

MARIJUANA OPERATIONS

DRAFT: May 13, 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.**

**EDUCATIONAL FACILITY - An establishment that provides lessons to children prepared for or taught by a state certified educator or state certified early childhood educator.**

**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,**

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37 caregivers or other cultivation facilities as defined under Title 28-B M.R.S. Chapter 1.

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

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

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

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

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

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

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

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

**II.**

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

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62 16.3.2.1 Residential-Rural (R-RL)

63 C. Special exception uses

64 (15) Medical Marijuana Register Caregiver Home Establishment

65 16.3.2.2 Residential-Suburban (R-S)

66 C. Special exception uses

67 (11) Medical Marijuana Register Caregiver Home Establishment

68 16.3.2.3 Residential-Kittery Point Village (R-KPV)

69 C. Special exception uses

70 (10) Medical Marijuana Register Caregiver Home Establishment

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- 71 16.3.2.4 Residential-Urban (R-U)
- 72 C. Special exception uses
- 73 **(11) Medical Marijuana Register Caregiver Home Establishment**
- 74 16.3.2.5 Residential-Village (R-V)
- 75 C. Special exception uses
- 76 **(4) Medical Marijuana Register Caregiver Home Establishment**
- 77 16.3.2.6 Residential-Rural Conservation (R-RC)
- 78 C. Special exception uses
- 79 **(9) Medical Marijuana Register Caregiver Home Establishment**
- 80 16.3.2.8 Residential-Business-Local (B-L)
- 81 C. Special exception uses
- 82 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 83 16.3.2.9 Business-Local 1 (B-L1)
- 84 C. Special exception uses
- 85 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 86 16.3.2.10 Mixed-Use-Neighborhood (MU-N)
- 87 C. Special exception uses
- 88 **(10) Medical Marijuana Register Caregiver Home Establishment**
- 89 § 16.3.2.11 Commercial (C-1, C-2, C-3).
- 90 (1) C-1 special exception uses.
- 91 **(p) Marijuana Business, excluding Tier 3 and Tier 4 Marijuana Cultivation Facilities**
- 92 (2) C-2 special exception uses.
- 93 **(q) Marijuana Business**
- 94 (3) C-3 special exception uses.
- 95 **(q) Marijuana Business**
- 96 § 16.3.2.13 Mixed-Use MU.
- 97 C. Special exception uses.

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98 **(19) Marijuana Business**

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

100 § 16.3.2.14 Mixed-Use-Badgers Island (MU-BI)

101 C. Special exceptions uses

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

103 § 16.3.2.15 Mixed-Use-Kittery (MU-KF)

104 C. Special exceptions uses

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

106 *§ 16.3.2.17 Shoreland Overlay Zone (OZ-SL)*

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

108 **[8] Medical Marijuana Registered Caregiver Home Establishment**

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

110 **[6] Medical Marijuana Registered Caregiver Home Establishment**

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

112 **[5] Medical Marijuana Registered Caregiver Home Establishment**

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

114 **[7] Medical Marijuana Registered Caregiver Home Establishment**

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

116 **[5] Medical Marijuana Registered Caregiver Home Establishment**

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

118 **[7] Medical Marijuana Registered Caregiver Home Establishment**

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

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

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

122 **[23] Medical Marijuana Registered Caregiver Home Establishment**

TITLE 16 – LAND USE AND DEVELOPMENT CODE

**ITEM 4**

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

124 **[24] Marijuana Business, excluding Tier 3 and Tier 4 Marijuana Cultivation Facilities**

125 **[25] Medical Marijuana Registered Caregiver Home Establishment**

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

127 **[27] Marijuana Business**

128 **[28] Medical Marijuana Registered Caregiver Home Establishment**

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

130 **[26] Marijuana Business**

131 **[27] Medical Marijuana Registered Caregiver Home Establishment**

132 (14)(b) MU Special exception uses

133 **[33] Marijuana Business**

134 **[34] Medical Marijuana Registered Caregiver Home Establishment**

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

136 **[21] Medical Marijuana Registered Caregiver Home Establishment**

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

138 **[19] Medical Marijuana Registered Caregiver Home Establishment**

139 *16.3.2.19 Resource Protection Overlay Zone (OZ-RP)*

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

141 (b) Special exception uses

142 **[7] Medical Marijuana Registered Caregiver Home Establishment**

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

144 (b.) Special exception uses

145 **[6] Medical Marijuana Registered Caregiver Home Establishment**

146 B.(3) Residential –Kittery Point Village Zone (R-KPV)

147 (b.) Special exception uses

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148 **[6] Medical Marijuana Registered Caregiver Home Establishment**

149 B.(4) Residential –Urban Zone (R-U)

150 (b.) Special exception uses

151 **[5] Medical Marijuana Registered Caregiver Home Establishment**

152 B.(5) Residential –Village Zone (R-V)

153 (b.) Special exception uses

154 **[5] Medical Marijuana Registered Caregiver Home Establishment**

155 B.(6) Residential –Rural Conservation Zone (R-RLC)

156 (b.) Special exception uses

157 **[7] Medical Marijuana Registered Caregiver Home Establishment**

158 B.(8) Business –Local (B-L)

159 (b.) Special exception uses

160 **[6] Medical Marijuana Registered Caregiver Home Establishment**

161 B.(9) Business –Local (B-L1)

162 (b.) Special exception uses

163 **[5] Medical Marijuana Registered Caregiver Home Establishment**

164 B.(10) Commercial–1 Zone (C-1)

165 (b.) Special exception uses

166 **[6] Medical Marijuana Registered Caregiver Home Establishment**

167 B.(11) Commercial–2 Zone (C-2)

168 (b.) Special exception uses

169 **[5] Medical Marijuana Registered Caregiver Home Establishment**

170 B.(12) Commercial–3 Zone (C-3)

171 (b.) Special exception uses

172 **[5] Medical Marijuana Registered Caregiver Home Establishment**

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

174 (b.) Special exception uses

175 **[6] Medical Marijuana Registered Caregiver Home Establishment**

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

177 (b.) Special exception uses

178 **[5] Medical Marijuana Registered Caregiver Home Establishment**

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

180 (b.) Special exception uses

181 **[5] Medical Marijuana Registered Caregiver Home Establishment**

182 **III.**  
183 **ADD Marijuana Businesses and Medical Marijuana Caregiver Home**  
184 **Establishments to Title 16 Design and Performance Standards for Built**  
185 **Environment**  
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187 **§16.8.29 Marijuana Business**

188 **16.2.29.1 General**

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

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

198 **§16.8.29.2 Standards**

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

204 **B. Marijuana Businesses shall not have any odor of marijuana detectible beyond the area controlled by the**

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205 business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land. Odors  
 206 shall be controlled by whatever best practices exist.

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

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

212 E. The design of any building containing a Marijuana Business shall conform with the standards within this  
 213 title and the Town of Kittery Design Handbook.

214 F. Parking shall conform to Article X Parking.

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

217 H. The owner of a Marijuana Cultivation Facility shall provide an affidavit from a master electrician or  
 218 electrical engineer at the time of application certifying that the electrical components can meet the electrical  
 219 load demands of the use.

220 I. Security.

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

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

229 §16.8.30 Medical Marijuana Registered Caregiver Home Establishment

230 16.8.30.1 Standards

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

236  
 237 B. A Medical Marijuana Registered Caregiver Home Establishment, when required by state law to be  
 238 licensed to manufacture, may only manufacture medical marijuana products in zoning districts where  
 239 Marijuana Manufacturing Facilities are permitted in accordance with §16.3 Land Use Zone Regulations.

240  
 241 C. A Medical Marijuana Registered Caregiver Home Establishment is restricted to lots on which only one  
 242 (1) single-family dwelling unit exists and serves as the primary residence of the Registered Caregiver as  
 243 determined by voter registration. A Registered Caregiver must provide documentation demonstrating



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244 ownership of the dwelling unit or a lease agreement permitting the registered caregiver to operate a  
245 Medical Marijuana Registered Caregiver Home Establishment. Medical Marijuana Registered Caregiver  
246 Home Establishment must be an accessory use of the property with the following requirement:  
247

248 (1) A Medical Marijuana Registered Caregiver Home Establishment is allowed to utilize 40% or 400-  
249 sf, whichever is greater, of the total floor area available in the single-family dwelling unit on the  
250 lot at the time of approval.  
251

252 D. A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients, provide  
253 consultations, and perform other functions, pursuant to 22 M.R.S. §2423. Medical marijuana caregivers  
254 shall not operate a storefront.  
255

256 E. Hours of operation shall be between 7 am and 7 pm Sunday through Saturday and shall be by  
257 appointment only.  
258

259 F. Medical Marijuana Registered Caregivers shall not have more than 3 employees.  
260

261 G. There shall be adequate parking on the lot to accommodate the property’s residents in accordance with  
262 §16.8.9 and zone specific standards found within §16.3 Land Use Regulations. Moreover, at a minimum,  
263 two parking spots for customers and one spot for each employee shall be provided on the lot.  
264

265 H. A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such that  
266 they are not detectable by reasonable means at the property lines. Odors shall be controlled by whatever  
267 best practices exist.  
268

269 I. A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate indoors or  
270 outdoors a cumulative of 30 mature plants or 500-sf of plant canopy, 60 immature plants and unlimited  
271 seedlings.  
272

273 J. The installation and displaying of signage advertising the presence of a Medical Marijuana Registered  
274 Caregiver Home Establishment on a lot is prohibited.  
275

IV.

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

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276 §16.10.3.8.1 Marijuana Businesses and Medical Marijuana Registered Caregiver Home Establishments

281 The Planning Board shall be the reviewing authority for all initial Marijuana Business and Medical Marijuana  
282 Registered Caregiver Home Establishment applications and the Code Enforcement Officer the reviewing  
283 authority for all renewal applications as described here, unless subject to the provisions under §16.10.9.1,  
284 §16.10.9.2 or §16.10.9.3.

285 Article XI §16.10.11 Medical Marijuana Registered Caregiver Home Establishment

286 §16.10.11.1 General

287  
288  
289 A. Purpose.  
290

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- 291 (1) It is the intent of these regulations to create a framework that will allow registered caregivers to  
 292 operate within their primary dwelling unit and community in such a way as to ensure a  
 293 harmonious co-existence.  
 294
- 295 (2) Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of  
 296 registered caregivers operating within their jurisdiction. The regulation of registered caregivers  
 297 as set herein is not to proscribe their operation, rather to ensure the registered caregiver home  
 298 establishment is compatible with both the area they are situated and the community as a whole.  
 299

B. Permit required.

- 300
- 301 (1) An applicant seeking Planning Board approval for a Medical Marijuana Registered Caregiver  
 302 Home Establishment shall submit a complete application with the following furnished  
 303 documents:  
 304
- 305
- 306 (a) Proof of property ownership or lease agreement in the Town of Kittery;  
 307 (b) Proof of residency in Town of Kittery as determined by voter registration;  
 308 (c) All relevant State of Maine license information demonstrating the applicant as a valid  
 309 registered caregiver;  
 310 (d) A site plan designed by a licensed surveyor or civil engineer registered with the State of  
 311 Maine in compliance with §16.10.5.2.B that also depicts all proposed outdoor growing  
 312 areas; and  
 313 (e) Floor plan of building showing:  
 314
- 315 (a) Existing and proposed layout and square footage.  
 316
- 317 (f) Narrative describing the nature of the registered caregiver operation.  
 318

§16.10.11.2 Approval Criteria

- 319
- 320 A. In addition to the approval criteria, pursuant to §16.10.8.3 Final plan approval, an application will be  
 321 approved or approved with conditions if the Planning Board makes a positive finding based on the  
 322 information presented. It must be demonstrated the proposed Medical Marijuana Registered Caregiver  
 323 Home Establishment will:  
 324
- 325 (1) Adequately accommodate employees;  
 326 (2) Have hours of operation that will not disturb abutting properties;  
 327 (3) Have adequate parking spaces for both employees and customers;  
 328 (4) Have a utilized floor area of operation not to exceed 40 % or 400-sf , whichever is greater, within  
 329 the dwelling unit; and  
 330 (5) Have the ability to prevent orders from infringing beyond the property line.  
 331

§16.10.11.2 Post approval

- 332
- 333 A. An approved application by the Planning Board is valid for one calendar year, upon which a renewal  
 334 permit is required to continue operation of the Medical Marijuana Caregiver Home Establishment.  
 335
- 336 B. All Planning Board approved applications must be renewed annually and filed with the Code  
 337 Enforcement Officer prior to the expiration date of the originally approved application by the Planning  
 338 Board.  
 339
- 340 C. Prior to granting a renewal permit, the Code Enforcement Officer shall conduct a site inspection to ensure  
 341 that the Medical Marijuana Registered Caregiver Home Establishment complies with the Planning  
 342 Board's approval.  
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- 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.



**Town of Kittery Marijuana Zoning Ordinance Amendments  
Hypothetical Marijuana Business Buffer Zone Analysis**

**Legend**

<span style="color: green;">●</span> Marijuana Business	<span style="color: red;">■</span> Commercial - 1
<span style="background-color: lightgreen;">■</span> 1000-ft. Buffer	<span style="background-color: lightcoral;">■</span> Commercial - 2
<span style="background-color: lightblue;">■</span> 1500-ft. Buffer	<span style="background-color: darkred;">■</span> Commercial - 3
<span style="background-color: lightgray;">■</span> 2000-ft. Buffer	<span style="background-color: orange;">■</span> Mixed Use
<b>Zoning District</b>	<span style="background-color: gray;">■</span> Parcel_2020_No_Water&Road_2





**Town of Kittery Marijuana Zoning Ordinance Amendments  
Hypothetical Marijuana Business Buffer Zone Analysis**

**Legend**

<span style="color: cyan;">●</span> Marijuana Business	<span style="color: red;">■</span> Commercial - 1
<span style="color: green;">■</span> 1000-ft. Buffer	<span style="color: orange;">■</span> Commercial - 2
<span style="color: blue;">■</span> 1500-ft. Buffer	<span style="color: darkred;">■</span> Commercial - 3
<span style="color: yellow;">■</span> 2000-ft. Buffer	<span style="color: lightorange;">■</span> Mixed Use
<span style="color: grey;">■</span> Zoning District	<span style="color: grey;">■</span> Parcel_2020_No_Water&Road_2

N