

# ITEM 3

Public Hearing  
February 25, 2021

## TITLE 16 – LAND USE CODE MARIJUANA OPERATIONS

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### 1. AMEND Title 16.2 Definitions for marijuana operations as follows:

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

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

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

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

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

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

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

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

24  
25 **ADULT USE MARIJUANA STORE** - A facility licensed under 28-B MRS Chapter 1 to purchase adult  
26 use marijuana, immature marijuana plants and seedlings from a cultivation facility, and to sell adult use  
27 marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

28 **MARIJUANA BUSINESS** - An Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical  
29 Marijuana Caregiver Retail Store, Marijuana Manufacturing Facility, Marijuana Testing Facility, Medical

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30 Marijuana Registered Caregiver or Medical Marijuana Registered Caregiver (Home Occupation)

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

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

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

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

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

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

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

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

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

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

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

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60 § 16.3.2.11 **Commercial (C-1, C-2, C-3).**

61 (1) C-1 special exception uses.

62 (p) Marijuana Business

63 (2) C-2 special exception uses.

64 (q) Marijuana Business

65 (3) C-3 special exception uses.

66 (q) Marijuana Business

67 § 16.3.2.13 **Mixed-Use MU.**

68 C. Special exception uses.

69 19. Marijuana Business

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

70 **§16.8.29 Marijuana Businesses**

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

74 A. Any Marijuana Business in operation as of the Effective Date of this Section and permitted by the Board  
75 of Appeals as a Home Occupation pursuant to Article XXII, but otherwise meeting the definition of a  
76 Medical Marijuana Caregiver Retail Store, may continue to operate as long as a license is received and  
77 maintained in accordance with this Ordinance. Such operations may not be built, used or occupied in any  
78 way that constitutes a material difference from any representations in the approved application and  
79 Findings of Fact, and/or approval conditions for Home Occupation.

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

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- 87 C. Marijuana Businesses shall not have any odor of marijuana detectible beyond the area controlled by  
88 the business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land.  
89 Odors shall be controlled by whatever best practices exist.
- 90 D. Marijuana grown by any Marijuana Business shall be grown indoors only. A Medical Marijuana  
91 Caregiver shall not conduct any sale of the product on premises unless the business is also permitted as a  
92 Medical Marijuana Caregiver Retail Store. Medical Marijuana grown by Medical Marijuana Caregivers shall  
93 be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot unless the  
94 business is also permitted as a Marijuana Cultivation Facility. A Medical Marijuana Caregiver (Home  
95 Occupation) in operation as of the effective date of this section shall be permitted to maintain the grow area  
96 in existence as of the effective date of this section.
- 97 E. Medical Marijuana Registered Caregiver and Medical Marijuana Registered Caregiver (Home  
98 Occupation), when required by state law to be licensed to manufacture, may only manufacture medical  
99 marijuana products in zoning districts where Marijuana Manufacturing Facilities are permitted.
- 100 F. Medical Marijuana Registered Caregiver (Home Occupation) shall at all times meet all permit and  
101 operational requirements for a home occupation and the additional license requirements for a Medical  
102 Marijuana Registered Caregiver (Home Occupation). Medical Marijuana grown by Medical Marijuana  
103 Caregiver (Home Occupation) in basements and accessory structures shall be limited to less than one  
104 thousand (1,000) square feet floor area measured cumulatively per lot for all caregivers cultivating on the lot.
- 105 G. The design of any building containing a Marijuana Business shall be visually compatible with other  
106 types of buildings in the immediately surrounding neighborhood, in terms of similarity of building materials,  
107 building size, building height and architecture.
- 108 H. The area of any Marijuana Business accessible to customers shall be no less than 400 nor more than  
109 1,000 square feet.
- 110 I. Parking shall conform to Article X.
- 111 J. Any building containing a Marijuana Business shall be protected by fire suppression measures and  
112 fire alarms to the satisfaction of the Fire Chief and in accordance with all applicable building codes.
- 113 K. The Owner of any Marijuana Business shall provide an annual affidavit from a master electrician  
114 certifying that the electrical components can meet the electrical load demands of the use.
- 115 L. Security.
- 116 1. The Licensed Premises shall have lockable doors and windows and shall be served by an alarm system  
117 which includes automatic notification to the Kittery Police Department.
- 118 2. The Licensed Premises shall have video surveillance capable of covering the exterior and interior of the

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119 facility. The video surveillance system shall be operated with continuous recording twenty-four hours per  
120 day, seven days per week and video shall be retained for a minimum duration of thirty (30) days. Such  
121 records shall be made available to law enforcement agencies when investigating a criminal complaint.

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

124 4. Medical Marijuana Registered Caregiver (home occupation) uses shall not be required to meet paragraphs  
125 2 and 3.