



TOWN OF KITTERY

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

KITTERY TOWN COUNCIL

Special Meeting

TOWN COUNCIL CHAMBERS

June 7, 2021

6:00PM

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

Safety precautions are in place in Town Hall for all meeting attendees including wearing masks at all times while in the building.

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_wbAp9zPTS2CS1eQJpO1bAw

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Communications from Chair Thomson
6. PUBLIC HEARINGS
7.
 - a. (060121-1) The Kittery Town Council moves to receive comments on Town Warrant Articles 2 through 10 for the June 8, 2021 Town Meeting Election.
 - b. (060121-2) The Kittery Town Council moves to hold a public hearing on Title 12 Prohibition of Fires at Seapoint and Crescent Beaches. **(See New Business item 8.a)**

7. DISCUSSION – Discussion is limited to the matter on the agenda for this meeting only.
 - a. Discussion by members of the public (three minutes per person)
 - b. Chairperson may read written comments into the public record.
 - c. Chairperson’s response to public comments.

8. NEW BUSINESS
 - a. (060121-3) The Kittery Town Council moves to postpone the public hearing on Title 12 Prohibition of Fires at Seapoint and Crescent Beaches until a date to be determined.
(Chair will request to take this matter up at the beginning of the meeting)
 - b. (060121-4) The Kittery Town Council moves to schedule a public hearing on June 28, 2021 on Marijuana – Title 5 and Title 16.

9. ADJOURNMENT

Posted: June 3, 2021

**TOWN OF KITTERY
TOWN MEETING WARRANT
JUNE 8, 2021**

To Robert V. Richter, a Constable of the Town of Kittery, in the County of York, State of Maine.

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the Town of Kittery in said county and state, qualified by law to vote in town affairs:

To meet, in said town, on Monday the 7th day of June 2021, at 6:00 p.m. to hold a public hearing on Articles 2 through 10.

To hold a **Municipal Election** at the Kittery Community Center Gymnasium, in said town, on Tuesday, the 8th day of June, 2021 at 8 a.m. to:

Elect one member of the Town Council for an unexpired term ending November 8, 2022

Elect one member of the Town Council for an unexpired term ending November 13, 2023

Act on Article 1 to elect a moderator by written ballot and to act on Articles 2 through 10 by secret ballot

The polls will be open from 8:00 a.m. until 8:00 p.m.

Absentee ballots will be processed centrally at 9:00 a.m., 10:00 a.m., 11:00 a.m., 12:00 p.m., 1:00 p.m., 2:00 p.m., 3:00 p.m., 4:00 p.m., 5:00 p.m., 6:00 p.m., 7:00 p.m., and 8:00 p.m.

Article 1. To elect a moderator to preside at said meeting and to vote by written ballot.

Article 2. Shall the town vote to authorize the Town Council to transfer up to \$125,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$125,000 when necessary to maintain a positive fund balance in the Compensated Absences account and to pay for accrued vacation and/or sick leave to settle any unpaid benefits owed to retired or terminated employees in the fiscal year?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The purpose of this article is to provide funds from the town's unassigned funds (unencumbered surplus) to pay for accrued benefits owed when a municipal employee retires or leaves. The reserve account balance is currently \$153,059. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 3. Shall the town vote to authorize the Town Council to transfer up to \$25,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$25,000 when necessary for the purpose of paying the town's cost on accepted insurance claims against the town?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The purpose of this article is to provide funds from the town's unassigned funds (unencumbered surplus) to pay the deductible and other associated costs on insurance claims that may be made in the fiscal year. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 4. Shall the town vote to authorize the Town Council to transfer up to \$500,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$500,000 when necessary for the purpose of providing the town's match to federal, state, and non-profit grants?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

Grant applications are filed by different town departments to assist with the operations and capital purchases. These grants, if successful, often require a local match to be raised. The purpose of this article is to provide funds from the town's unassigned funds (unencumbered surplus) when and if necessary, for the purpose of meeting grant match requirements. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 5. Shall the town vote to authorize the Town Council to transfer up to \$40,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$40,000 when necessary for the purpose of covering shortfalls in the town departments' fuel accounts due to the unpredictable fuel pricing markets?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The purpose of this article is to provide departments, who have exhausted their allocated fuel budgets in the fiscal year, access to funds for fuel needs. The Town Council favored keeping the fiscal year fuel and utility accounts as low as possible, with this article making available surplus funds as a safety net in case of an unstable market for fuel. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 6. Shall the town vote to authorize the Town Council to transfer up to \$40,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$40,000 when necessary for the purpose of providing for the town's General Assistance Program as required by town, state, and federal laws in the fiscal year?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The General Assistance Program is budgeted from the town's operational budget each year. The program assists town citizens with welfare type services by following very strict state and federal guidelines for income eligibility within the General Assistance Ordinance. The purpose of this article is to create a method for the Town Council to supplement the General Assistance budget if needed. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 7. Shall the town vote to authorize the Town Council to transfer up to \$50,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$50,000 when necessary for the purpose of paying for emergency repairs and energy efficiency improvements to town-owned facilities that are not contemplated in the regular fiscal year operating budget?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

Occasionally, repairs to town facilities are needed that have not been budgeted. In addition, energy efficiency projects are being identified to further save the town funds. The purpose of this article is to allow the Town Council to make unplanned emergency facility repairs and undertake energy efficiency projects that may arise in the fiscal year. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 8. Shall the town vote to authorize the Town Council to transfer up to \$50,000 from unassigned funds (unencumbered surplus) and appropriate and expend up to \$50,000 for a Municipal Property Tax Assistance program to credit property taxes owed by certain residents that meet the program requirements?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The Senior Tax Credit program allows for taxpayers that qualify to receive a credit on their property taxes each year. The program assists seniors with their property tax obligations. The unassigned fund balance (unencumbered surplus) is currently \$6,970,748.

Article 9. Shall the town vote to authorize the Town Council to transfer up to \$800,000 from unassigned funds (unencumbered surplus) and to expend up to that amount for the expansion of the Gorges Road Fire Station to house the ambulance service; and to surplus and sell, in accordance with Town Ordinance, 25 Walker Street (Walker Street Fire Station), with sale proceeds to be returned to the unassigned funds?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The Town has determined that the Gorges Road Fire Station is a more advantageous site for the ambulance service than the current Walker Street Fire Station. The Gorges Road station will require an expansion to house the ambulance service, to include two ambulance bays, a small living quarter for bunking of staff, an office area, and an upgrade to the existing kitchen. Upon completion of the expansion, the Walker Street Fire Station will be sold, with proceeds used to reimburse the expenditure from the unassigned funds. The Walker Street station was appraised at \$635,000 in March of 2020.

Article 10. Shall the town vote to authorize the Town Council to sell 2 Walker Street (Taylor Building), in accordance with Town Ordinance, with sale proceeds assigned in a manner approved by the Town Council?

Town Council Recommends – Vote: Yes 5 No 0

Explanation:

The Town Council formed the ad hoc Taylor Building Committee to conduct research and identify what the opportunities and concerns are related to the potential, sale, lease, or re-use of the building. The Taylor Building Committee recommended sale or long-term lease to a non-profit organization that supports art, culture, or other community-related purpose that adds to the vitality of the Foreside. The building was appraised at \$770,000 in March of 2019.

The Registrar of Voters will hold office hours while the polls are open to correct any error in, or change a name or address on, the voting list; to accept registration of any person who becomes 18 years of age on Election Day or after the close of registration prior to it; and to accept new enrollments.



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

REPORT TO TOWN COUNCIL

Meeting Date: May 24, 2021
Update: June 7, 2021
From: Kendra Amaral, Town Manager
Subject: Title 12 – Fires at Seapoint and Crescent Beaches
Council Sponsor: Vice Chair Judy Spiller

UPDATE

Town Council Chair will motion to postpone the public hearing until an undetermined date in the future.

EXECUTIVE SUMMARY

The Town Council has requested a proposal to amend Title 12 to address the growing complaints from abutters and beachgoers regarding fires at the beaches. The neighbors have been reporting a growing prevalence of fires, burning embers, and the associated litter and noise that comes with the fires.

BACKGROUND

Regulations for Seapoint and Crescent Beaches are contained in Title 12. The existing regulations cover what types of activities are prohibited such as camping, jet skis, and disturbing the topography. Title 12 also contains regulations regarding parking for residents and non-residents, and the hours of operation.

The Town currently does not require a permit for fires for cooking and warming. This means fires are not expressly prohibited at the beaches. Bonfires at the beaches have occurred for many years, though the care of the fires, frequency, size and numbers of fires are growing. COVID-19 has increased regional interest in the Town's beaches causing a greater impact on abutters and visitors.

The staff are not recommending implementing a permit program for fires on the beaches. The resources required to manage a robust permitting program with sufficient compliance and enforcement efforts is outside of our existing capacity.

The Fire Chief reviewed the ten-year fire call data. He indicates the data does not indicate that the fires at Seapoint and Crescent beaches represent a fire danger. The Fire Department has responded fourteen times to fire calls in ten years, of which ten (71.4%) were categorized "Rescue Calls". The four remaining calls were categorized "Fire Calls". Two were unfounded calls and two were actual calls where the FD extinguished the fire.

The Fire Chief advises that a ban on open fires at the beach is likely to cause an increase in fire calls until the general public is made well aware of the ordinance. This could include calls to extinguish harmless warming or cooking fires where people do not understand or follow the rules.

The definition of the term "Open Burning" is as follows:

“Open Burning” is the burning, of any type of combustible material in the, open (ambient) air without being completely enclosed and where the smoke goes directly into the ambient air without passing through a stack, chimney, duct or other device or structure.”

This means a full ban on fires including use of charcoal will not be allowed at the beach if banned.

The Police are able to enforce the existing hours of operation (4AM to 11PM). Violations are enforced in accordance with Title 1, which requires a summons.

The majority of issues are in the late evening/early morning hours. Police staffing is limited on this shift, making a guarantee of regular police presence each night is not possible. The Police Chief is working to have directed patrols at the beaches and have a greater presence as much as practicable.

OPTIONS

The Council may want to consider the following options:

- No change, wait and see with increase directed patrols.
- Amend the violation section of the ordinance to allow for direct citations for violation of the existing regulations.
- Amend the ordinance to ban fires and the violation sections.

In all cases, additional enforcement action will be needed from the Police Department to make an impact.

ATTACHMENTS

- Draft Title 12 Amendment
- Draft Title 12 Enactment
- Title 12 Seapoint and Crescent Beaches Ordinance - Current

Chapter 12.4
Prohibit Fires at Seapoint and Crescent Beaches

AMEND to prohibit fires at all times as follows:

1 § 12.4.9 **Fires.**

2 No person may start or allow any fire to burn within Seapoint or Crescent Beaches, ~~except in suitable~~
3 ~~facilities provided by the municipality or where permission has been obtained from the municipal Fire Chief,~~
4 ~~Town Forest Fire Warden. A permit will not be required for the use of portable stoves which are fueled by~~
5 ~~propane gas, sterno or briquettes. In the event that any cooking or other fire or burning herein allowed is~~
6 ~~undertaken by any person, said person before leaving such fire must totally extinguish the same.~~

7 AMEND Violations to enhance enforcement options as follows:

8 § 12.4.17 **Enforcement; violations and penalties.**

9 ~~This chapter is enforced by the Police Department. Any violation of this chapter will be assessed a penalty~~
10 ~~under Title 1, Chapter 1.3. All penalties recovered accrue to the benefit of the Town.~~ Any person who violates
11 a provision of this chapter will be assessed a penalty of \$100.



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REPORT TO TOWN COUNCIL

Meeting Date: June 7, 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

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 permitting 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 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 shall 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.

43
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 will, 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 less 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 shall 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 shall 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 shall 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 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall issue a written decision to the applicant indicating whether it has met the
203 standards for pre-application certification. Applications for licensure may be submitted as soon as
204 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 shall 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.

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) shall 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.
- 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 shall demonstrate
249 that the following requirements are met. The Licensee shall 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 shall 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 shall 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 shall 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 shall 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 only be made 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 shall 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 shall 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. ~~Medical Marijuana Registered Caregiver or Medical Marijuana~~
331 ~~Registered Caregiver (Home Occupation)~~

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

336 Tier 1: Up to 500 square feet of plant canopy
337 Tier 2: Up to 2,000 square feet of plant canopy
338 Tier 3: Up to 7,000 square feet of plant canopy
339 Tier 4: Up to 20,000 square feet of plant canopy

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

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

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

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

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

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

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

363 Medical Marijuana Registered Caregiver Home Establishment

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

364 § 16.3.2.11 Commercial (C-1, C-2, C-3).

365 (1) C-1 special exception uses.

366 (p) Marijuana Business, ~~if~~ except a Marijuana Cultivation Facility, or if:

367 **[STAFF ARE NOT RECOMMENDING THE 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 **[STAFF ARE NOT RECOMMENDING THE FOLLOWING PROVISION]**

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

376 a. Businesses are functionally distinct and mutually dependent;

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

378 c. the Marijuana Businesses are under common ownership

379 (3) C-3 special exception uses.

380 (q) Marijuana Business, if:

381 **[STAFF ARE NOT RECOMMENDING THE FOLLOWING PROVISION]**

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

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

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

385 c. the Marijuana Businesses are under common ownership

386 § 16.3.2.13 Mixed-Use MU.

387 C. Special exception uses.

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

389 **[STAFF ARE NOT RECOMMENDING THE FOLLOWING PROVISION]**

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

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

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

393 c. the Marijuana Businesses are under common ownership

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

394 §16.8.29 Marijuana Businesses

395 16.8.29.1 General

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

399 16.8.29.2 Standards

400 Marijuana Businesses shall meet the following standards:

401 A. Marijuana Businesses may not locate within ~~1,000~~ 500 feet of a public or private school measured from
402 the ~~main entrance or any customer entrance door~~ exterior wall of the Marijuana Business in a straight
403 line to the property line of the protected use. Marijuana Businesses may not locate within 250 feet of a
404 state-licensed daycare of any size, measured from the exterior wall of the Marijuana Business to the
405 property line of the protected use. This section does not prohibit the activity of a caregiver or other
406 authorized individual from administering medical marijuana to a qualified patient who is located within
407 one of these protected areas.

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

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

414 D. The design of any building containing a Marijuana Business must ~~be visually compatible with other types~~
415 ~~of buildings in the immediately surrounding neighborhood, in terms of similarity of building materials,~~
416 ~~building size, building height and architecture~~ conform to the standards within this Title and the Town of
417 Kittery Design Handbook.

418 E. The area of any Marijuana Business accessible to customers must be no less than 400 nor more than
419 ~~1,000~~ 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, shall provide an
424 annual affidavit from a master electrician or electrical engineer certifying that the electrical components
425 can 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). Such
432 records must be made available to law enforcement agencies when investigating a criminal complaint.

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

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

437 §16.8.30 Medical Marijuana Registered Caregiver Home Establishment

438 16.8.30.1 General

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

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

453 16.8.30.2 Standards

454
455 A Medical Marijuana Registered Caregiver Home Establishment shall 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.

460

461 A. Manufacturing of medical marijuana products may only occur 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 shall be between 7 am and 7 pm Sunday through Saturday and shall be by
476 appointment only.

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

479 H. There shall 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 shall 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 and outdoors.

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 will be 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 they are 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 shall 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 [PLANNING BOARD RECOMMENDED AN ANNUAL PERMITTING PROCESS FOR HOME
517 OCCUPATION WITHIN TITLE 16. THE RECOMMENDATION IS DUPLICATIVE OF TITLE
518 5 RENEWAL PROPOSAL AND WOULD ESTABLISH AN UNNECESSARY BURDEN FOR
519 HOME ESTABLISHMENTS. STAFF HAVE REMOVED THE DUPLICATION]

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

520 **§ 16.8.22.3 Major home occupation standards.**

521 C. Prohibited uses. The following uses are categorically prohibited as major home occupations: motor
522 vehicle repair; motor vehicle sales or rental; commercial parking; commercial outdoor storage; junkyard;
523 auto salvage yard; ~~marijuana retail use~~ Marijuana Business; and ~~marijuana medical use~~ Medical Marijuana
524 Registered Caregiver Home Establishment ~~except the activities of a primary caregiver registered under 22-~~

525 ~~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