

MARIJUANA OPERATIONS

ITEM 3

Draft: April 22, 2021

I.

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 facility licensed under 28-B MRS Chapter 1 to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

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

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 as defined under Title 28-B M.R.S. Chapter 1.

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

- 36 Tier 1: Up to 500 square feet of plant canopy
- 37 Tier 2: Up to 2,000 square feet of plant canopy
- 38 Tier 3: Up to 7,000 square feet of plant canopy
- 39 Tier 4: Up to 20,000 square feet of plant canopy

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

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

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

53 MEDICAL MARIJUANA REGISTERED CAREGIVER HOME ESTABLISHMENT - A person or an
54 assistant of that person who is registered with the state in accordance with state law and licensing to provide
55 care for a qualifying patient within their primary dwelling unit.

56 **II.**

57 **AMEND Title 16.3 Land Use Zone regulations**
58 **to allow marijuana operations in certain zones**
59 _____

60 16.3.2.1 Residential-Rural (R-RL)

61 C. Special exception uses

62 (15) Medical Marijuana Register Caregiver Home Establishment

63 16.3.2.2 Residential-Suburban (R-S)

64 C. Special exception uses

65 (11) Medical Marijuana Register Caregiver Home Establishment

66 16.3.2.3 Residential-Kittery Point Village (R-KPV)

67 C. Special exception uses

68 (10) Medical Marijuana Register Caregiver Home Establishment

TITLE 16 – LAND USE AND DEVELOPMENT CODE AMENDMENTS

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

- 69 16.3.2.4 Residential-Urban (R-U)
- 70 C. Special exception uses
- 71 **(11) Medical Marijuana Register Caregiver Home Establishment**
- 72 16.3.2.5 Residential-Village (R-V)
- 73 C. Special exception uses
- 74 **(4) Medical Marijuana Register Caregiver Home Establishment**
- 75 16.3.2.6 Residential-Rural Conservation (R-RC)
- 76 C. Special exception uses
- 77 **(9) Medical Marijuana Register Caregiver Home Establishment**
- 78 16.3.2.8 Residential-Business-Local (B-L)
- 79 C. Special exception uses
- 80 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 81 16.3.2.9 Business-Local 1 (B-L1)
- 82 C. Special exception uses
- 83 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 84 16.3.2.10 Mixed-Use-Neighborhood (MU-N)
- 85 C. Special exception uses
- 86 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 87 § 16.3.2.11 Commercial (C-1, C-2, C-3).
- 88 (1) C-1 special exception uses.
- 89 **(p) Marijuana Business, excluding Tier 3 and Tier 4 Marijuana Cultivation Facilities**
- 90 (2) C-2 special exception uses.
- 91 **(q) Marijuana Business**
- 92 (3) C-3 special exception uses.
- 93 **(q) Marijuana Business**
- 94 § 16.3.2.13 Mixed-Use MU.
- 95 C. Special exception uses.

TITLE 16 – LAND USE AND DEVELOPMENT CODE AMENDMENTS

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

96 **(19) Marijuana Business**

97 **(20) Medical Marijuana Registered Caregiver Home Establishment**

98 § 16.3.2.14 Mixed-Use-Badgers Island (MU-BI)

99 C. Special exceptions uses

100 **(4) Medical Marijuana Registered Caregiver Home Establishment**

101 § 16.3.2.15 Mixed-Use-Kittery (MU-KF)

102 C. Special exceptions uses

103 **(3) Medical Marijuana Registered Caregiver Home Establishment**

104 § 16.3.2.17 Shoreland Overlay Zone (OZ-SL)

105 (1)(b) R-RL Special exception uses

106 **[8] Medical Marijuana Registered Caregiver Home Establishment**

107 (2)(b) R-S Special exception uses

108 **[6] Medical Marijuana Registered Caregiver Home Establishment**

109 (3)(b) R-KPV Special exception uses

110 **[5] Medical Marijuana Registered Caregiver Home Establishment**

111 (4)(b) R-U Special exception uses

112 **[7] Medical Marijuana Registered Caregiver Home Establishment**

113 (5)(b) R-V Special exception uses

114 **[5] Medical Marijuana Registered Caregiver Home Establishment**

115 (6)(b) R-RC Special exception uses

116 **[7] Medical Marijuana Registered Caregiver Home Establishment**

117 (8)(b) B-L Special exception uses

118 **[23] Medical Marijuana Registered Caregiver Home Establishment**

119 (9)(b) B-L1 Special exception uses

TITLE 16 – LAND USE AND DEVELOPMENT CODE AMENDMENTS

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

120 **[23] Medical Marijuana Registered Caregiver Home Establishment**

121 (10)(b) C-1 Special exception uses

122 **[24] Marijuana Business, excluding Tier 3 and Tier 4 Marijuana Cultivation Facilities**

123 **[25] Medical Marijuana Registered Caregiver Home Establishment**

124 (11)(b) C-2 Special exception uses

125 **[27] Marijuana Business**

126 **[28] Medical Marijuana Registered Caregiver Home Establishment**

127 (12)(b) C-3 Special exception uses

128 **[26] Marijuana Business**

129 **[27] Medical Marijuana Registered Caregiver Home Establishment**

130 (14)(b) MU Special exception uses

131 **[33] Marijuana Business**

132 **[34] Medical Marijuana Registered Caregiver Home Establishment**

133 (15)(b) MU-BI Special exception uses

134 **[21] Medical Marijuana Registered Caregiver Home Establishment**

135 (16)(b) MU-KF Special exception uses

136 **[19] Medical Marijuana Registered Caregiver Home Establishment**

137 *16.3.2.19 Resource Protection Overlay Zone (OZ-RP)*

138 B.(1) Residential –Rural Zone (R-RL)

139 (b) Special exception uses

140 **[7] Medical Marijuana Registered Caregiver Home Establishment**

141 B.(2) Residential –Rural Zone (R-S)

142 (b.) Special exception uses

143 **[6] Medical Marijuana Registered Caregiver Home Establishment**

TITLE 16 – LAND USE AND DEVELOPMENT CODE AMENDMENTS

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

- 144 B.(3) Residential –Kittery Point Village Zone (R-KPV)
- 145 (b.) Special exception uses
- 146 **[6] Medical Marijuana Registered Caregiver Home Establishment**
- 147 B.(4) Residential –Urban Zone (R-U)
- 148 (b.) Special exception uses
- 149 **[5] Medical Marijuana Registered Caregiver Home Establishment**
- 150 B.(5) Residential –Village Zone (R-V)
- 151 (b.) Special exception uses
- 152 **[5] Medical Marijuana Registered Caregiver Home Establishment**
- 153 B.(6) Residential –Rural Conservation Zone (R-RLC)
- 154 (b.) Special exception uses
- 155 **[7] Medical Marijuana Registered Caregiver Home Establishment**
- 156 B.(8) Business –Local (B-L)
- 157 (b.) Special exception uses
- 158 **[6] Medical Marijuana Registered Caregiver Home Establishment**
- 159 B.(9) Business –Local (B-L1)
- 160 (b.) Special exception uses
- 161 **[5] Medical Marijuana Registered Caregiver Home Establishment**
- 162 B.(10) Commercial–1 Zone (C-1)
- 163 (b.) Special exception uses
- 164 **[6] Medical Marijuana Registered Caregiver Home Establishment**
- 165 B.(11) Commercial–2 Zone (C-2)
- 166 (b.) Special exception uses
- 167 **[5] Medical Marijuana Registered Caregiver Home Establishment**

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

168 B.(12) Commercial–3 Zone (C-3)

169 (b.) Special exception uses

170 **[5] Medical Marijuana Registered Caregiver Home Establishment**

171 B.(14) Mixed-Use Zone (MU)

172 (b.) Special exception uses

173 **[6] Medical Marijuana Registered Caregiver Home Establishment**

174 B.(15) Mixed-Use–Badger’s Island Zone (MU-BI)

175 (b.) Special exception uses

176 **[5] Medical Marijuana Registered Caregiver Home Establishment**

177 B.(16) Mixed-Use–Kittery Foreside Zone (MU-KF)

178 (b.) Special exception uses

179 **[5] Medical Marijuana Registered Caregiver Home Establishment**

180

181

III.

182

**ADD Marijuana Businesses and Medical Marijuana Caregiver Home
Establishments to Title 16 Design and Performance Standards for Built
Environment**

184

185

186 **§16.8.29 Marijuana Business**

187 **16.2.29.1 General**

188 **A. This section regulates Marijuana Businesses, as defined uses within the Town of Kittery. The permitting**
189 **standards outlined herein shall be observed by the applicant in addition to all other applicable standards**
190 **within this title or state law.**

191 **B. Any Marijuana Business legally operating as of the Effective Date of this section, but otherwise meeting**
192 **the definition of a Medical Marijuana Caregiver Retail Store, may continue to operate as long as a license**
193 **is received and maintained in accordance with this ordinance. Such operations may not be built, used or**
194 **occupied in any way that constitutes a material difference from any representations in either the approved**
195 **application, Findings of Fact, or approval conditions for Home Occupation.**

196

TITLE 16 – LAND USE AND DEVELOPMENT CODE AMENDMENTS

MARIJUANA OPERATIONS

ITEM 3

Draft: April 22, 2021

197 §16.8.29.2 Standards

198 A. Marijuana Businesses shall not locate within 500 feet of a public school, or private school facility measured
199 from the exterior wall of the Marijuana Business in a straight line to the property line of the protected use.
200 This section shall not prohibit the activity of a registered caregiver or other authorized individual from
201 administering medical marijuana to a qualified patient who is located within one of these protected areas.

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

205 C. Marijuana grown by any Marijuana Business shall be grown indoors only. For the purpose of this section,
206 hoop houses or outdoor tunnels shall not be considered as an indoor growing facility and are prohibited
207 for marijuana cultivation by a Marijuana Business.

208 D. The design of any building containing a Marijuana Business shall conform with the standards within this
209 title and the Town of Kittery Design Handbook.

210 E. Parking shall conform to Article X Parking.

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

213 G. The owner of a Marijuana Cultivation Facility shall provide an affidavit from a master electrician or
214 electrical engineer at the time of application certifying that the electrical components can meet the electrical
215 load demands of the use.

216 H. Security.

217 (1) The Licensed Premises shall have video surveillance capable of covering the exterior and interior
218 of the facility. The video surveillance system shall be operated with continuous recording twenty-
219 four hours per day, seven days per week and video shall be retained for a minimum duration of
220 forty-five (45) days. Such records shall be made available to law enforcement agencies when
221 investigating a criminal complaint.

222 (2) The Licensed Premises shall have exterior lighting that conforms with Article XXIV Exterior
223 Lighting and the Town of Kittery’s Design Handbook. The Planning Board at its discretion may
224 require motion sensors covering the full perimeter of the building(s).

225 §16.8.30 Medical Marijuana Registered Caregiver Home Establishment

226 16.8.30.1 Standards

227 A. A Medical Marijuana Registered Caregiver Home Establishment shall not conduct any walk-in sale of
228 the product on premises unless the business is also permitted as a Medical Marijuana Caregiver Retail
229 Store, pursuant to §16.8.29 Marijuana Businesses. A Medical Marijuana Caregiver (Home Occupation)
230 in operation as of the effective date of this section shall be permitted to maintain the grow area in existence
231 as of the effective date of this section.

232
233 B. A Medical Marijuana Registered Caregiver Home Establishment, when required by state law to be

MARIJUANA OPERATIONS

ITEM 3

Draft: April 22, 2021

234 licensed to manufacture, may only manufacture medical marijuana products in zoning districts where
235 Marijuana Manufacturing Facilities are permitted in accordance with §16.3 Land Use Zone Regulations.
236

237 C. A Medical Marijuana Registered Caregiver Home Establishment is restricted to a dwelling unit serving
238 as the primary residence of the Registered Caregiver as determined by voter registration. A Registered
239 Caregiver must provide documentation demonstrating ownership of the dwelling unit or a lease
240 agreement permitting the registered caregiver to operate a Medical Marijuana Registered Caregiver
241 Home Establishment. A Medical Marijuana Registered Caregiver Home Establishment must be an
242 accessory use of the property with the following requirement:
243

244 (1) A Medical Marijuana Registered Caregiver Home Establishment is allowed to utilize 40% or 400-
245 sf, whichever is greater, of the total floor area available within the dwelling unit.
246

247 D. A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients, provide
248 consultations, and perform other functions, pursuant to 22 M.R.S. 558-C §2423-A. Medical marijuana
249 caregivers shall not operate a storefront.
250

251 E. Hours of operation shall be between 7 am and 7 pm Sunday through Saturday and shall be by
252 appointment only.
253

254 F. Medical Marijuana Registered Caregivers shall not have more than 3 employees.
255

256 G. There shall be adequate parking on the lot to accommodate the property’s residents in accordance with
257 §16.8.9 and zone specific standards found within §16.3 Land Use Regulations. Moreover, at a minimum,
258 two parking spots for customers and one spot for each employee shall be provided on the lot.
259

260 H. A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such that
261 they are not detectable by reasonable means at the property lines. Odors shall be controlled by whatever
262 best practices exist.
263

264 I. A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate indoors or
265 outdoors a cumulative of 30 mature plants or 500-sf of plant canopy, 60 immature plants and unlimited
266 seedlings.
267

268 J. The installation and displaying of signage advertising the presence of a Medical Marijuana Registered
269 Caregiver Home Establishment on a lot is prohibited.
270

IV.

**ADD Marijuana Business and Medical Marijuana Registered Caregiver
Home Establishment to Title 16 Development Plan Application and Review**

275 §16.10.3.8.1 Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments

276 The Planning Board shall be the reviewing authority for all initial Marijuana Business and Medical Marijuana
277 Registered Caregiver Home Establishment applications and the Code Enforcement Officer the reviewing
278 authority for all renewal applications as described here, unless subject to the provisions under §16.10.9.1,
279 §16.10.9.2 or §16.10.9.3.

280 Article XI §16.10.11 Medical Marijuana Registered Caregiver Home Establishment

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

281
282
283
284
285
286
287
288
289
290
291
292
293
294
295

296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328

329

330
331
332

§16.10.11.1 General

A. Purpose.

- (1) It is the intent of these regulations to create a framework that will allow registered caregivers to operate within their primary dwelling unit and community in such a way as to ensure a harmonious co-existence.
- (2) Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of registered caregivers operating within their jurisdiction. The regulation of registered caregivers as set herein is not to proscribe their operation, rather to promote the health, safety and welfare of the Town of Kittery by ensuring that a registered caregiver home establishment is compatible with both the area they are situated and the community as a whole.

B. Permit required.

- (1) An applicant seeking Planning Board approval for a Medical Marijuana Registered Caregiver Home Establishment shall submit a complete application with the following furnished documents:
 - (a) Proof of property ownership or lease agreement in the Town of Kittery;
 - (b) Proof of residency in Town of Kittery as determined by voter registration;
 - (c) All relevant State of Maine license information demonstrating the applicant as a valid registered caregiver;
 - (d) A site plan designed by a licensed surveyor or civil engineer registered with the State of Maine in compliance with §16.10.5.2.B that also depicts all proposed outdoor growing areas; and
 - (e) Floor plan of building showing:
 - (a) Existing and proposed layout and square footage.
 - (f) Narrative describing the nature of the registered caregiver operation.

§16.10.11.2 Approval Criteria

A. In addition to the approval criteria, pursuant to §16.10.8.3 Final plan approval, an application will be approved or approved with conditions if the Planning Board makes a positive finding based on the information presented. It must be demonstrated the proposed Medical Marijuana Registered Caregiver Home Establishment will:

- (1) Adequately accommodate employees;
- (2) Have hours of operation that will not disturb abutting properties;
- (3) Have adequate parking spaces for both employees and customers;
- (4) Have a utilized floor area of operation not to exceed 40 % or 400-sf, whichever is greater, within the dwelling unit; and
- (5) Have the ability to prevent orders from infringing beyond the property line.

§16.10.11.2 Post approval

A. An approved application by the Planning Board is valid for one calendar year, upon which a renewal permit issued by the Code Enforcement Officer is required to continue operation of the Medical Marijuana Caregiver Home Establishment.

MARIJUANA OPERATIONS

Draft: April 22, 2021

ITEM 3

- 333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
- B. All Planning Board approved applications must be renewed annually and filed with the Code Enforcement Officer prior to the expiration date of the originally approved application by the Planning Board.
 - C. Prior to granting a renewal permit, the Code Enforcement Officer shall conduct a site inspection to ensure that the Medical Marijuana Registered Caregiver Home Establishment complies with the Planning Board’s approval.
 - D. Approval to operate as a Medical Marijuana Caregiver Home Establishment may be suspended by the Code Enforcement Officer for any substantiated violation of Town Code, Planning Board approval, the Maine Uniform Building and Energy Code (MUBEC) or the Maine Medical Use Marijuana Program under the following terms:
 - (1) Suspension for the first offence shall be for a period not to exceed one calendar month.
 - (2) Suspension for a second offence shall be for a period not to exceed six calendar months.
 - E. Approval to operate as a Medical Marijuana Registered Caregiver Home Establishment may be revoked by the Code Enforcement Officer for the following reason:
 - (1) Applicant has received three substantiated violations; or
 - (2) The Maine Medical Marijuana Caregiver’s State license is invalidated.
 - F. Reinstatement. Medical Marijuana Registered Caregivers may be reinstated following suspension if they prove, to the satisfaction of the Code Enforcement Officer, that they have corrected all violations and provide a plan to prevent future violations of the same type.
 - G. Medical Marijuana Registered Caregivers must wait one calendar year from the date of revocation to apply to the Planning Board for approval.