

LEWISTON CITY COUNCIL WORKSHOP AND SPECIAL MEETING AGENDA

CITY COUNCIL CHAMBERS, CITY HALL

TUESDAY, OCTOBER 30, 2018

6:00 p.m. Workshop

Pledge of Allegiance to the Flag.

WORKSHOP

1. Recognition of Public Works employee Michael Danforth for his 50 years of dedicated service to the community
2. Public Health Committee Update
3. Consideration of Supporting Community Concepts Workforce Development Program
4. Review of Temporary Sign Ordinance
5. Discussion concerning Weed Ordinance
6. Discussion of regulations concerning Marijuana

SPECIAL MEETING

- ES-1. Executive Session to discuss Acquisition of Property of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.
- ES-2. Executive Session pursuant to MRSA Title 1, section 405(6)(A) to discuss a personnel matter.

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
TUESDAY, OCTOBER 30, 2018
6:00 PM

1. Recognition of Mike Danforth

Public Works employee Mike Danforth is retiring after 50 years of dedicated service to the community. We will be recognizing him at the beginning of the workshop.

2. Public Health Committee Update

Erin Guay from the Public Health Committee has asked to update the Council on the Committee's work and seek guidance on issues they should be addressing in the near term.

3. Consideration of Supporting Community Concepts Workforce Development Program

Community Concepts is requesting City support for its application to the JPMorgan Chase's Advancing Cities Challenge. See the attached information from Misty Parker.

4. Temporary Sign Ordinance

This election season has seen a proliferation of temporary signs in the right-of-way, prompting a number of questions and concerns from the Council and public. Given a recent Supreme Court decision which appears to find ordinances like the City's temporary sign ordinance unconstitutional, our enforcement efforts on temporary signs have been guided by the state law crafted in response to the Court's decision. The City does, however, have the ability to amend our ordinance to come into compliance with Court direction and to place additional limitations on temporary signs. Please see the attached memorandum.

5. Weed Ordinance

The City's current weed ordinance (yes, that is really what it is called) requires that all exterior property in certain specified zones be maintained free from weed or plant growth in excess of 12 inches. Weeds are defined as all grasses and annual plants and vegetation excluding trees, shrubs, and cultivated flowers and gardens. This ordinance applies in the riverfront district, NCA B district, downtown residential district and Centreville. These are all predominantly downtown districts. Recently, a number of Councilors and residents have raised concern about the lack of adequate grounds maintenance in other zones. While this has primarily been related to vacant properties, it has also, in some instances, included occupied properties. This workshop will allow the Council to discuss whether the areas covered by this ordinance should be expanded and, if so, should that expansion address vacant properties or all properties.

6. Marijuana

The City Council has held an initial discussion regarding the direction the City should take in regard to both medical and recreational marijuana given that, in many instances, the City must affirmatively opt in to allow certain marijuana facilities to operate here. The revised state laws on both medical and recreational operations will go into effect on December 13. The City also adopted a moratorium on medical marijuana retail stores that will run until early January. Given that there are a considerable number of decisions required by the Council, it

is unlikely that we will have a fully developed regulatory scheme in place prior to the expiration of the current moratorium. We also wish to be assured that the City's current medical marijuana ordinance does not inadvertently authorize certain types of operations (such as a registered dispensary) without the Council taking a formal action. This session is intended to, first, outline the interim steps required to ensure that no further marijuana operations open in Lewiston prior Council action and, second, to continue the discussion of what our eventual regulatory scheme will be. Attached is a copy of the City's current medical marijuana ordinance with proposed amendment to allow it to serve as a placeholder pending development of a full approach to marijuana in Lewiston.

7. Executive Session - Land Acquisition
8. Executive Session - Personnel Issue - Public Works Director Recruitment

Economic and Community Development

Misty Parker

Economic Development Manager



To: Honorable Mayor and Members of the City Council
From: Misty Parker
RE: Community Concepts Workforce Development Support
Date: October 24, 2018

Community Concepts Inc, has approached the City of Lewiston for support in their application to the JPMorgan Chase's Advancing Cities Challenge. JPMorgan will make investments of up to \$3 million in cities to support creative, collaborative and sustainable solutions that address cross-cutting challenges that help more people benefit from a growing economy. Successful proposals will support existing local coalitions of elected, business and nonprofit leaders working together to address major social and economic challenges such as employment barriers, financial insecurity, and neighborhood disinvestment. CCI is proposing to expand the Lewiston Workforce Initiative to connect trainees in the construction trades with on the job training that also supports the redevelopment of the Tree Street neighborhood through the City's Choice Neighborhood Initiative. Additionally, CCI will expand the workforce initiative into other sectors to help downtown residents access job opportunities with economic mobility, as well as support residents currently in entry level positions.

The Legacy Lewiston comprehensive plan tasks the City with partnering to create a skilled labor education plan that will in turn create programs to ensure a skilled labor force in Lewiston for future businesses. The Lewiston Workforce Initiative is achieving this goal as well as goals of the Choice Neighborhood Initiative by providing opportunities for residents to access good paying jobs here in our community.

The history of the workforce initiative was founded in the Tree Street neighborhood as an innovative program designed by a coalition of community organizations rooted in the neighborhood as well as traditional workforce partners like Lewiston Adult Ed, the Career Center, and Western Maine Community Action. In 2016 the John T. Gorman Foundation made a grant to the City of Lewiston to help coordinate this coalition to identify how to remove barriers for low-income families, veterans, and immigrants living in the downtown to access careers in the construction field. The goal was three fold: help downtown residents successfully access good paying job opportunities with economic mobility; supply a pipeline of ready to work entry level workers to the local construction field; and help residents of the downtown obtain the skills needed to help improve the housing conditions in the downtown neighborhood.

Through the pilot program, 15 participants have completed the training, 14 were hired directly from the program, and 11 remain employed with the same employers today. The average starting wage of those hired from the program was \$12.75 per hour. Today, the average wage of participants who have been employed for over one year is \$16.06 per hour. The employers have been pleased with the program and continue to stay engaged. The program model has been refined and is poised to grow. The construction program is well positioned to play a critical role in supporting the redevelopment of the Tree Street neighborhood through the transformation plan.

With the success of the pilot program, the Lewiston Workforce Initiative has found a permanent home at Community Concepts, Inc. Joy Gould has been hired by CCI to be the Project Director. In addition to continuing the construction program, Joy has been tasked with identifying other sectors to expand the model to as well as develop a financially sustainable pathway for the program to continue.

CCI is seeking Council support to pursue funding through the Advancing Cities Challenge. If successful, CCI will grow the construction training program and expand the program model to the health care sector allowing the program to reach 60 participants per year. In addition to the training program, CCI will launch their Workforce Stability Program for existing local employers to help increase employee retention in high turnover, entry level positions. The workforce stability project will utilize innovative HR practices designed to minimize work disruptions, decrease absenteeism, and improve financial stability. As part of the grant work, CCI will be working with the City to address public policy that can help remove barriers to residents participating in these programs.

If the City is successful in seeking a Choice Neighborhood Implementation grant to redevelop Maple Knoll, the City would be required to incorporate Section 3 of the HUD Act of 1968 into the project. The Section 3 program requires recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. Contractors hired for the redevelopment work would meet this requirement by participating in the Lewiston Workforce Initiative. CCI will further work with the City on how other redevelopment happening in the Tree Street neighborhood could utilize similar section 3 type policies at the local level to encourage more hiring of residents pursuing the training through the workforce initiative. Additionally, CCI intends to work with the City's General Assistance department and other social services agencies in the area to address policy changes that would remove barriers from residents seeking training opportunities that could be at risk from losing benefits and therefore preventing them from pursuing the training opportunity and potential job placement.

The need is high in Lewiston to seek creative approaches to helping local employers find entry level workers who are trained and ready to work. Our residents who are unemployed or underemployed, especially in the Choice Neighborhood area have barriers to employment that are holding them back. With the support of the City, CCI will expand their work to help address these challenges while also finding new ways to bring investment back into the tree street neighborhood.



EXECUTIVE DEPARTMENT

Edward A. Barrett, City Administrator
Denis D'Auteuil, Deputy City Administrator

October 23, 2018

To: Honorable Mayor and Members of the City Council
Fr: Edward A. Barrett
Su: Temporary Signs

Councilor Marcotte recently raised some questions about the City's sign ordinance particularly as it relates to temporary signs and the ordinance prohibition against placing temporary political signs within or outside of the public right-of-way on or in front of City owned property including schools, parks, cemeteries, and municipally owned buildings.

Current Ordinance

5. *Political signs.* Signs of a temporary nature bearing political messages relating to an election, primary or referendum may be placed within the public right-of-way of any street or highway in accordance with the timelines established in M.R.S.A. Title 23, (1913-A, Section 1(H)). Political signs outside of the public right-of-way are not subject to time limits. Political signs located within or outside the public right-of-way of any street or highway are prohibited on or in front of City-owned property including schools, parks, cemeteries and municipally owned buildings. Notwithstanding article V, section 7, the code enforcement official may remove any political signs erected contrary to this section.

6. *Temporary signs, banners, decorations.* Upon approval of the City Council, temporary signs, banners, flags and other decorations may be erected in the public right-of-way when in relation to a special event.

Supreme Court

Several years ago, the U.S. Supreme Court ruled in *Reed v. Gilbert* that regulations imposed on certain signs impacted the First Amendment's right of free speech and, therefore, were subject to strict scrutiny by the Courts. Strict scrutiny involves several "tests." First, any regulation must be content neutral. Basically, that means the regulation must apply to all similarly located signs regardless of what the sign is about. Our ordinance immediately fails that test since section 5 above applies only to "political" signs. Given this, we have generally been regulating such signs under the current provisions of state law, which have been amended in response to the *Reed v. Gilbert* decision.

In addition, even content neutral regulations are subject to greater scrutiny when they apply to traditional public forums such as median strips. In such cases, the following test apply: (1) are the regulations narrowly tailored (2) to serve a significant governmental interest and (3) leave open ample alternative channels for communication of the information.

State Law

Given the status of the City's ordinance, we have generally been following the regulatory requirements of state law. State law allows temporary signs placed within the public right-of-way at any time for a maximum of 12 weeks during the calendar year. (This was recently increased from 6 weeks.) A temporary sign may not be placed within 30 feet of another temporary sign bearing the same or substantially the same message; must be no larger than 4 feet by 8 feet in size; must be labeled with the name and address of the individual/entity that placed the sign in the right of way and the date the sign was placed.

Signs in Right-of-Way Adjacent to City Property

Given this, it is unlikely that the City can restrict the placement of political signs in the rights-of-way adjacent to City properties such as schools, cemeteries, and parks. We can, however, limit such signs on City property, as our current ordinance does.

Options

Operate under State Law

The City could simply adopt the same standards found in state law, effectively continuing our current practices.

Elimination of Temporary Signs

The City may be able to simply ban all temporary signs from the public right-of-way. Given Court rulings regarding traditional public forums, such a step could be challenged. Further, if this approach is adopted, the City would also no longer be able to allow temporary signs in the right-of-way for non-profit events such as the Shriners' circus, yard sales, etc. and other events that are publicized through our A-frame signs located on Main Street and at the intersection of Canal and Lisbon Streets. Note however, that decorative signs and banners and Christmas decorations such as those mounted to city-owned light poles could still be allowed.

Stricter Regulation

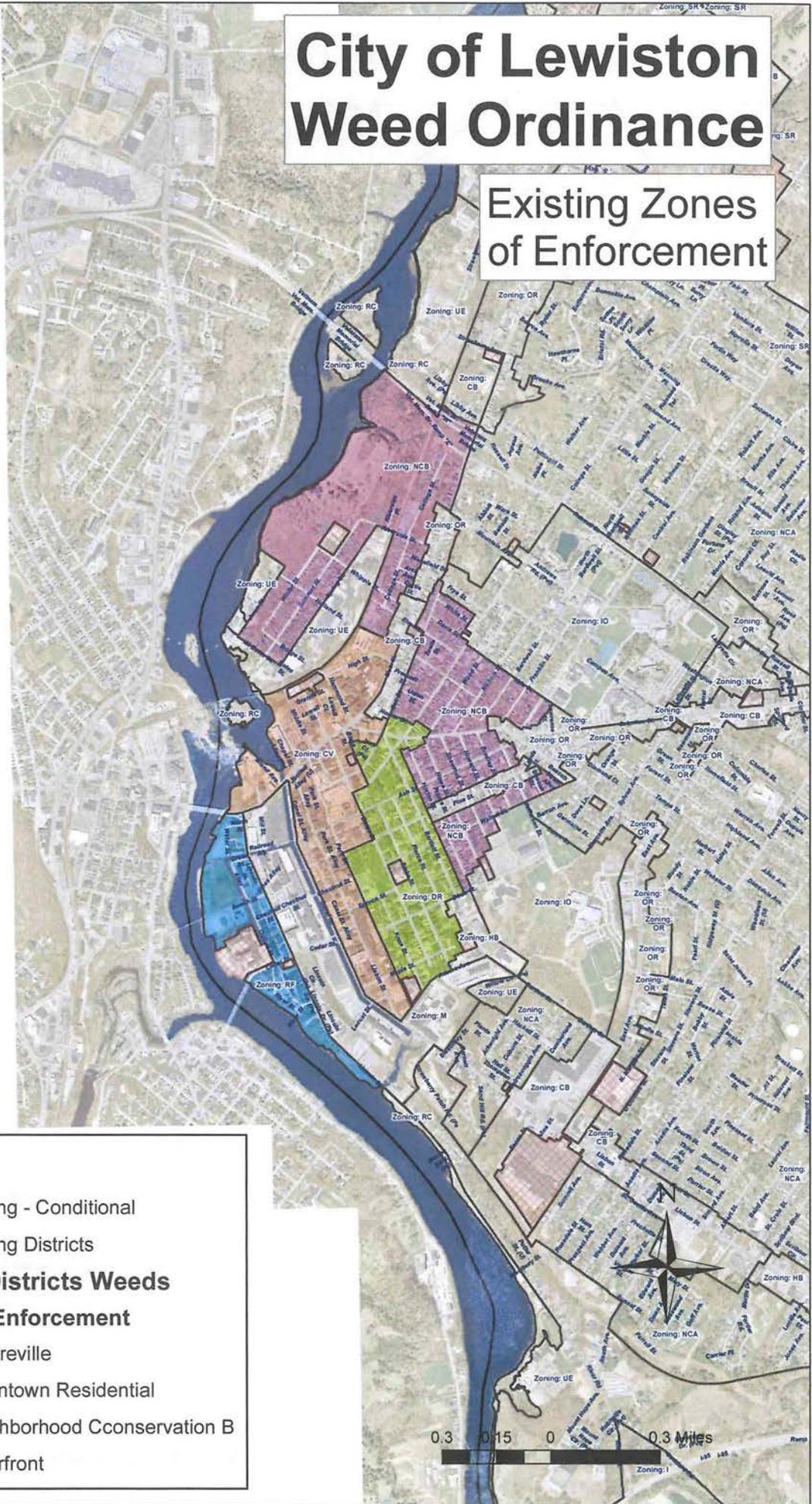
The City could adopt stricter regulations governing the placement of temporary signs. This could include the length of time they are allowed to be in place; the distance between signs of a similar message; sign dimensions (particularly height above the ground given driver visibility concerns), and other similar restrictions. If the City takes this approach, it must be recognized that it will create enforcement problems since it will create a divergence between City and state regulations that many campaigns, particularly those on a larger than city geographical basis, will generally tend to operate under the state's standards. Again, this will similarly affect the temporary signage that the City now allows in the right-of-way, particularly dimensional requirements since our current A-frames are 4 by 8 feet in size.

Conclusion

Given that our current ordinance likely is unconstitutional as written and therefore unenforceable, the ordinance should be amended to, at a minimum, bring it into compliance with Court rulings. The extent to which such temporary signs should be further restricted is, however, a policy issue that the Council is best suited to decide.

City of Lewiston Weed Ordinance

Existing Zones of Enforcement



Legend

 Zoning - Conditional

 Zoning Districts

Zoning Districts Weeds

Areas of Enforcement

 Centreville

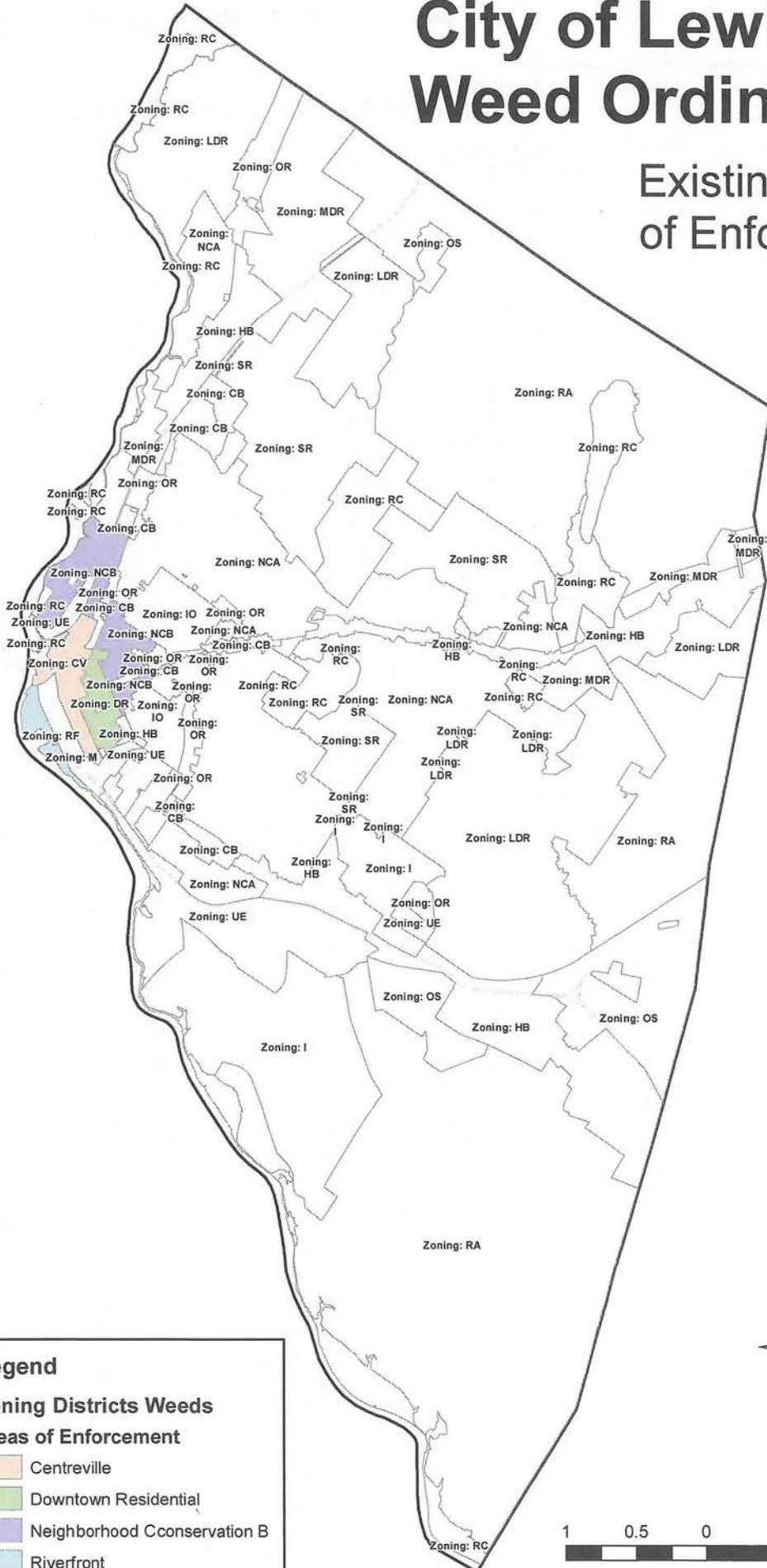
 Downtown Residential

 Neighborhood Conservation B

 Riverfront

City of Lewiston Weed Ordinance

Existing Zones of Enforcement



Legend

Zoning Districts Weeds Areas of Enforcement

- Centreville
- Downtown Residential
- Neighborhood Conservation B
- Riverfront



ARTICLE XV. MEDICAL MARIJUANA – DISTRIBUTION AND CULTIVATION

Sec. 22-420. Purpose.

The purpose of this chapter is to implement the Maine Medical Use of Marijuana Act (“Act”) and to protect the public health, safety, and welfare of the residents and patients of the City of Lewiston by prescribing the manner in which the cultivation and distribution of medical marijuana can be conducted in the City. Further, the purpose of this chapter is to:

Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Maine Medical Marijuana Act.

Protect public health and safety through reasonable controls on marijuana cultivation and distribution operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the operation and its personnel, and other health and safety concerns.

Impose fees to cover the cost to the City of licensing the cultivation and distribution of medical marijuana in an amount sufficient for the City to recover its costs of the licensing program.

Adopt a mechanism for the monitoring compliance with the provisions of this chapter.

Sec. 22-421. Applicability.

This article shall apply to any ~~registered dispensary and any~~ registered ~~primary~~ caregiver located and doing business in the City of Lewiston, and to any registered patient residing within the city.

Sec. 22-422. Definitions.

For purposes of this article, the following definitions shall apply unless the content clearly implies otherwise:

Cardholder means a ~~registered patient, a registered primary caregiver or a principal officer, board member, or employee of a registered dispensary~~ person who has been issued and possesses a valid registry identification card from the State of Maine.

Department means the State Department of ~~Administrative and Financial~~ Health and Human Services or any successor agency.

City Department means any or all of the chief of police, the fire chief, the director of planning and code enforcement and their designees who administer the provisions of this chapter.

Disqualifying ~~drug~~ offense means a conviction for a violation of a state or federal ~~controlled substance~~ law that is a crime punishable by imprisonment for one year or more. It does not include ~~an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten (10) or more years earlier; or~~ an offense that consisted of conduct that would have been permitted under this chapter.

BUSINESSES

Enclosed, locked facility means a closet, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a cardholder.

Food Establishment means a factory, plant, warehouse, or store in which food and food products are manufactured, processed, packed, held for introduction into commerce, or sold and includes a caregiver and a registered dispensary that prepare food containing marijuana for medical use by a qualifying patient. It does not include a caregiver conducting an activity for a qualifying patient who is a member of the family as defined in MRS Title 22 Section 2422 5-A.

Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Marijuana plant means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's ~~debilitating~~ medical condition diagnosis or symptoms ~~associated with the registered patient's debilitating medical condition.~~ For which a medical provider has provided the qualifying patient a written certification.

Multifamily dwelling means a building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units, and which is not a single-family attached dwelling.

Patient means a person whose physician has provided a written certification to the Department for the patient's medical use of marijuana.

Physician means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to 32 M.R.S.A. Chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant 32 M.R.S.A. Chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

Physician's written certification means a document signed by a physician stating that in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

Prepared marijuana means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana plant or other ingredients in goods prepared for human consumption or use.

BUSINESSES

Registered dispensary or dispensary means a not-for-profit entity registered pursuant to State Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia, or related supplies and educational materials to qualifying registered patients who have designated the dispensary to cultivate marijuana for their medical use and to the registered primary caregivers of those patients.

Registered patient means a patient who has a registry identification card issued by the State of Maine.

Registered primary caregiver or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Registered primary caregiver operation means a registered primary caregiver that cultivates marijuana for 2 or more registered patients pursuant to State law.

Registry identification card means a document issued by the department that identifies a person as a registered patient, registered primary caregiver, or a principal officer, board member, or employee of a registered dispensary.

School means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

State Law means the Act and any rules and regulations issued by the Department under the Act.

Sec. 22-423. Medical marijuana license required.

No person shall engage, operate or conduct the business of ~~a registered dispensary or a registered primary caregiver operation~~ in the city unless such person has first acquired a license in accordance with this Article.

Sec. 22-424. Food establishment license.

A registered ~~dispensary and a registered~~ primary caregiver must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for medical use for a registered patient.

Sec. 22-425. Reserved—Application requirements for registered dispensary.

~~This section governs the license application requirements for a registered dispensary. All applications for licenses under this article shall be filed with, and in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:~~

BUSINESSES

- ~~(1) Name, address, date of birth and contact information, including a phone number of the applicant and all other persons having a legal interest in the registered dispensary and the individual(s) hired by the applicant to manage these operations, if any. A photograph and a copy of a valid registry identification card issued by the State of Maine are required for each principal officer, board member, agent and employee of a registered dispensary.~~
- ~~(2) The location of the premises for which a license is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered dispensary.~~
- ~~(3) The dimensions and acreage of the property.~~
- ~~(4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
 - ~~(a) The boundary lines of the property for which a license is sought.~~
 - ~~(b) The location of all existing and proposed buildings and structures.~~
 - ~~(c) The location of all existing and proposed parking areas and walkways and any other site improvements.~~
 - ~~(d) The location and characteristics of all existing and proposed vegetation to be maintained for required screening.~~
 - ~~(e) The location and characteristics of all existing and proposed fencing to be maintained for required screening.~~
 - ~~(f) The location and characteristics of all vehicular entrances and exits serving the property.~~~~
- ~~(5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered dispensary.~~
- ~~(6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, registered patient services, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, floor plans, etc.~~
- ~~(7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.~~
- ~~(8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 15 copies of the license application and all supporting documentation.~~
- ~~(9) Evidence of registered dispensary incorporation under Title 13B and evidence that the corporation is in good standing with the Secretary of State;~~

Sec. 22-426. Background checks.

The city clerk shall order background checks of ~~each principal officer, board member and employee of a registered dispensary and~~ a registered primary caregiver engaged in the cultivation of marijuana for two or more registered patients. Updated background checks shall be conducted annually at the time of license renewal. Background checks shall be conducted in each state where such individuals have resided since the age of 18.

Sec. 22-427. ReservedLimitation on number of dispensaries.

~~Not more than one registered dispensary shall be licensed to operate within the City of Lewiston. The registered dispensary must cultivate and distribute medical marijuana from one location.~~

BUSINESSES

Sec. 22-428. ~~Reserved~~ Requirements for registered dispensary.

~~A registered dispensary shall conform to the following provisions:~~

- ~~(1) It shall comply at all time and in all circumstances with State Law.~~
- ~~(2) It shall not be located within 500 feet of the property line of a preexisting public or private school;~~
- ~~(3) It shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;~~
- ~~(4) Access to the enclosed, locked facility shall be limited to a cardholder who is a principal officer, board member, or employee of a registered dispensary when acting in his or her official capacity~~
- ~~(5) It shall implement appropriate security and safety measures provisions in accordance with Sec. 22-431 and any city department rules regarding security and safety to the satisfaction of the city department to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;~~
- ~~(6) It shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana;~~

Sec. 22-429. Application requirements for registered primary caregiver operation.

This section governs the license application requirements for a registered primary caregiver operation. All applications for licenses under this article shall be filed with, and, in a form satisfactory, to, the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth, and contact information, including a phone number and email address of the registered primary caregiver. A photograph and a copy of a valid registry primary caregiver identification card issued by the State of Maine are required.
- (2) The location of the premises for which a permit is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered primary caregiver operation.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
 - (a) The boundary lines of the property for which a permit is sought.
 - (b) The location of all existing and proposed buildings and structures.
 - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
 - (d) The location and characteristics of all vehicular entrances and exits serving the property.
- (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered caregiver operation.

BUSINESSES

- (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, security provisions, hours of operation, identification of other required licenses, floor plans, etc.
- (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
- (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 3 copies of the license application and all supporting documentation.

Sec. 22-430. Requirements for registered primary caregiver operation.

Registered primary caregiver operations shall conform to the following provisions:

- (1) They shall comply at all times and in all circumstances with the provisions of State Law;
- (2) They shall not cultivate marijuana within or on the property of a multifamily dwelling;
- (3) They shall not cultivate marijuana within 500 feet of the property line of a preexisting public or private school;
- (4) They shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana ~~from~~ the registered primary caregiver operation, unless the plants are being transported because the primary caregiver is moving;
- (5) They shall comply with security and safety related provisions contained in Sec, 22-431 and any city department rules regarding security and safety;
- (6) They shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana;
- (7) They shall be equipped with the air handling and treatment equipment necessary to ensure that odor from marijuana plants or other marijuana products will remain confined within the premises and not be detectable at the property line.

Sec. 22-431. ~~Dispensary and p~~Primary caregiver operation security and safety - protections of premises and persons.

A ~~registered dispensary and~~ registered primary caregiver operation shall implement appropriate security and safety measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana. Security measures to protect the premises, registered patients, registered primary caregivers, and employees of registered primary caregivers~~principal officers, board members and employees of the registered dispensary~~ shall include but are not limited to the following:

- (1) On-site parking in accordance with Appendix A, Article XII, Sec. 17(d) of the Code of Ordinances of the City of Lewiston (hereinafter referred to as the Code) shall be provided.
- (2) Exterior lighting shall be provided in accordance with Appendix A, Article XIII, Sec.4 (n) of the Code to deter nuisance activity and facilitate surveillance;

BUSINESSES

- (3) Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device shall be installed to detect an unauthorized intrusion.
- (4) The interior shall be equipped with electronic monitoring, video cameras, and panic buttons.
- (5) Satisfy all applicable State of Maine and city code requirements such as but not limited to electrical, plumbing, building, ventilation, energy conservation, life safety, mechanical and the environmental performance standards with respect to odors and other environmental considerations as per Appendix A, Article XII, Section 19 of the Code, with the additional requirement that odor from marijuana plants or other marijuana products must be confined within the premises and not detectable at the property line.

Sec. 22-432. ~~Reserved Inspection of Registered Dispensary.~~

~~A registered dispensary is subject to inspection as follows:~~

- ~~(1) A registered dispensary shall allow the City Department entry without notice to carry out an inspection in accordance with this chapter.~~
- ~~(2) Submission of a license application for a registered dispensary shall constitute permission for entry and inspection.~~
- ~~(3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered dispensary may receive written notice of the nature of the violations. The registered dispensary shall notify in writing the representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.~~
- ~~(4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered dispensary subject to revocation by the City Council.~~

Sec. 22-433. Inspection of registered primary caregiver operation.

A registered primary caregiver operation is subject to inspection as follows:

- (1) A registered primary caregiver operation shall allow the City Department entry upon 24 hours' notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered primary caregiver operation shall constitute permission for entry and inspection.
- (3) During an inspection, the City Department may identify violations of this chapter, provisions of the Code, and State Law. The registered primary caregiver operation may receive written notice of the nature of the violations. The registered primary caregiver operation shall notify in writing representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered primary caregiver operation subject to revocation by the city administrator.

BUSINESSES

Sec. 22-434. Denial of application.

The city clerk may deny an application for a license based on the following:

- (1) The applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information; and,
- (2) The determination that the information provided was materially inaccurate or incomplete.

Sec. 22-435. Disqualifying ~~drug~~ conviction.

The City shall not approve a license to ~~a registered dispensary or to~~ a registered primary caregiver operation if ~~any principal officer, board member, agent or employee of a dispensary, or the registered primary caregiver,~~ has been convicted of a disqualifying ~~drug~~ offense in Maine or another jurisdiction.

Sec. 22-436. Revocation of license.

The city clerk or the City Department shall temporarily suspend the license for a ~~registered dispensary or a~~ registered primary caregiver operation that sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under State Law and for any violations of the provisions contained within this chapter. Grounds for revocation of a license ~~by the city council of a registered dispensary or revocation of a license~~ by the city administrator of a registered primary caregiver operation include the following:

- (1) The ~~dispensary or~~ caregiver is convicted of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana for medical purposes in accordance with these rules.
- (2) A registered caregiver ~~or a registered dispensary~~ cardholder is convicted of a disqualifying drug offense.
- (3) A ~~registered dispensary or~~ registered primary caregiver cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the ~~dispensary or~~ registered primary caregiver to cultivate marijuana; ~~or a registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a patient's registered primary caregiver.~~
- (4) Failure to cooperate with required inspections.
- (5) Violations of any laws, rules, or ordinances that govern the operation of a ~~registered dispensary or~~ registered primary caregiver operation.
- (6) Committing, permitting, aiding or abetting any illegal practices in the operation of a ~~dispensary or~~ primary caregiver operation.
- (7) Conduct or practices that are detrimental to the safety and welfare of registered patients or registered primary caregivers; and,
- (8) Providing information that is materially inaccurate or incomplete.

Sec. 22-437. Reserved ~~License administration for registered dispensary.~~

BUSINESSES

- ~~(1) City council review. License applications for a registered dispensary shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied by the city clerk.~~
- ~~(2) If the application for a registered dispensary is deemed to be complete, the city clerk will notify the applicant that the registered dispensary must first obtain a conditional use permit from the planning board along with development review approval if required pursuant to Appendix A, Article XIII Sec. 2 of this Code. The conditional use permit must be obtained prior to scheduling a public hearing for the city council to consider the license to establish the proposed registered dispensary. In addition, the department shall provide a recommendation to the city council prior to said public hearing.~~
- ~~(3) Conditions of license approval. The city council may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - ~~(a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.~~
 - ~~(b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.~~
 - ~~(c) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board or by the director of planning, shall be installed and completed to the satisfaction of the city clerk prior to the issuance of any license under this article.~~~~

Sec. 22-438. License administration for registered primary caregiver operation.

- (1) City clerk review. License applications for a registered primary caregiver operation shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete and if the license should be granted. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) Conditions of license approval. The city clerk and the City Department may impose conditions on the approval of any license application ~~for a registered dispensary~~ under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
 - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.

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Sec. 22-439. Reserved Screening requirements.

~~A registered dispensary shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Notwithstanding this requirement, plantings or other means may be used to satisfy the requirement for a visual screen of six feet in height.~~

Sec. 22-440. Reserved Semi-annual meetings with the City Department.

~~A minimum of two meetings per calendar year will be conducted at the registered dispensary to allow the applicant and the City Department the opportunity to discuss issues and to establish a good working relationship between the City Department and the dispensary.~~

Sec. 22-441. Requirements for registered patients and registered caregivers that do not cultivate marijuana for more than one registered patient.

A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall conform to the following provisions:

- (1) A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall comply at all times and in all circumstances with the provisions of State Law;
- (2) A registered patient or a registered primary caregiver that cultivates marijuana shall keep the marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana unless the plants are being transported because the patient is moving or taking the plants to another patient's home.
- (3) A registered patient or a registered primary caregiver that cultivates marijuana shall ensure that odor from marijuana plants or other marijuana products will remain confined within the premises and not detectable at the property line.

Sec. 22-442. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

- (1) Temporary suspension. The city clerk and the City Department is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- ~~(2) Suspension or revocation. The city council may suspend or revoke a license for a registered dispensary in accordance with the provisions of section 22-44 of this chapter.~~ The city administrator may suspend or revoke a license for a primary caregiver operation in accordance with the provisions of section 22-436 of this article.
- (3) Civil penalties. A violator may be required to pay the penalties imposed by section 1-8 of

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this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city. Notwithstanding the above, the chief of police may initiate criminal proceedings relative to individuals engaged in the unlawful distribution, use, and cultivation of medical marijuana.

Sec. 22-443. Confidentiality.

All applications and supporting information submitted by primary caregivers under this ordinance, and the identity of registered primary caregivers and registered patients, shall be confidential pursuant to the Act, 22 M.R.S.A. §2425(8), and the Maine Freedom of Access law, 1 M.R.S.A. §402(3)(F). (Ord. No. 10-15, 1-6-11)

Sec. 22-444. Other Marijuana Related Facilities and Operations Not Authorized

Notwithstanding any other provision of the City Code of Ordinances, the city has not opted in under state law (22 M.R.S. Section 2429-D) to authorize any registered caregiver retail stores, registered dispensaries, marijuana testing facilities, or marijuana manufacturing facilities prior to and after December 13, 2018, except as specifically permitted under a permit issued by the City prior to November 20, 2018 or as specifically authorized by ordinance on or after December 13, 2018.

ARTICLE XVI. RESERVED*

***Editor's note:** Ord. No. 18-07, effective Sept. 13, 2018, repealed Art. XVI, § 22-450, in its entirety. Formerly, said article pertained to Recreational Marijuana.

Secs. 22-450 –22-459. Reserved.

Lewiston and Marijuana Regulations

10.30.2018

1. Timeline on Council Decisions
2. Lewiston's Current Regulations
3. Threshold Questions / Priorities
 - Medical Marijuana
 - Adult Use (Recreational) Marijuana
4. Staff Recommendations

Timeline on Council Decisions

July 10, 2018 - Council approves 6-month moratorium of Medical Marijuana Retail

July 13, 2018 - 6 month moratorium takes effect

October / November / December- Timeframe for City Council to decide on Opt in and/or create local regulations related to Medical Marijuana. Also may decide to opt in regarding Adult Use Marijuana.

December 13, 2018 – Medical marijuana Law Amendments take effect.

- Note: Adult use marijuana law is in effect, but state must create rules.

January 13, 2019- 6-month city moratorium ends on Medical Marijuana Retail

Lewiston's Current Regulations

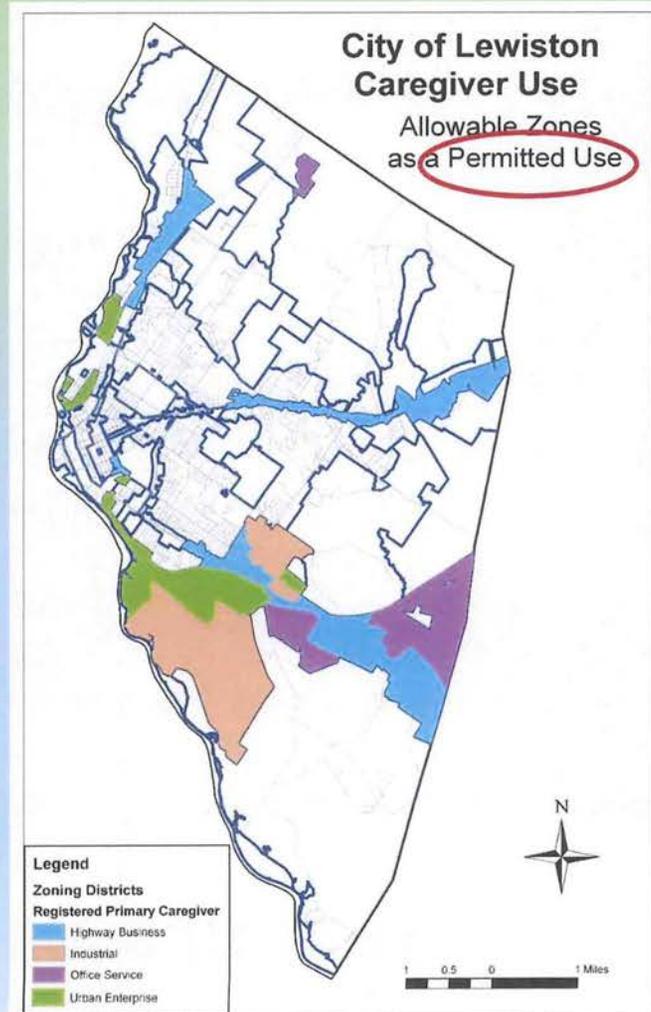
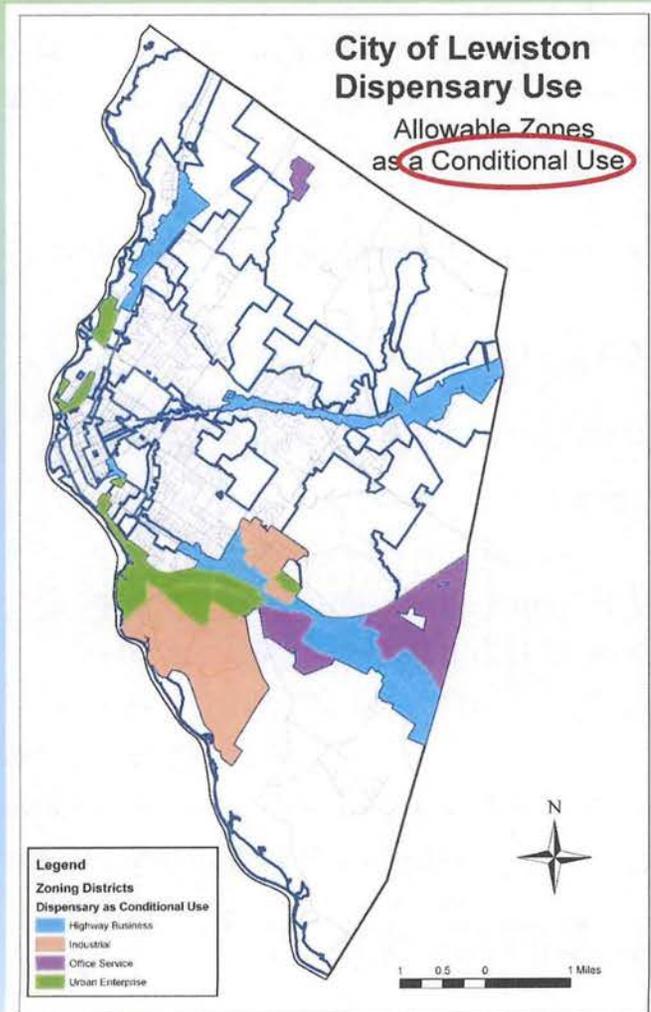
1. Medical Marijuana Uses allowed:

- a. Caregiver- can grow for 2 patients, any zoning district, no local license or permitting required.
- b. Registered Caregivers
 - Each caregiver may grow for up to 5 patients, 6 mature plants per patient (note: new state law will allow unlimited patients and 30 mature plants).
 - Facility may include multiple growers
 - Facility must have use permit
 - Each caregiver must have a local caregiver license and be inspected
 - Retail sales allowed as a medical use (note: subject to moratorium which expires on January 13, 2019)
 - Testing facilities allowed as a business and professional office

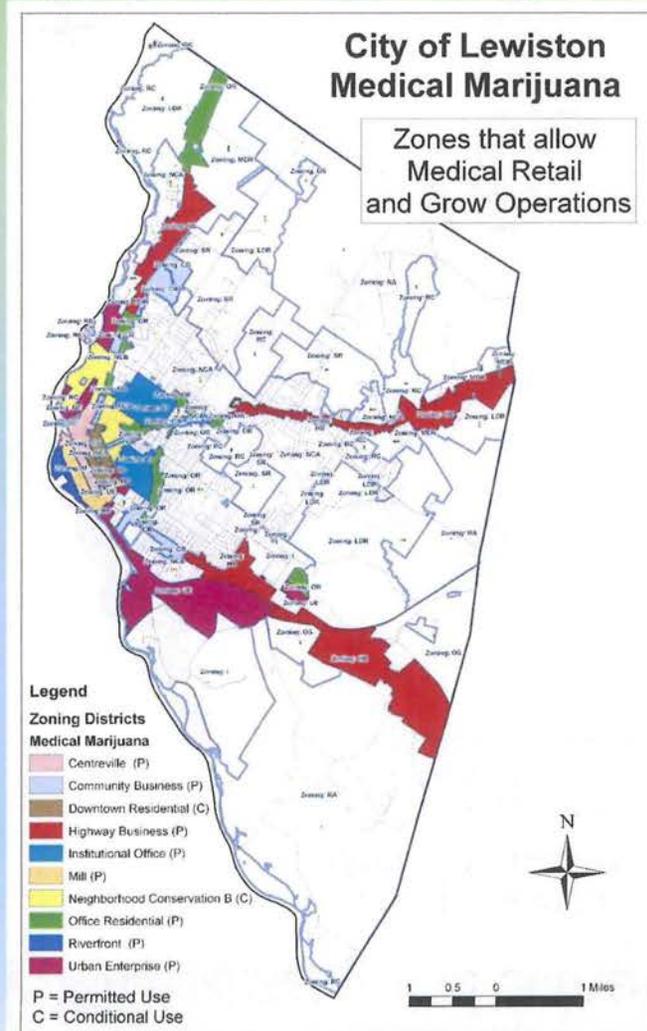
2. Medical Dispensaries: no more than one allowed; may allow certain types of manufacturing; none located in Lewiston.

3. Adult Use Marijuana: personal use and grows allowed in any zoning district, no local license or permitting required. However, no commercial facilities currently allowed.

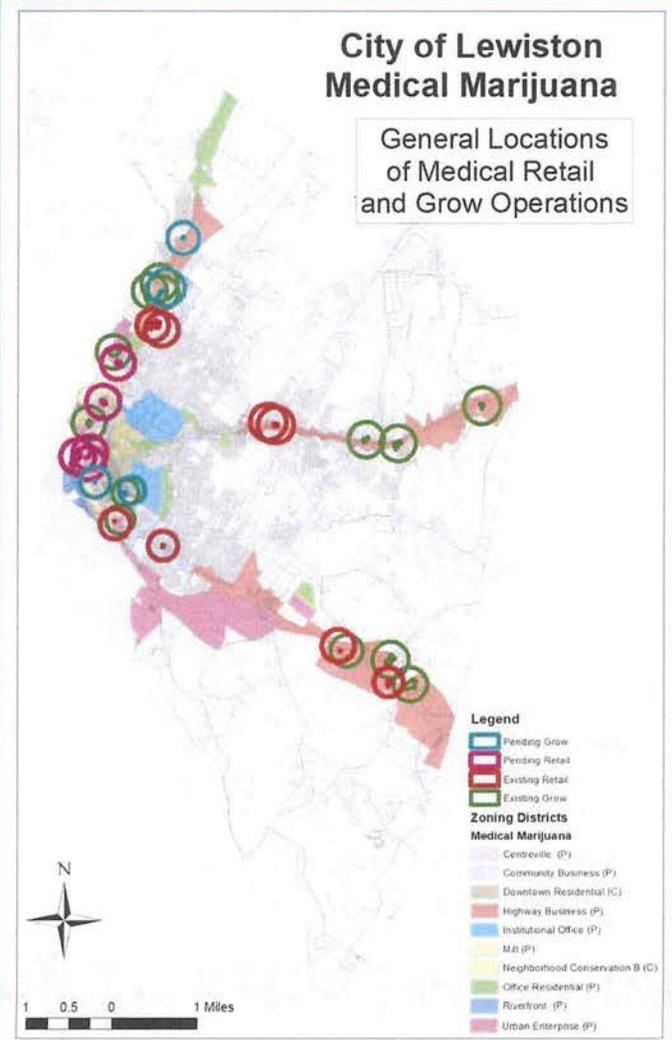
Current Zoning for Medical Dispensaries and Caregiver Grow Operations



Current Zoning for Retail Marijuana Businesses



Existing and Pending Medical Retail and Caregiver Grow Locations



Threshold Questions / Priorities

1. City must decide whether to opt in for both Medical Marijuana and Adult Use Marijuana.
2. What is the current state of Marijuana regulations?
3. If opt in, where should Marijuana activity be allowed?
Evaluate by common themes/concerns and by type: Medical and Adult Use
4. What changes or additions need to be considered?

Medical

- Caregivers/personal grows
- Caregivers/multiple patients
- Caregiver retail stores
- Registered dispensaries
- Testing facilities
- Manufacturing facilities
- Opt in on non-residential uses

Recreational/ Adult Use

- Personal grows
- Marijuana store
- Cultivation facility
- Products manufacturing facility
- Testing facility
- Opt in on non-residential uses

Odor
Stand-Alone Structures
Locational requirements
Separation from Schools and Parks
Residential Grows
Zoning Districts
Licensing Fees
Food Establishments
Enclosed Facilities
Background Checks
Retail
Edibles/Food Processing

Common Themes/Concerns?

Recommendations

1. Amend the existing **medical marijuana** ordinance to provide the city the ability to determine if and how caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities should be regulated.
 - An amendment will provide the city the ability to opt in after considering uses specifically regulated by the state but not contemplated under current city ordinances.
2. Staff comes back with recommendations on all commercial **medical uses** including:
 - Performance standards for all commercial activities (i.e. odor, locational criteria, separation from other facilities, SAFE zones, zoning, etc.)
 - Update licensing provisions (i.e. expand background checks/any felony conviction; mandate scheduled inspections, filtration systems requirements, fees, etc.)
 - Update definitions to match state law.
3. **Caregiver/personal grows**: develop limited performance standards (i.e., odor provisions, no retail sales, no license fees)
4. **Adult use marijuana**: determine whether to opt in to allow marijuana stores, cultivation facilities, products manufacturing facilities, testing facilities.
 - If opt in, recommend regulating subject to the same provisions as medical marijuana.

Questions?

New Maine Marijuana Statutes Cheat Sheet

Adult Use Marijuana Act – P.L. 2017 c. 409 (LD 1719)

- Legalizes the use and commercial sale of marijuana for recreational purposes
- Enacted May 2, 2018 as **emergency legislation**
- Completely replaces the citizen-initiated Marijuana Legalization Act
- Establishes state licensing process for adult use marijuana establishments (no social clubs)
- **Default is prohibition** – municipalities must vote to “opt in” to operation of adult use marijuana establishments within the municipality
- State licensing conditioned on municipal approval
- State licensing of adult use marijuana establishments will not begin until at least summer 2019
- Municipalities may regulate adult use marijuana establishments locally
- Municipalities may regulate home cultivation, but may not generally prohibit, zone or license the activity

Medical Marijuana Law Amendments – P.L. 2017 c. 447 (LD 238)

- Amendment to the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)
- Enacted July 9, 2018, as **emergency legislation**
- Carve-out of some provisions of LD 1539
- Establishes state registration requirements for medical marijuana products manufacturing
- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers

Medical Marijuana Law Amendments – P.L. 2017 c. 452 (LD 1539)

- Complete overhaul of the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)
- Enacted July 9, 2018, **but not yet in effect** - effective date is December 13, 2018
- Authorizes registered caregivers to operate medical marijuana retail stores
- Allows six additional registered dispensaries, eliminates cap on dispensaries after 2021
- Establishes state registration requirements for medical marijuana products manufacturing
- Local code enforcement officers can obtain caregiver registration information from State
- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers
- **Default will be prohibition** – After December 13, 2018, municipalities must vote to “opt-in” to operation of registered caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities
- Medical marijuana establishments already in operation with municipal approval as of December 13, 2018, will be grandfathered

Medical Marijuana

This packet is intended for general informational purposes only. It is not meant, nor should it be relied upon, as legal advice in any particular situation. Links to documents herein are provided as examples for informational purposes only and have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel. The information herein is not a substitute for consultation with legal counsel and legal review or other specific guidance on the subject. The statutes and other information herein are only current as of the date of publication.

Date of last revision: 09/2018

~~This packet includes the following attachments:~~

- ~~• [22 M.R.S. §§ 2421-2430-B](#)~~
- ~~• [PL 2017, c. 452 \(LD 1539\)](#)~~
- ~~• [PL 2017, c. 447 \(LD 238\)](#)~~
- ~~• [Sample Moratorium Ordinance Regarding Medical Marijuana Retail Stores](#)~~
- ~~• [2018 Maine Medical Use of Marijuana Program Rules, 10-144 CMR c. 122](#)~~

Important Issues and considerations include:

I. Current Law

NOTE: AMENDMENTS TO THE LAW ARE PENDING. (See below for details)

The Maine Medical Use of Marijuana Act ([22 M.R.S. §§ 2421-2430-B](#)) authorizes the use, possession, cultivation and distribution of marijuana for medical purposes. In general, the act currently allows patients with a qualifying medical condition to possess up to 2 ½ ounces of marijuana for medical purposes, cultivate up to 6 marijuana plants for their own medical use, or give away up to 2 ½ ounces of marijuana to another qualifying patient for their medical use. Qualifying patients may also designate one of eight medical marijuana dispensaries in the state, or a registered caregiver to cultivate and furnish medical marijuana for them. The Act also authorizes registered caregivers to cultivate up to 6 plants for each qualifying patient that has designated that caregiver to cultivate medical marijuana on their behalf. The Act currently limits the amount of qualifying patients one registered caregiver can assist to 5. 22 M.R.S. § 2423-A. Once new amendments to the Maine Medical Use of Marijuana Act go into effect (discussed below), these current authorizations will change drastically.

Current law also now states specifically that municipalities possess home rule authority to regulate registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities, except that municipalities may not prohibit or limit the number of registered caregivers. Emergency legislation enacted on July 9, 2018, PL 2017 c. 447 (LD 238) includes this confirmation. LD 238 also includes language establishing a registration process for individuals engaged in medical marijuana manufacturing.

II. 128th Legislature Medical Marijuana Law Amendments

NOTE: THE PROVISIONS BELOW ARE NOT YET IN EFFECT

In July of 2018 the Legislature enacted two amendments to the Maine Use of Medical Act. The larger of the two, PL 2017, c. 452 (LD 1539) (see link above), is a sweeping reform to the entire medical marijuana statute.

The reforms established by LD 1539 will not become effective until December 13, 2018.

Included in these reforms are the following changes:

Regulatory Agency:

- State regulatory authority over medical marijuana will be transferred from the Department of Health and Human Services (DHHS), to the Department of Administrative and Financial Services (DAFS).

Patients:

- Patients will no longer need to have a qualifying medical condition to receive a prescription for medical marijuana. Instead, physicians may issue written prescription certifications to use medical marijuana for any medical condition that physician believes will be alleviated by medical marijuana. 22 M.R.S. § 2423-B.
- Per-patient prescription limits are increased from 2 ½ ounces to 2 pounds of harvested marijuana, and the total amount a patient may possess at any given time is increased from 2 ½ ounces to 8 pounds of harvested marijuana. 22 M.R.S. § 2423-A(1)(A).
- Patients will no longer be required to designate a single caregiver or dispensary for the furnishing of medical marijuana (unless the patient is a minor), but the total number of mature plants per patient, whether cultivated by the patient him or herself, or by a caregiver, may not exceed 6. 22 M.R.S. § 2423-A(1)(B), (F-1).

Caregivers:

- When LD 1539 goes into effect, registered caregivers will be able to cultivate up to a total of 30 plants, rather than 6 plants per-patient. The 5-patient limit for registered caregivers will also be eliminated. 22 M.R.S. § 2423-A(2)(B).
- Registered caregivers will be expressly authorized to operate retail stores. 22 M.R.S. § 2423-A(2)(P).
- Caregivers are not required to register with the state if the qualifying patient served by the caregiver is a member of the caregiver's household or family. 22 M.R.S. § 2423-A(3)(C). This registration exemption exists in the current law as well, but when LD 1539 goes into effect, such caregivers will be limited to serving no more than 2 qualifying patient household members or family members and will not be allowed to sell marijuana wholesale, organize as a business entity, or operate a retail store. 22 M.R.S. § 2423-A(3)(C-1).

Dispensaries:

- Six additional dispensaries will be allowed, and after 2021 the cap on the number of dispensaries will be eliminated entirely. 22 M.R.S. § 2428(11-A)

Manufactured Marijuana Products:

- Individuals wishing to manufacture marijuana products and marijuana concentrate for medical use are subject to certain limitations and registration requirements (the previous medical marijuana laws were silent on marijuana products manufacturing). 22 M.R.S. § 2423-F.

Local Regulation:

- Code enforcement officers, or another municipal officer if the municipality does not employ a code enforcement officer, may request verification of a caregiver registration card from the state. 22 M.R.S. § 2425-A(12)(E).
- The law expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities, except that municipalities may not prohibit or limit the number of registered caregivers. 22 M.R.S. § 2429-D.
- Opt in System. As of the effective date of LD 1539, municipalities must opt-in to the operation of registered caregiver retail stores, manufacturing facilities, dispensaries, and testing facilities. This means that no new retail store manufacturing facility, testing facility or dispensary may begin operation in the municipality unless or until the municipal legislative body affirmatively votes to allow that particular type of establishment to locate in the municipality. However, all such facilities already in operation with municipal approval prior to the effective date of LD 1539 will be grandfathered. 22 M.R.S. § 2429-D.

The other medical marijuana law legislation, PL 2017, c. 447 (LD 238), includes generally the same language establishing a registration process for individuals engaged in medical marijuana manufacturing. LD 238 also includes language recognizing municipal home rule authority to regulate registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities, except that municipalities may not prohibit or limit the number of registered caregivers. LD 238 was enacted as an emergency and took effect immediately.

III. Local Regulation and Grandfathering of Medical Marijuana Facilities

Both amendments to the medical marijuana laws enacted by the Legislature recognize municipal home rule authority to regulate registered caregivers, registered dispensaries, marijuana testing facilities, and manufacturing facilities, as long as they do not prohibit or limit the number of registered caregivers. With LD 238 already in effect, it is clear that municipalities may now, by ordinance, regulate such medical marijuana activity.

LD 1539 also recognizes local authority to regulate registered caregiver retail stores specifically, and prohibits all medical marijuana stores, dispensaries, testing facilities and manufacturing facilities from operating unless the municipal legislative body affirmatively votes to allow, or "opt-in" to their operation. This municipal authorization is similar to the municipal "opt-in" authorization required before adult use marijuana establishments may operate under the Adult Use Marijuana Act ([28-B M.R.S. §§ 101-1504](#)).

However, this opt-in requirement will not apply to medical marijuana retail stores, dispensaries, testing facilities, and manufacturing facilities until LD 1539 takes effect, which will not be until December 13, 2018. In addition, LD 1539 expressly grandfathers stores, dispensaries, testing facilities, and manufacturing facilities operating "with municipal approval" prior to the law's effective date. This means that such facilities still have several months to obtain grandfathered status before new medical marijuana facilities are prohibited from operating without a municipal vote to "opt-in" to medical marijuana establishment operation.

For municipalities that want to prohibit medical marijuana retail stores, dispensaries, testing facilities or manufacturing facilities, or for municipalities that may want to allow them but need time to amend local ordinances to regulate them, a moratorium ordinance is recommended (see link above). Since LD 238 is already in effect, there is no doubt that a moratorium ordinance specifically related to registered caregivers is authorized.

IV. Adult Use vs. Medical Use Marijuana

It is important to remember that Maine has two separate statutes to regulate medical marijuana and adult use marijuana. The Medical Use of Marijuana Act and pending amendments only govern the state and local regulation of medical marijuana. The use and possession of adult use marijuana, as well as the licensing and local regulation of adult use marijuana establishments, is governed by Maine's Adult Use Marijuana Act. This means that municipalities attempting to regulate both medical and adult use marijuana activity must do so separately, pursuant to the authority outlined in each respective statute. This also means that marijuana stores, dispensaries, testing facilities or manufacturing facilities operating under the authority of the medical marijuana laws may not transition into adult use activity without also complying with the licensing requirements and restrictions of the adult use marijuana statute. It would not be possible for a registered caregiver operating a medical marijuana storefront to start selling adult use marijuana until the municipality has opted in to the operation of adult use marijuana stores, and the caregiver has obtained a license to sell adult use marijuana. See MMA's [Adult Use Marijuana Information Packet](#) for additional information.

V. Rulemaking

On May 10, 2018, rules developed by the Maine Medical Use of Marijuana Program became effective (see link above). These rules make a number of fairly significant changes to the rights and duties of medical marijuana caregivers under existing law. For example, the rules authorize unannounced state inspections of cultivation areas by the Maine Center for Disease Control, and require "trip tickets" that identify the source and destination of any medical marijuana transported by caregivers. Many aspects of these rule changes will be superseded once LD 1539 becomes effective. Therefore, it is likely that additional rules pursuant to the recent amendments to the medical marijuana statute will be forthcoming.



Adult Use Marijuana

MMA Legal Services Information Packet

This packet is intended for general informational purposes only. It is not meant, nor should it be relied upon, as legal advice in any particular situation. Links to documents herein are provided as examples for informational purposes only and have not been reviewed by MMA Legal Services. Do not use any sample unless it has been reviewed by your legal counsel. The information herein is not a substitute for consultation with legal counsel and legal review or other specific guidance on the subject. The statutes and other information herein are only current as of the date of publication.

Date of last revision: 06/2018

~~This packet includes the following attachments:~~

- ~~• [Adult Use Marijuana Act](#)~~
- ~~• [Sample warrant articles generally authorizing adult use marijuana](#)~~
- ~~• [South Portland Marijuana Zoning Laws](#)~~
- ~~• [South Portland Marijuana Licensing Process](#)~~

Important issues and considerations include:

On May 2, 2018, the Legislature passed as an emergency the Adult Use Marijuana Act, legalizing the use and commercial sale of marijuana for recreational purposes. This law was the result of an 18-month long effort to amend the original law legalizing recreational marijuana, the Marijuana Legalization Act, which was passed through a citizen-initiated ballot question in November of 2016.

The Adult Use Marijuana Act was enacted as its own separate Title under the Maine Revised Statutes, Title 28-B. Previously, the citizen-initiated Marijuana Legalization Act was located in Chapter 417 of Title 7 (Note: Any local ordinances enacted pursuant to, or ordinance provisions referencing, the Marijuana Legalization Act in Title 7 should be reviewed to determine if they are still effective or need to be updated)

The Adult Use Marijuana Act legalizes marijuana for personal recreational use, and establishes a licensing process for commercial marijuana establishments cultivating, processing and selling adult use marijuana. The Act also provides broad home rule authority for regulation of such establishments at the local level. Most importantly for municipalities, the current law prohibits adult use establishments from operating in any municipality until that municipality has voted to authorize its operation.

I. Background on the Repealed Marijuana Legalization Act

On November 8, 2016 Maine voters passed a citizen-initiated ballot question to legalize recreational marijuana in Maine, also known as Question 1. The passage of Question 1 enacted the Maine Marijuana Legalization Act (the citizen-initiated law), the first version of the laws governing personal use and commercial sale of recreational marijuana in Maine. With adoption of this legislation, Maine became one of nine states in the U.S. to legalize marijuana for adult recreational use.

The citizen-initiated law provided significant local control over commercial aspects of the industry. However, municipalities had to take action to "opt-out" of commercial marijuana activity if they wanted to limit or prohibit the operation of marijuana establishments within their jurisdictions. The citizen-initiated law also contained several drafting errors and ambiguities that made the licensing approval process unworkable and needed to be fixed. (For more on the progression of legislative efforts after passage of Question 1, please see the following [Legal Notes from December, 2016 through February, 2018](#).)

On May 2, 2018, after a year and a half of deliberation and one failed attempt to override the Governor's veto of overhaul legislation in November of 2017, the Legislature enacted as an emergency a new law outlining a workable regulatory process for commercial sale of recreational marijuana, the Adult Use Marijuana Act.

II. Adult Use Marijuana Act (Current Law)

The Adult Use Marijuana Act completely replaced the citizen-initiated law (you will notice that there is no longer any reference to "recreational" marijuana in the law, only "adult use" marijuana). The law continues to allow the personal recreational use, possession and cultivation of adult use marijuana by persons over the age of 21 (although it reduces the allowable number of mature plants for home cultivation from six plants to three). The law also establishes a state licensing process for four types of adult use marijuana establishments: 1) marijuana stores; 2) testing facilities; 3) products manufacturing facilities; and 4) cultivation facilities.

No social clubs: The citizen-initiated law, and earlier drafts of the Adult Use Marijuana Act also included a licensing process for marijuana "social clubs." This type of establishment was ultimately taken out of the law altogether because the operation of social clubs in the state was too controversial.

Opt-in: The Adult Use Marijuana Act allows municipalities to "opt-in" to the operation of adult use marijuana establishments within their jurisdiction through a vote of the legislative body, as opposed to the "opt-out" requirements of the citizen-initiated law. Under this new "opt-in" process, municipalities are no longer required to take any action to prevent commercial adult use marijuana activity from occurring in the municipality before the voters decide if and how they want to regulate adult use marijuana in their jurisdiction. All commercial activity is prohibited unless the municipality votes to opt-in.

Although the Adult Use Marijuana Act is in effect now, it will still be some time before the commercial licensing process is up and running. The Department of Administrative and Financial Services estimated that the rulemaking process could take at least nine months. Once the rules are developed they will also need to undergo a legislative review because all rules developed pursuant to the Adult use Marijuana Act are defined as major substantive rules. 28-B M.R.S. § 104. No commercial activity can occur until establishments are licensed by the state.

III. Types of Adult Use Marijuana Establishments

The Adult Use Marijuana Act authorizes four types of adult use marijuana establishment licenses:

- **Marijuana Store:** A marijuana store is a facility authorized to sell marijuana and marijuana products directly to consumers. 28-B M.R.S. § 102(34). Marijuana stores are also authorized to sell marijuana paraphernalia, and other non-consumable products (like clothing), as well as consumable products that do not contain marijuana, (like soda or candy). Marijuana stores may not sell tobacco or alcohol products that do not also contain marijuana. Adult use marijuana sales with the use of vending machines, drive-through windows, internet-based platforms, and deliveries, are prohibited. 28-B M.R.S. § 504.
- **Cultivation Facility:** A cultivation facility is a facility licensed to grow, prepare, and package marijuana. 28-B M.R.S. § 102 (13). Cultivation licensees are authorized to sell the marijuana they grow and package to other establishments licensed under the Adult Use Marijuana Act, but they may not sell marijuana to registered caregivers or dispensaries distributing marijuana pursuant to Maine's medical marijuana laws. They also cannot sell marijuana to consumers unless they have a separate marijuana store license. 28-B M.R.S. § 501(8). A cultivation licensee may fall within one of 4 tiers of cultivation facility licenses, depending on the plant canopy square footage. 28-B M.R.S. § 301.

There is also a subset of the cultivation license called a "nursery cultivation facility" license. Nurseries may not cultivate more than 1,000 square feet of plant canopy. However, in addition to growing marijuana and selling to other licensed adult use marijuana establishments, nurseries can also sell immature plants, seedlings and seeds directly to consumers without obtaining a separate store license. A nursery cultivation licensee that wishes to sell to consumers must section off a portion of the licensed facility dedicated to that purpose, and that portion must comply with all applicable rules related to the operation of marijuana stores.

- **Products Manufacturing Facility:** A products manufacturing facility is authorized to blend, infuse, or extract components of the marijuana plant to make marijuana products such as ointments, tinctures, or edibles, for sale to marijuana stores or other marijuana products manufacturing facilities. 28-B M.R.S. §§ 102(26), (33), (43). Products manufacturing sometimes requires extraction of marijuana concentrate using hazardous solvents such as butane or methyl alcohol. A products

manufacturing facility that is going to perform this type of extraction must obtain certification from a professional engineer that the proposed extraction method is safe. 28-B M.R.S. § 502(7)(B).

- **Testing Facility:** The purpose of a testing facility is to conduct research, analysis and testing of marijuana and marijuana products for contamination, potency, and safety. 28-B M.R.S. § 102(53), (54). As the quality assurance arm of the industry, testing facility licensees are strictly prohibited from engaging in other aspects of the adult use or medical marijuana industry. Testing facility licensees may not be registered caregivers, or have any interest in a medical marijuana dispensary or any other adult use marijuana establishment. Testing facilities must be certified by the Department of Health and Human Services and Maine Center for Disease Control, and must be accredited under standards developed by the International Organization for Standardization. 28-B M.R.S. § 503.

All licensees must comply with the following state and local licensing processes to operate in the State.

IV. State Licensing Process

Licensing authority: The Department of Administrative and Financial Services (DAFS) has sole licensing and rulemaking authority for adult use marijuana businesses at the state level, although they must consult with the Department of Agriculture, Department of Labor, and Department of Public Safety in the development of rules relevant to each respective agency. 28-B M.R.S. §104.

Qualifications: DAFS requires the following basic qualifications for obtaining an adult use marijuana business license (28-B M.R.S. § 202):

- The applicant must be at least 21 years old;
- The applicant must be a Maine resident (this does not apply to testing facility licensees) – if the applicant is a business entity, it must be incorporated in the state of Maine;
- The applicant cannot have any disqualifying drug convictions or outstanding court ordered payments;
- The applicant must submit a comprehensive criminal history record check;
- The applicant cannot work with a state agency with regulatory authority over adult use marijuana, or in law enforcement;
- The applicant cannot have previously had a medical or adult use marijuana license revoked.

If the licensee is a business entity, all officers, directors, managers and partners of the business must meet each of the licensing requirements.

DAFS is also authorized to take certain additional factors into consideration, including any other criminal convictions involving dishonesty or fraud, tax compliance history, and other state marijuana related violations or penalties that did not result in license revocation. 28-B M.R.S. § 203. Although these additional considerations may influence DAFS's decision to issue a license, they are not determinative.

Conditional License: If applicants meet all basic qualifications outlined in the statute, and any applicable rules adopted by DAFS, they will be issued a conditional license within 90 days of receipt of their application. 28-B M.R.S. § 205(3). Conditional licensees cannot engage in cultivation, manufacture, testing, or sale of marijuana; they must wait until an active license is issued. A conditional license is only good for one year, and cannot be renewed. If a conditional licensee fails to obtain an active license within a year, the conditional license will expire. 28-B M.R.S. § 205(3).

Before DAFS issues an active license, the municipality in which the marijuana establishment will be operating must certify that the municipality has voted to authorize the operation of that type of marijuana establishment in the municipality, and that the applicant has obtained all the necessary local licenses and permits for operation, if the town requires any. 28-B M.R.S. § 205(4); 403(3). Within 10 days of receiving notice of local certification, DAFS will notify the conditional licensee that local authorization has been confirmed. To finally receive its active license the conditional licensee must then pay the license fee and submit its facility plan to DAFS.

Multiple licenses: Licensees may obtain multiple licenses of any license type, as long as having multiple licenses does not result in the applicant having a direct or indirect financial interest in more than three cultivation facilities, or more than 30,000 square feet of plant canopy (although licensees can exceed this canopy cap through approved increases in plant canopy, authorized for tier 4 cultivation licenses). Until January 2022, licensees are also limited from having direct or indirect financial interest in more than 4 marijuana stores. Testing facility licensees can obtain multiple testing facility licenses, but are prohibited from being caregivers, or having any interest in medical dispensaries, cultivation facilities, products manufacturing facilities, and marijuana stores. 28-B M.R.S. § 205(2).

Each license issued by DAFS is separate. For example, a products manufacturing licensee cannot operate a marijuana retail store at the same location without first applying for a store license, or open another products manufacturing facility at a separate location without applying for another products manufacturing license. 28-B M.R.S. § 205(5).

The nursery cultivation facility license is the one exception to this general rule. A nursery cultivation licensee is authorized to operate a storefront in the same location as its cultivation facility for the purpose of selling seeds, seedlings, immature plants, and other gardening supplies related to marijuana cultivation directly to consumers. 28-B M.R.S. § 501(3). (Note: Municipalities wishing to prevent retail sales of any type within their jurisdiction, or to restrict marijuana retail sales to specific locations within the municipality, may want to account for nursery cultivation facilities in their local authorizations and regulations – see the local regulatory authority section below).

Adults only: All employees at licensed establishments must be at least 21 years old. 28-B M.R.S. § 506. No one under 21 years old may enter an adult use marijuana establishment of any type. 28-B M.R.S. § 507.

Renewal: All licenses must be renewed by DAFS annually. Licensees will receive notification of the need to renew their licenses from DAFS 90 days prior to its expiration, and must submit their application for renewal to DAFS at least 30 days prior to expiration of the license, unless they are granted an extension for good cause shown. As with the initial application, before annual renewal is issued, municipalities must certify that the licensee is still authorized to operate within the municipality and is complying with any applicable local requirements. 28-B M.R.S. § 209.

Notification to the municipality: DAFS must notify a municipality within 14 days of any license approval, renewal, denial, suspension, revocation, penalty, or termination or if DAFS approves a transfer of ownership or relocation application for any establishment. 28-B M.R.S. § 215.

V. Local Regulatory Authority

Under the "opt-in" process of the Adult Use Marijuana Act, commercial testing, manufacturing, cultivation and sale of adult use marijuana is, by default, prohibited until municipalities vote to generally authorize the activity within their jurisdiction. Additionally, the law provides broad home rule authority for municipalities to regulate commercial adult use marijuana activity locally, if they choose to do so. An active license cannot be issued until DAFS receives confirmation from the municipality that it has authorized the operation of that type of establishment within its jurisdiction, and the licensee has met all applicable local requirements to the satisfaction of the municipality.

General authorization: No adult use marijuana establishment may obtain an active license to operate unless the municipality in which the establishment is going to be located has voted to authorize its operation. 28-B M.R.S. § 402(1)(A). This "general authorization" can only be accomplished by vote of the legislative body - meaning the town meeting vote or town or city council vote. General authorization can take various forms, depending on the extent to which the municipality wants to regulate such establishments locally. If the municipality wants to take a "hands-off" approach to regulation, and let the operation of adult use marijuana be governed by the state licensing process and the market, its legislative body can approve a simple ordinance or warrant article authorizing the operation of some or all types of adult use marijuana establishments (see the link to sample warrant articles above).

Types of local regulation: Municipalities may also enact additional local requirements by ordinance, if they want to take a more active role in regulating the location, number, and operation of adult use marijuana establishments. By ordinance municipalities have the ability to: 1) limit the number of some or all types of establishments; 2) place restrictions on the location of some or all types of establishments; 3) impose performance standards; or 4) require licenses and payment of reasonable licensing fees. Municipalities may choose to amend existing land use or zoning ordinances to include certain requirements for adult use marijuana establishments. Municipalities may also choose to enact a stand-alone ordinance governing the operation of adult use marijuana establishments within the municipality.

- **Zoning:** Through zoning ordinances, municipalities have the ability to divide the municipality into districts and apply different regulations for each district. A municipality with zoning may wish to limit adult use marijuana establishments to one or a few districts in the municipality, where such activity is more consistent with surrounding activities. For example, municipalities may want to restrict cultivation facilities to agricultural districts, retail stores to commercial districts, or testing facilities to industrial districts. In Maine, zoning must be done pursuant to and consistent with a comprehensive plan adopted by the legislative body. 30-A M.R.S. § 4352(2). Maine law also establishes special notice and hearing requirements for the adoption or amendment of zoning ordinances. 30-A M.R.S. §§ 4352(9), (10). For additional information on zoning, see [Chapter 7](#) of MMA's Planning Board Manual.

- **Other land use ordinances:** Municipalities are not required to enact zoning ordinances to regulate marijuana establishments. Pursuant to 30-A M.R.S. § 3001, municipalities have broad home rule authority to enact or amend municipal-wide land use ordinances that apply standards to marijuana establishments wherever located in the municipality. Examples of non-zoning land use regulation for adult use marijuana establishments could include, but are not limited to: odor control, pesticide control, performance standards, site plan review, home occupation permits, building permits for new structures, signage restrictions or parking setback requirements.
- **Licensing:** Municipalities have the authority to impose licensing requirements and associated fees on the various types of adult use marijuana establishments. Municipalities can require adult use marijuana businesses or owners to be licensed, either through a general business licensing ordinance, or through marijuana-specific licensing requirements. Any fees established pursuant to this authority must reasonably reflect the municipality's costs associated with the license procedure and enforcement. 30-A M.R.S. § 3702.

Given the various types of municipal governments throughout the state, and the range of options for local regulation of adult use marijuana establishments, there is no specific form such regulations should take. For an example of what one Maine city has done, see the links above to South Portland's zoning and licensing ordinances, which now include provisions governing adult use marijuana establishments.

Plantations: Plantations do not have general home rule authority to enact ordinances (See 30-A M.R.S. §§ [2001](#), [7051](#), [7059](#); and [1 M.R.S. §72\(13\)](#)). Instead, plantations must be able to refer to specific statutory authorization to regulate a particular subject area. The Adult use Marijuana Act includes plantations in its definition of "municipality," thereby providing plantations with the specific statutory authority required to enact ordinances regulating adult use marijuana. 28-B M.R.S. § 102(38). However, any planning, zoning, or subdivision regulations in a plantation under the jurisdiction of the Land Use Planning Commission (LUPC) are subject to the Commission's oversight authority. [12 M.R.S. § 685-A\(4-A\)](#). For more on plantation ordinance authority see our [Ordinance Enactment](#) Information Packet.

Maine Agriculture Protection Act, (a.k.a. "Right to Farm" law) does not apply: Ordinances regulating adult use marijuana establishments are not subject to limitations on local regulation of farmers in the Maine Agriculture Protection Act ([Title 7, Ch. 6](#)) or the state licensing exemption authority provided to municipalities under the Food Sovereignty Law ([Title 7, Ch. 8-F](#)). 28-B M.R.S. § 401.

Minimum requirements: The Adult Use Marijuana Act does establish an express limitation on home rule authority by imposing two minimum requirements for municipal approval of adult use marijuana establishments. 28-B M.R.S. § 402(2). All municipalities, even those with nothing more than a warrant article authorizing adult use establishments, must make sure that the establishments operating within the municipality meet the following minimum requirements:

1. Municipalities cannot authorize the operation of marijuana establishments less than 1,000 feet away from the property line of a school. Municipalities may adopt an ordinance reducing the distance from schools in which an adult use marijuana establishment may operate to less than 1000 feet, but under no circumstance may that distance be less than 500 feet.
2. The applicant must show entitlement to possession of the property in which the adult use marijuana establishment is to operate. This may be evidenced by a lease or rental agreement if the applicant does not own the property.

DAFS municipal certification form: As mentioned above, DAFS will not issue an active license until it receives confirmation directly from the municipality that the conditional licensee is allowed to operate in that municipality. According to the Adult Use Marijuana Act, DAFS is responsible for developing a certification form intended to provide such confirmation to DAFS. 28-B M.R.S. § 205(4)(B). When asked to do so by the conditional licensee, the municipality must complete the form and return it directly to DAFS. Towns and plantations in the unorganized and deorganized areas must first certify to the LUPC, which will then return this form to DAFS on behalf of the plantation or town. 28-B M.R.S. § 403(3). This form has not yet been developed, but it is presumed that the form will ask the municipality to confirm 3 things:

1. the legislative body has voted to generally authorize the type of establishment that is the subject of the application;
2. the location of that establishment meets the appropriate setback from the property line of a school, and the applicant has shown proof of entitlement to the premises; and
3. the applicant has met all applicable local land use, zoning, permitting, or licensing requirements, if any.

DAFS form completion; failure to act: A municipality has 90 days to complete the certification form and return it to DAFS. If the municipality still needs time to complete all necessary local review and approval processes required of the conditional licensee, then the municipality can notify DAFS of this fact before the 90 days have expired to extend the deadline an additional 90 days. If a municipality fails to act on a conditional licensee's request within the allowed timeframe, it is deemed a denial, which is a final governmental action appealable to Superior Court pursuant to Rule 80B. 28-B M.R.S § 402(5).

VI. Personal Use and Cultivation

Under the Adult Use Marijuana Act a person 21 years or older may:

- Possess up to 2.5 ounces of marijuana or 5 ounces of marijuana concentrate
- Give away up to 2.5 ounces of marijuana or 5 ounces of concentrate to other adults
- Give away up to 6 immature plants or seedlings to another adult
- Possess up to 3 mature plants, or 12 immature plants, and unlimited seedlings (there is a 6 month grace period for individuals to have up to 6 mature plants, which was the limit under the previous law). Any marijuana produced by the allowable amount of mature plants may be retained at the person's place of residence or the location where marijuana was cultivated.

Home solvent based extraction using hazardous substances is strictly prohibited.

No remuneration for marijuana transfers: The personal use provisions of the Adult Use Marijuana Act only allow transfer of the allowable amount of marijuana or marijuana concentrate "without remunerations." The law defines "remuneration" as a "donation or any other monetary payment received directly or indirectly by a person in exchange for good or services as part of a transaction in which marijuana is transferred." 28-B M.R.S. § 1501. In other words, it is illegal to provide "free weed" for a delivery or bag fee or as compensation for any type of service.

Consumption: The consumption of marijuana or marijuana products can only occur in a private residence, or on private property not generally accessible by the public with permission by the owner. Marijuana and marijuana product consumption in any public place is strictly prohibited, including in licensed marijuana establishments. No adult use marijuana products may be consumed on premises of any licensed establishment unless that individual is an employee and is a qualifying patient under the medical marijuana laws. 28-B M.R.S. § 508. Marijuana or marijuana products also may not be consumed in vehicles (whether you are a driver or a passenger), at private residences used as day care facilities, or in designated smoking areas under the Workplace Smoking Act. 28-B M.R.S. § 1501(2).

Enforcement of personal use violations: Any violation of the personal use provisions of the statute may be subject to civil and criminal penalties, enforceable by state law enforcement authorities. 28-B M.R.S. § 1504.

Local regulation of home cultivation: The Act allows a person to cultivate up to 3 mature marijuana plants on his or her own land, or on land owned by someone else, provided he or she has a written agreement with the property owner authorizing that person's use of the land for home cultivation. 28-B M.R.S. § 1502. The Act does not limit the amount of plants that can be located on one parcel or tract of land through written agreement for home cultivation purposes. The Act does allow municipalities to do so, as long as the limitations imposed are not more restrictive than what the state law allows (3 mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land). 28-B M.R.S. § 1502(4).

Municipalities also have home rule authority to regulate home cultivation in other ways – for example, by enacting odor control ordinances – but municipalities may not:

- generally prohibit the home cultivation of marijuana for personal adult use within the municipality;
- restrict the areas within the municipality in which home cultivation of marijuana for personal adult use is allowed; or
- charge a license or other fee for home cultivation of marijuana for personal adult use within the municipality.

Even if a municipality chooses not to regulate home cultivation directly, the use of a parcel by multiple non-domiciled individuals for home cultivation may require municipal review under Maine's subdivision laws. A subdivision is defined as the division of a tract or parcel of land into 3 or more lots, "whether the division is accomplished by sale, lease, development, buildings, or otherwise." A parcel with 3 or more written agreements sectioning off parts of the parcel for home cultivation could qualify as a subdivision under this definition.

VII. Taxation on Adult Use Marijuana

The Act authorizes a 20% effective tax rate through the collection of a sales tax on the retail sales of marijuana and marijuana products and an excise tax on wholesale products sold by cultivation facilities.

Excise tax: Excise tax is paid monthly by cultivation licensees on all marijuana sold by that facility to other adult use licensees. Excise taxes are \$335 per pound of marijuana flower or mature marijuana plants, \$94 per pound of marijuana trim, \$1.50 per immature plant, and \$.30 per marijuana seed. 28-B M.R.S. § 1001. Excise taxes also apply to sales by nursery cultivation facilities to other licensees 28-B M.R.S. § 501(3) as well as sales of medical marijuana to cultivation facilities authorized in the two-year sunset provision in 28-B M.R.S. § 501(6) (see discussion in section "IX. Medical Marijuana" below).

Sales tax: The Act imposes a 10 % sales tax rate on the value of all marijuana and marijuana products sold by establishments licensed for retail sales, including retail sales by nursery cultivation facilities. 36 M.R.S. § 1811.

12% of the excise tax revenues and 12% of the sales tax revenues collected are transferred to the Adult Use Marijuana Public Health and Safety Fund, to facilitate public health and safety awareness education programs and training for local, county and state law enforcement. The remainder of the excise and sales tax revenues are deposited into the General Fund. 28-B M.R.S. § 1003.

Otherwise, there is no revenue sharing with those municipalities that have opened their jurisdictions to adult use marijuana establishments. Local option taxation of adult use marijuana establishments is not authorized. (Note: personal property taxes and real property taxes still apply to all adult use marijuana establishments).

VIII. Adult Use Marijuana in the Workplace

Maine employers – including municipalities – are under no obligation to allow or accommodate the use, consumption, possession, trade, display, transportation, sale or cultivation of adult use marijuana or marijuana products in the workplace. 28-B M.R.S. § 112. However, keep in mind there may be circumstances under which Maine's medical marijuana laws require some accommodations for marijuana use by qualifying patients. Employers can adopt and enforce workplace policies prohibiting adult use marijuana and marijuana products in the workplace or while otherwise engaged in activities within the course and scope of employment. Employers can also discipline or terminate employees in accordance with such policies if they are found to be under the influence of adult use marijuana on the job.

For more information on employee discipline, see MMA's Information Packet on [Municipal Employee Discipline](#).

IX. Medical Marijuana

The Adult Use Marijuana Act only governs the state and local regulation of adult use marijuana. There is no authority in the adult use laws for municipalities to regulate medical marijuana – the use and possession of marijuana by qualifying patients, as well as distribution by registered caregivers and dispensaries, is governed by Maine's medical marijuana laws outlined in [22 M.R.S. § 2421 et seq.](#)

With that said, there are certain provisions in the Adult Use Marijuana Act that authorize an overlap of the medical and adult use industries. For example, registered caregivers may apply for any adult use marijuana establishment license (except testing facility licenses). Registered caregivers and dispensaries are also authorized to cultivate medical and adult use marijuana in the same facility but only if they have licenses under both the medical and adult use statutes and they keep the cultivation process for each separate. 28-B M.R.S. § 501(5). The same is true for products manufacturing facilities. 28-B M.R.S. § 502(4).

There is also a provision that sunsets two years after the date of enactment of the Adult Use Marijuana Act, allowing registered caregivers and dispensaries to sell plants and seeds to adult use cultivation facilities that also possess caregivers/dispensaries licenses. 28-B M.R.S. § 501(6). The purpose of this sunset provision is to ensure there is a sufficient amount of marijuana for the adult use market once licenses become available. DAFS will only allow new licensees this opportunity for the first two years, and cultivation facilities will not retain this authorization upon renewal of their licenses.

X. Federal Marijuana Law

Under federal law the transfer, possession, and use of marijuana, whether for medical or recreational purposes, is illegal. 21 U.S.C. §§ 812, 841. This is true even if individuals engaging in these activities are in compliance with state law. This means that although the use, cultivation, transfer and sale of adult use and medical marijuana within Maine is legal at the state level, individuals engaging in state-authorized use, cultivation, transfer and sale of adult use marijuana can still be prosecuted under federal law.

To date, there has been very little enforcement of federal law against those operating in compliance with state marijuana laws. Under the Obama Administration, a guidance memo from Deputy Attorney General James Cole memorialized a hands-off approach to federal prosecution of marijuana-related activity that complied with state law. The current Attorney General, Jeff Sessions, has since rescinded Cole's guidance memo. However, even without the Cole Memo in place, U.S attorneys must prioritize prosecution in their respective jurisdictions based on available resources and the cumulative impacts of crimes in the region. For the U.S. Attorney for the District of Maine, the priority when it comes to drug-related crimes is activity related to the opioid crisis (see Maine U.S. Attorney Statement on Marijuana Enforcement).

LEWISTON CITY COUNCIL
MEETING OF OCTOBER 30, 2018

AGENDA INFORMATION SHEET: AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session to discuss Acquisition of Property of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To enter into an Executive Session, pursuant to MRSA Title 1, section 405(6)(c), to discuss Acquisition of Property, of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

LEWISTON CITY COUNCIL
MEETING OF OCTOBER 30, 2018

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES-2

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405(6)(A) to discuss a personnel matter.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

Entering into executive session is permitted and defined under Maine State Statutes.

EAB/KMM

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To enter into an Executive Session pursuant to MRSA Title 1, Section 405(6)(A) to discuss a personnel matter.