

ITEM 3

April 8, 2021

TITLE 16 – LAND USE CODE MARIJUANA OPERATIONS

~~TITLE 5 – BUSINESS LICENSES and REGULATIONS~~ ~~and~~ ~~TITLE 16 – LAND USE CODE~~ ~~MARIJUANA OPERATIONS~~

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

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

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

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

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

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

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

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

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

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

27 EDUCATIONAL FACILITY - An establishment that provides lessons to children prepared for or taught by

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28 a state certified educator or state certified early childhood educator.

29 MARIJUANA BUSINESS - An Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical
30 Marijuana Caregiver Retail Store, Marijuana Manufacturing Facility, Marijuana Testing Facility, Medical
31 Marijuana Registered Caregiver or Medical Marijuana Registered Caregiver (Home Occupation)

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

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

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

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

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

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

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

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

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

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

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

§ 16.3.2.1 Residential- Rural (R-RL)

C. Special exceptions uses

(15) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.2 Residential- Suburban (R-S)

C. Special exceptions uses

(11) Medical Marijuana Registered Caregiver Home Establishment

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

C. Special exceptions uses

(10) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.4 Residential-Residential-Urban (R-U)

C. Special exceptions uses

(11) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.5 Residential-Residential-Village (R-V)

C. Special exceptions uses

(4) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.6 Residential-Residential Rural Conservation (R-RC)

C. Special exceptions uses

(9) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.8 Business- Local (B-L)

C. Special exceptions uses

(10) Medical Marijuana Registered Caregiver Home Establishment

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§ 16.3.2.9 Business- Local 1 (B-L1)

C. Special exceptions uses

(10) Medical Marijuana Registered Caregiver Home Establishment

§ 16.3.2.10 Mixed-Use-Neighborhood (MU-N)

C. Special exceptions uses

~~3.~~ (13) Medical Marijuana Registered Caregiver Home Establishment

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

61 (1) C-1 special exception uses.

62 (p) Marijuana Business, excluding Tier 3 and Tier 4 Marijuana Cultivation Facilities

63 (q) Medical Marijuana Registered Caregiver Home Establishment

64 (2) C-2 special exception uses.

65 (q) Marijuana Business

66 (r) Medical Marijuana Registered Caregiver Home Establishment

67 (3) C-3 special exception uses.

68 (q) Marijuana Business

69 (r) Medical Marijuana Registered Caregiver Home Establishment

70 § 16.3.2.13 **Mixed-Use MU.**

71 C. Special exception uses.

72 19. Marijuana Business

73 (20) Medical Marijuana Registered Caregiver Home Establishment

74 § 16.3.2.14 Mixed-Use-Badgers Island (MU-BI)

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- 75 [C. Special exceptions uses](#)
- 76 [\(4\) Medical Marijuana Registered Caregiver Home Establishment](#)
- 77 [§ 16.3.2.15 Mixed-Use-Kittery \(MU-KF\)](#)
- 78 [C. Special exceptions uses](#)
- 79 [\(3\) Medical Marijuana Registered Caregiver Home Establishment](#)
- 80 [§ 16.3.2.17 Shoreland Overlay Zone \(OZ-SL\)](#)
- 81 [\(1\)\(b\) R-RL Special exception uses](#)
- 82 [\[8\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 83 [\(2\)\(b\) R-S Special exception uses](#)
- 84 [\[6\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 85 [\(3\)\(b\) R-KPV Special exception uses](#)
- 86 [\[5\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 87 [\(4\)\(b\) R-U Special exception uses](#)
- 88 [\[7\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 89 [\(5\)\(b\) R-V Special exception uses](#)
- 90 [\[5\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 91 [\(6\)\(b\) R-RC Special exception uses](#)
- 92 [\[7\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 93 [\(8\)\(b\) B-L Special exception uses](#)
- 94 [\[23\] Medical Marijuana Registered Caregiver Home Establishment](#)
- 95 [\(9\)\(b\) B-L1 Special exception uses](#)

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96 [\[23\] Medical Marijuana Registered Caregiver Home Establishment](#)

97 [\(10\)\(b\) C-1 Special exception uses](#)

98 [\[24\] Medical Marijuana Registered Caregiver Home Establishment](#)

99 [\(11\)\(b\) C-2 Special exception uses](#)

100 [\[27\] Medical Marijuana Registered Caregiver Home Establishment](#)

101 [\(12\)\(b\) C-3 Special exception uses](#)

102 [\[26\] Medical Marijuana Registered Caregiver Home Establishment](#)

103 [\(14\)\(b\) MU Special exception uses](#)

104 [\[33\] Medical Marijuana Registered Caregiver Home Establishment](#)

105 [\(15\)\(b\) MU-BI Special exception uses](#)

106 [\[21\] Medical Marijuana Registered Caregiver Home Establishment](#)

107 [\(16\)\(b\) MU-KF Special exception uses](#)

108 [\[19\] Medical Marijuana Registered Caregiver Home Establishment](#)

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

§16.8.29 Marijuana Businesses

110 [This section regulates Marijuana Businesses, as defined uses within the Town of Kittery. The permitting](#)
111 [standards outlined here shall be adhered to for all Marijuana Businesses, in addition to other applicable](#)
112 [standards in this and other ordinances or state law.](#)

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

119 [B. Marijuana Businesses shall not locate within ~~1,000~~500 feet of a public school, ~~or~~ private school, or other](#)

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120 ~~educational facility, measured from the main entrance or any customer entrance door of the Marijuana~~
121 ~~Business in a straight line to the property line of the protected use. Marijuana Businesses shall not locate~~
122 ~~within 250 feet of a state licensed daycare of any size, measured from the exterior wall of the Marijuana~~
123 ~~Business to the property line of the protected use. This section shall not prohibit the activity of a~~
124 ~~caregiver or other authorized individual from administering medical marijuana to a qualified patient who~~
125 ~~is located within one of these protected areas.~~

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

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

132 ~~———— Marijuana grown by any Marijuana Business shall be grown indoors only. A Medical Marijuana~~
133 ~~Caregiver shall not conduct any sale of the product on premises unless the business is also permitted as a~~
134 ~~Medical Marijuana Caregiver Retail Store. Medical Marijuana grown by Medical Marijuana Caregivers shall~~
135 ~~be limited to less than one thousand (1,000) square feet floor area measured cumulatively per lot unless the~~
136 ~~business is also permitted as a Marijuana Cultivation Facility. A Medical Marijuana Caregiver (Home~~
137 ~~Occupation) in operation as of the effective date of this section shall be permitted to maintain the grow area~~
138 ~~in existence as of the effective date of this section.~~

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

141 ~~———— Medical Marijuana Registered Caregiver and Medical Marijuana Registered Caregiver (Home~~
142 ~~Occupation), when required by state law to be licensed to manufacture, may only manufacture medical~~
143 ~~marijuana products in zoning districts where Marijuana Manufacturing Facilities are permitted.~~

144 ~~F. Parking shall conform to Article X Parking.~~

145 ~~———— Medical Marijuana Registered Caregiver (Home Occupation) shall at all times meet all permit and~~
146 ~~operational requirements for a home occupation and the additional license requirements for a Medical~~
147 ~~Marijuana Registered Caregiver (Home Occupation). Medical Marijuana grown by Medical Marijuana~~
148 ~~Caregiver (Home Occupation) in basements and accessory structures shall be limited to less than one~~
149 ~~thousand (1,000) square feet floor area measured cumulatively per lot for all caregivers cultivating on the lot.~~

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

152 ~~———— The design of any building containing a Marijuana Business shall be visually compatible with other~~
153 ~~types of buildings in the immediately surrounding neighborhood, in terms of similarity of building materials,~~
154 ~~building size, building height and architecture.~~

155 ~~———— The area of any Marijuana Business accessible to customers shall be no less than 400 nor more than~~
156 ~~1,000 square feet.~~

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157 ~~———— Parking shall conform to Article X.~~

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

160 H. The Owner of any Marijuana Business shall provide an annual affidavit from a master electrician
161 certifying that the electrical components can meet the electrical load demands of the use.

162 I. Security.

163 1. The Licensed Premises shall have lockable doors and windows and shall be served by an alarm
164 system which includes automatic notification to the Kittery Police Department.

165 2. The Licensed Premises shall have video surveillance capable of covering the exterior and interior
166 of the facility. The video surveillance system shall be operated with continuous recording twenty-
167 four hours per day, seven days per week and video shall be retained for a minimum duration of
168 thirtyfour-five (3045) days. Such records shall be made available to law enforcement agencies when
169 investigating a criminal complaint.

170 (3) The Licensed Premises shall have exterior lighting that conforms with Article XXIV Exterior
171 Lighting and the Town of Kittery’s Design Handbook. The Planning Board at its discretion may
172 require motion sensors covering the full perimeter of the building(s).~~3. The Licensed Premises shall~~
173 ~~have exterior lighting with motion sensors covering the full perimeter of the building(s).~~

174 ~~4. Medical Marijuana Registered Caregiver (home occupation) uses shall not be required to meet paragraphs~~
175 ~~2 and 3.~~

6. ADD Marijuana Businesses to Title 16 Development Plan Application and Review

177 16.10.3.8.1 Marijuana Business

178 The Planning Board shall be the reviewing authority for all initial Marijuana Business applications
179 and the Code Enforcement Officer the reviewing authority for all renewal applications as described
180 herein, unless subject to provisions under §16.10.9.1, §16.10.9.2 or §16.10.9.3.

7. ADD Medical Marijuana Registered Caregivers to Title 16 Design and Performance Standards for 182 Built Environment

183 §16.8.30 Medical Marijuana Registered Caregiver (Home Establishment)

184 16.8.30.1 Purpose

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185 A. It is inherent based upon the recent history surrounding caregivers that the Town of Kittery needs a
186 more robust approach to regulation. It is the intent of these regulations to create a framework that will
187 allow caregivers to operate within their primary dwelling unit and community in such a way as to
188 ensure a harmonious co-existence.

189 B. Maine State Law (22 MRS §2429-D) prohibits municipalities from restricting the number of
190 registered caregivers operating within their jurisdiction. The regulation of caregivers is not to prohibit
191 their operation, but to ensure that it is harmonious with both the area they are situated and the
192 community as a whole.

16.8.30.2 Standards

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

199 B. Medical Marijuana Registered Caregiver Home Establishments are allowed only by Special
200 Exception in the zones designated in §16.3 Land Use Regulations.

201 C. A Medical Marijuana Registered Caregiver Home Establishment, when required by state law to be
202 licensed to manufacture, may only manufacture medical marijuana products in zoning districts where
203 Marijuana Manufacturing Facilities are permitted in accordance with §16.3 Land Use Zone
204 Regulations

205 D. Medical Marijuana Registered Caregivers operations are restricted to lots on which one single-
206 family dwelling unit is the primary use and serves as their primary residence as determined by voter
207 registration. Caregivers must prove either ownership or a lease agreement that allows them to operate
208 as a caregiver. Medical Marijuana Registered Caregiver Home Establishment must be an accessory
209 use of the property with the following requirement:

210 (1) A Medical Marijuana Registered Caregiver Home Establishment is allowed to utilize 40%
211 of the total floor area available in the single-family dwelling unit on the lot at the time of
212 approval. The operation of Medical Marijuana Registered Caregiver Home Establishment is
213 not allowed to exceed 400 square feet within the dwelling-unit.

214 E. Medical Marijuana Registered Caregivers shall be allowed to see patients, provide consultations,
215 and perform other functions as outlined in Maine State Law (Citation Here). Medical marijuana
216 caregivers shall not operate a storefront.

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217 F. Hours of operation shall be between 7 am and 7 pm Sunday through Saturday and shall be by
218 appointment only.

219 G. Medical Marijuana Registered Caregivers shall not have more than 3 employees.

220 H. There shall be enough parking on the lot to accommodate the residents of the lot, as defined in
221 16.8.9 with zone specific amendments found in 16.3, two spots for customers, and one spot for each
222 employee.

223 I. Medical Marijuana Registered Caregivers must mitigate offensive odors such that they are not
224 detectable by reasonable means at the property lines. Odors shall be controlled by whatever best
225 practices exist.

226 J. A Medical Marijuana Registered Caregiver is permitted to grow indoors or outdoors a cumulative
227 1000-sf of plant canopy.

228 K. No signage shall be permitted to be displayed at a Medical Marijuana Registered Caregiver Home
229 Establishment.

8. ADD Medical Marijuana Registered Caregiver to Title 16 Development Plan Application and 231 Review

16.10.3.8.2 Medical Marijuana Registered Caregivers (Home Establishment)

233 The Planning Board shall be the reviewing authority for all initial Medical Marijuana Registered Caregiver
234 Home Establishment applications and the Code Enforcement Officer the reviewing authority for all renewal
235 applications as described herein:

236 A. Applications are considered complete when they include all of the required information and have
237 paid all application fees in full.

238 B. Applicants seeking Planning Board approval shall submit an application provided by the Town
239 with the following documents furnished as part of the application:

240 (1) Proof of property ownership or lease agreement;

241 (2) Proof of residency as determined by voter registration;

242 (3) State of Maine License information;

243 (4) Site plan from a licensed surveyor in compliance with 16.10.5.2.B and depicting all
244 proposed outdoor growing areas; and

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245 (5) Floor plan of building showing:

246 (a) Existing and proposed layout and square footage.

247 (6) Narrative describing the nature of the registered caregiver operation.

248 C. An approved application by the Planning Board is valid for one calendar year, upon which a
249 renewal permit is required to continue operation of the Home Establishment

250 D. All Planning Board approved applications must be renewed annually and filed with the Code
251 Enforcement Officer prior to the expiration date of the originally approved application by the
252 Planning Board.

253 E. Prior to granting a renewal permit, the Code Enforcement Officer shall conduct a site inspection to
254 ensure that the Medical Marijuana Registered Caregiver Home Establishment complies with the
255 Planning Board’s approval.

256 F. Approval to operate as a Medical Marijuana Caregiver Home Establishment may be suspended by
257 the Code Enforcement Officer for any substantiated violation of Town Code, Planning Board
258 approval, the Maine Uniform Building and Energy Code (MUBEC) or the Maine Medical Use
259 Marijuana Program under the following terms:

260 (1) Suspension for the first offence shall be for a period not to exceed one calendar month.

261 (2) Suspension for a second offence shall be for a period not to exceed six calendar months.

262 G. Approval to operate as a Medical Marijuana Registered Caregiver Home Establishment may be
263 revoked by the Code Enforcement Officer for the following reason:

264 (1) Applicant has received three substantiated violations; or

265 (2) The Maine Medical Marijuana Caregiver’s State license is invalidated.

266 H. Reinstatement. Medical Marijuana Registered Caregivers may be reinstated following suspension
267 if they prove, to the satisfaction of the Code Enforcement Officer, that they have corrected all
268 violations and provide a plan to prevent future violations of the same type.

269 I. Medical Marijuana Registered Caregivers must wait one calendar year from the date of revocation
270 to apply to the Planning Board for approval.

9. ADD Supplemental Findings of Fact to Final Plan Review

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272 16.10.8.3 Final Plan Review

273 For Medical Marijuana Registered Caregivers Home Establishments, the proposed Home Establishment will
274 demonstrate:

275 (a) Adequate accommodations for employees;

276 (b) Having hours of operation that will not disturb abutting properties;

277 (c) Adequate parking spaces for both employees and customers;

278 (d) Having a utilized floor area of operation not to exceed 40 % or 400 square feet, whichever is
279 greater, within the dwelling unit; and

280 (e) Having the ability to prevent orders from infringing beyond the property line

281 (f) Not more than 1000-sf of plant canopy is grown on the lot.