms are operational in Q4 2021 or Q1 2022
- Do not pay anything until solar farms are generating electricity
- **77% of Kittery's municipal electricity will be from Maine solar energy!**



**KITTERY TOWN CODE –
NET ENERGY BILLING CREDIT AGREEMENT**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01, 2.07(3), and 6.11(3) of the Town Charter; and 30-A MRS §3001, pursuant to its
7 powers that authorize the town, under certain circumstances, to provide for the public health,
8 welfare, morals, and safety, and does not intend for this Ordinance to conflict with any existing
9 state or federal laws; and

10 **WHEREAS**, the Town of Kittery seeks to diversify its electricity sources to include a significant
11 amount of generation from renewable energy sources; and

12 **WHEREAS**, the Town of Kittery joined with five other communities to engage in a net energy
13 billing credit project to achieve the goal and receive beneficial credits to lower energy costs; and

14 **WHEREAS**, the collaborative engaged in a competitive procurement process, and selected
15 Encore Renewable Energy for their ability to deliver on the project objectives and beneficial cost
16 savings;

17 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
18 CHARTER §§2.14 and 6.11(3), THE TOWN OF KITTERY HEREBY ORDAINS APPROVAL
19 FOR THE TOWN MANAGER TO EXECUTE A TWENTY-YEAR AGREEMENT FOR THE NET
20 ENERGY BILLING CREDIT PROGRAM.

21 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
22 20____, by: _____ {NAME} Motion to approve by Councilor
23 _____ {NAME}, as seconded by Councilor _____ {NAME} and
24 passed by a vote of _____.

25 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
26 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

27 **Attest:** {NAME}, _____ Town Clerk

Kendra Amaral

From: O.G. Sexton <o.g.sexton87@gmail.com>
Sent: Tuesday, June 15, 2021 1:01 PM
To: Kendra Amaral
Subject: Orchard Grove Headstone Repair

Dear Ms. Amaral,

Orchard Grove proposes to make repairs to damaged headstones for dignified appearances.

SUBCHAPTER V: PROTECTION AND PRESERVATION

1371. Approval for repair, maintenance and removal

1. Prior authorization or approval for repair, maintenance or removal. Any person may repair, maintain or remove, subject to the restrictions of subsection 2, any tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure for the burial of the dead, after obtaining:

- A. The authorization of the owner of the burial lot or a lineal descendent of the deceased buried there, if reasonable to locate and notify; or**
- B. The written approval of the municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located.**

We have widely publicized the following first group with no contact from any family or descendant.

Orchard Grove Cemetery intends to make repairs to a number of headstones and gravesites beginning June 1st, 2021; and serves this notice for plot owners or descendants of the following persons to assure that all work is in keeping with their wishes:

ISAAC O. PARKER	10 Apr 1838 - 6 Jul 1863	PLOT 32
MARGARET C. WALKER	1840 - 23 Jan 1874	PLOT 97
INFANT JACKSON (ZINA N. & EMMA F. JACKSON)	Unknown - 17 Aug 1888	PLOT 160
SAMUEL W. HOLLIS	1867 - 1955	PLOT 185
JOSEPH H. PERKINS	1848 - 9 Dec 1882	PLOT 195
MARY R. PERKINS	1884-1884	PLOT 195

Related parties are requested to contact the Orchard Grove Sexton at (207) 703-6738; or via e-mail at O.G.SEXTON87@gmail.com for more details.

Respectfully request your approval to effect said repairs.

v/r
garybeers
Secretary/Sexton

§1371. Approval for repair, maintenance and removal

1. Prior authorization or approval for repair, maintenance or removal. Any person may repair, maintain or remove, subject to the restrictions of subsection 2 or 3, any tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure for the burial of the dead, after obtaining written approval of the owner or operator of the cemetery or burial ground, if an owner or operator exists, and one of the following, in the following order of priority.

A. The person must first seek the authorization of the owner of the burial lot or a lineal descendant of the deceased buried there, if the owner or a lineal descendant is reasonable to locate and notify. [PL 2015, c. 294, §1 (AMD).]

A-1. If an owner or lineal descendant listed in paragraph A cannot reasonably be located and notified, the person shall seek the authorization of a next of kin, if reasonable to locate and notify, of the deceased buried there. [PL 2015, c. 294, §1 (NEW).]

B. If none of the persons listed in paragraph A or A-1 can reasonably be located and notified, the person shall obtain the written approval of the municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located. [PL 2015, c. 294, §1 (AMD).]
[PL 2015, c. 294, §1 (AMD).]

2. Conditions on removal for repair, restoration or preservation. Removal of a tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or a portion or fragment of a memorial, is permitted only for the purpose of preservation. A tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or a portion or fragment of a memorial, may not be removed from the confines of the cemetery or burial ground, except that a person who has obtained authorization or approval described in subsection 1 may remove all or a portion of a memorial for a period of no longer than 6 months for the purpose of repair, restoration or preservation, but only when repair, restoration or preservation can not reasonably be accomplished on the site of the cemetery or burial ground. Prior to removal of the memorial, a notice must be submitted to the municipality, or to the county in the case of unorganized territory, stating the location of the burial ground, the identification of the memorial, the authority requesting the removal, the site to which the memorial will be temporarily removed, the proposed date of removal and the proposed date of replacement in the burial ground.
[PL 2015, c. 294, §1 (AMD).]

3. Permanent removal of memorial. If a tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead is in such poor condition that it cannot be preserved in its original location, that memorial may be removed by a person who has obtained authorization or approval described in subsection 1 to another location accessible to the public. Prior to removal of the memorial, a notice must be submitted to the municipality, or to the county in the case of a memorial in unorganized territory, stating the location and identification of the memorial, the authority requesting the removal and the site to which the memorial will be moved and providing documentation of the reason the memorial cannot be preserved in its original location.

When possible, a replacement or replica of the removed memorial must be placed in the original location along with information as to the location of the original memorial. If such placement is not possible, a sign must be placed recording the new location of the memorial.
[PL 2015, c. 294, §1 (NEW).]

All costs associated with actions taken pursuant to this section must be paid by the person or entity that requests the repair, maintenance or removal of a tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or any portion or fragment of any such

memorial, or any fence, railing, curb or other enclosure in the burial lot or cemetery. [PL 2015, c. 294, §1 (NEW).]

The owner, operator or caretaker of a burial lot or a cemetery association that authorizes removal of a memorial pursuant to this section is not responsible or liable for the location or care of the memorial. [PL 2015, c. 294, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 326, §1 (NEW). PL 1997, c. 193, §1 (AMD). PL 2015, c. 294, §1 (AMD).

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