

## Bart McDonough

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**From:** Clay Wyman <claywyman@gmail.com>  
**Sent:** Wednesday, February 24, 2021 12:49 PM  
**To:** Bart McDonough  
**Subject:** Comments for Feb 25th planning board meeting

Good Afternoon Mr McDonough,

I'd like to have this letter read at Thursday night's planning board meeting.

Thank you,

Clay Wyman

February 25th, 2021

Dear Planning Board members,

The results of various votes and polls over the years indicate that Kittery is marijuana-friendly town. The 2018 non-binding referendum question and the 2020 voting poll indicate a preference for having retail establishments in Town so citizens can purchase a legal, taxable item...marijuana.

I would like to express a general sentiment that bringing recreational marijuana to Kittery is not in the best interest of the Town for the following reasons:

**Kittery citizens already have access to retail marijuana --** Medical marijuana caregivers have been serving Kittery citizens for 10+ years. Medical marijuana home occupations have been conducting retail operations for almost two years with minimal issues. Any person with a medical marijuana card can frequent these establishments. The barrier to entry is quite low...10 minutes of your time and a fee of \$50 or less. That fee will easily be offset by lower cost marijuana products when compared to recreational store prices.

**Support local businesses --** The existing medical marijuana home businesses are locally-owned, locally-funded and locally staffed. In contrast, the recreational marijuana market is dominated by large national and multinational companies that distribute their profits to Wall Street and/or out-of-state investors.

**Proposed limit on stores will result in a lawsuit against the Town --** The proposed ordinance includes a limitation (5) on the number recreational stores allowed in Kittery. Other towns/cities have attempted to limit the number of stores. Successful lawsuits have been filed by large marijuana corporations to remove these limits. Those towns now have no limits on the number of stores. To-date, Portland, ME has issued 36 conditional licenses, a significant increase to its original limit of 20. Being the bordering town to New Hampshire and 30 minutes or less from Massachusetts, Kittery will be a target of all of these big corporations. If this ordinance is approved, Kittery should be prepared for litigation which will likely result in an unlimited number of stores.

I ask the Planning Board to address the bigger question of what is in the best interest of Kittery citizens.

Does Kittery want an unlimited number of recreational marijuana stores the majority of which will be owned by large national companies, funded by out-of-state investors and marketed towards out-of-state customers?

Or does Kittery wish to continue to support local-owned, locally-operated medical marijuana establishments?

Since marijuana was legalized in 2016, the citizens of Kittery have expressed their desire to purchase a legal commodity. I believe the Town has been and is being well served at this time.

Sincerely,

Clay Wyman

## Bart McDonough

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**From:** Kendra Amaral  
**Sent:** Thursday, February 25, 2021 11:23 AM  
**To:** Bart McDonough  
**Subject:** FW: Proposed cannabis ordinance

For tonight PB.  
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**From:** John Arnold <john@indico.care>  
**Sent:** Thursday, February 25, 2021 11:22 AM  
**To:** Kendra Amaral <KAmaral@kitteryme.org>  
**Cc:** Mitch Delaney <ceo@indico.care>; Lindsay Blanchard <lindsay@indico.care>  
**Subject:** Proposed cannabis ordinance

To Whom it May Concern,

Hello,

I'm writing an open letter to the town council and town planners with significant concerns about the proposed adult-use cannabis ordinance. As an existing medical cannabis business owner in the town of Kittery I am extremely concerned in regards to the proposed law and fervently urge the town to vote NO. This ordinance is \* a bad deal\* for the town of Kittery as a whole and we believe more time and consideration are required to enact any future legislation that could at best disrupt the medical cannabis industry and at worst eliminate patient's access to affordable medication. We believe it would be a devastating disservice to the Kittery community should this bill be passed.

What the citizens of Kittery must understand is the national market share Kittery would have should they elect to allow adult use stores to open. According to the Maine Turnpike Authority, more than 90 million people used the turnpike in 2019. The influx in traffic would be the first glaring issue this ordinance would encounter with Kittery being the first stop on the turnpike. We believe that the proposed stores should be zoned only in areas designed to withstand high vehicular traffic during peak times of the year. Roughly 3900 people work at the Portsmouth Naval Shipyard. The daily commute already exceeds Kittery's capacity. We also No variances of proposed shops, outside of C1, should ever be considered regardless of corporate success or promises of potential "Starbucks status". Any company that makes these claims should understand that the people of Kittery are generally not drawn to franchises that ultimately destroy Mom and Pop community driven businesses.

Our next concern in regards to the proposed ordinance is the lack of consciousness in exposing the children of Kittery to the adult-use cannabis market. The proposed setbacks should have a minimum of 1,000 yard buffer zone from any business that involves children and/or childcare.

The next item that requires examination is the number of licenses being proposed. Only making 5 licenses available will never work. As we saw with the city of Portland who tried to restrict the number of licenses and attempted to implement a merit system and a cap on the number of licenses issued, the ordinance could not stand up to expensive lawyers with out-of-state financial aid. We believe the number of licenses should be determined by strong zoning ordinance rather than the first come first serve format. Restricting Kittery to 5 shops is counter-productive and implies to us that the town's vision of growth is grossly short-sighted. The proposed ordinance would also only allow for a 1,000 square foot showroom/sales floor allowing for a total of 5000 sq. ft. sales floors for all of Kittery. We understand the complex financial benefits that adult-use cannabis *could* bring in, but how many retail jobs *would* actually be created? We are seeing many vacancies on Route 1, and we all understand that traditional retail/outlet retail is being swallowed up by online business ( ie Walmart, Amazon). This pandemic has only accelerated the decline of traditional retail. We believe the town would benefit in more ways than one by allowing more room for future discussion. We recommend the town also explore more ways to generate additional income on the licencing fees. These fees could potentially cover any cost incurred due to proposed cannabis ordinances.

We ask the town to include members of Kittery's medical cannabis community in the process of planning any future ordinances that are of any relevance to cannabis, adult or medical. We understand the state and the town view the medical program and adult-use program as two seperate industry, but at the end of the day we sell the same product and answer to the Office of Marijuana Policy. Wouldn't you want there to be a liason that could provide insight to an established market that has actual data and opinions formed by experience? To not include the people baring foresight, experience, and compassion to move forward into the legal medical market would be a tragic waste of retail cannabis knowledge.

In conclusion, we as citizens of Kittery need to ask ourselves why? Why are we doing this? Will 5 licenses benefit Kittery as a whole, or will we do what is right and invest in an ordinance that will truly stand the test of time? Please stand with the residents of Kittery and vote no. We implore you to support your residents and not the 5 companies that stand to benefit from such a soft and ill-advised ordinance.

Sincerely,  
Mitchell Delaney  
Indico Owner/President/CEO

## Bart McDonough

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**From:** Kendra Amaral  
**Sent:** Tuesday, February 16, 2021 1:03 PM  
**To:** Adam Causey; Bart McDonough; Craig Alfis  
**Subject:** FW: Court decision on constitutionality of residency preferences - addressing a comment posted on Kittery's website  
**Attachments:** 2020-08-14 Order for PI.PDF

**From:** Malina E. Dumas <MDumas@dwmlaw.com>  
**Sent:** Tuesday, February 16, 2021 9:50 AM  
**To:** Kendra Amaral <KAmaral@kitteryme.org>  
**Subject:** Court decision on constitutionality of residency preferences - addressing a comment posted on Kittery's website

Dear Kendra,

I work closely with Hannah King and other colleagues at Drummond Woodsum on cannabis matters as they relate to both industry and municipal clients. I have been closely following the conversations around the opt-in process as they unfold in Kittery.

While the public hearing last week was at the Planning Board level and comments were only accepted that related to the proposed land use ordinance amendments (not the licensing ordinance), I did notice one problematic suggestion in a written comment posted on the town's website that I wanted to be sure to address early on in this process. In particular, a member of the public suggested that the town consider giving priority to businesses that have Maine and/or local resident owners rather than issuing licenses to the first applicants that are prepared to move forward in the City's licensing process.

I suspect that you and others in Kittery might have seen the news last year about the lawsuit filed against the City of Portland in the marijuana licensing context. I am attaching the federal court decision that came out of that lawsuit, which was challenging a couple of the categories of points in a larger scoring matrix. The challenged categories favored individuals/businesses that had lived and/or operated in Maine for a number of years. The court issued a preliminary injunction against the City to prevent those points from being awarded. The decision makes it evident that the court would rule against the City on the merits of the lawsuit, because the residency preference violates the dormant Commerce Clause of the U.S. Constitution.

After the attached court decision was published, the few municipalities that had Maine/local residency requirements or preferences in their marijuana ordinances started taking steps to remove those provisions. Brunswick is one example of a town that took swift action after the decision was released to amend their ordinance in that respect.

Thank you for taking this into consideration as these discussions move forward. Best,

Malina

**Malina E. Dumas**

Attorney

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**Drummond**Woodsum  
ATTORNEYS AT LAW

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## Bart McDonough

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**From:** Contact form at Kittery ME <cmsmailer@civicplus.com>  
**Sent:** Friday, February 19, 2021 4:00 PM  
**To:** Bart McDonough  
**Subject:** [Kittery ME] Emerald Elevation (Sent by Marla Baldassare, marla@wefillgoodseacoast.com)

Hello bmcdonough,

Marla Baldassare ([marla@wefillgoodseacoast.com](mailto:marla@wefillgoodseacoast.com)) has sent you a message via your contact form (<https://www.kitteryme.gov/user/3484/contact>) at Kittery ME.

If you don't want to receive such e-mails, you can change your settings at <https://www.kitteryme.gov/user/3484/edit>.

Message:

Hello Bart,

I have a store at 42 state rd in Kittery (We Fill Good) and I was visited by Julie with Emerald Elevation about her project. I wanted to let you know that I am in full support of her or any other Retail Marijuana stores in BL-1 zone. If there is anything else you need from me, please reach out.

Thank you for your time,

Marla Baldassare

February 24, 2021

Subject: February 25th Public Hearing - Proposed marijuana ordinance

Dear Planning Board members,

Please accept the following remarks regarding the proposed ordinance on recreational marijuana:

Expanding allowable zones -- During the last public hearing session, representatives of Green Blossoms LLC advocated for expanding the allowable zoning for recreational marijuana establishments to include "Business Local (B-L)" zones. I believe entertaining this idea would not be in the best interest of the Town. To allow recreational stores along State Road and Kittery "Center" (i.e., Post Office/Walgreens area) would (1) increase traffic pressure in areas already having capacity issues and, (2) change the character of those neighbors not for the better. The majority of recreational marijuana customers will be coming from out of town. Best to leave this traffic stream to zones close to the interstate and away from areas used on a daily basis by Town citizenry.

Regulatory overreach -- When regulating a new industry it is tempting to control all aspects of the new businesses. I ask the planning board to use restraint and treat recreational marijuana like other retail businesses in town whenever possible. For example, stipulations dictating visual compatibility (Sec 16.8.29.G), store size (Sec 16.8.29.H), and electrical compliance certification (Sec 16.8.29.K) appear incongruent with regulatory requirements for other retail businesses in Town. Any restrictive regulations should be based in logic and easily justified.

Best regards,

Gerry Burns