

LEWISTON CITY COUNCIL SPECIAL MEETING & WORKSHOP AGENDA

CITY COUNCIL CHAMBERS, CITY HALL

TUESDAY, MARCH 12, 2019

6:00 p.m. Special Meeting

Pledge of Allegiance to the Flag.

SPECIAL MEETING

1. Resolve, Recognizing the Vacancy in the Office of Mayor as a Result of the Formal Resignation of Shane Bouchard on March 8, 2019 and the Filling of the Vacancy on that Date by the City Council President.
 2. Swearing In of Kristen Cloutier as Mayor of the City of Lewiston.
- ES-1. Executive Session regarding consultation with the City Attorney.

WORKSHOP

(Immediately following Executive Session)

1. Proposal to review Lake Auburn water quality issues and potential alternatives.
2. Presentation of a framework for local regulations of medical and adult use marijuana.
3. Discussion concerning Sober House Regulations.

LEWISTON CITY COUNCIL
SPECIAL COUNCIL MEETING
TUESDAY, MARCH 12, 2019
6:00 PM

1. Resolve, Recognizing the Vacancy in the Office of Mayor as a Result of the Formal Resignation of Shane Bouchard on March 8, 2019 and the Filling of that Vacancy on that Date by the City Council President.
2. Swearing In of Kristen Cloutier as Mayor of the City of Lewiston.

COUNCIL WORKSHOP
IMMEDIATELY FOLLOWING THE SPECIAL MEETING

1. Executive Session – Consultation with the City Attorney
2. Lake Auburn Water Quality

The Mayor of Auburn has proposed that the two cities work together through some form of ad-hoc committee(s) to review water quality issues associated with Lake Auburn and potential alternatives. Please see the attached information.

3. Marijuana

Planning would like to present the Council with a framework for local regulation of medical and adult use marijuana in order to receive feedback and reactions. Once an acceptable framework has been developed, work can begin on an actual ordinance.

4. Sober House Regulation

Unlike most group home facilities, sober houses are not regulated by the state. As a result, certain fire and life safety code requirements that generally apply to group living facilities do not apply to sober houses. There has been some interest in adopting local regulations to address this gap. Please see the attached information from Planning.

**LEWISTON CITY COUNCIL
MEETING OF MARCH 12, 2019**

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 1

SUBJECT:

Resolve Recognizing the Vacancy in the Office of Mayor as a Result of the Formal Resignation of Shane Bouchard on March 8, 2019 and the Filling of that Vacancy on that Date by the City Council President.

INFORMATION:

Shane Bouchard resigned as Mayor on March 8, 2019. This Resolve is to recognize his resignation and the filling of the vacancy created by that resignation by City Council President Cloutier.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

REQUESTED ACTION:

1	2	3	4	5	6	7	M
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To approve the Resolve Recognizing the Vacancy in the Office of Mayor as a Result of the Formal Resignation of Shane Bouchard on March 8, 2019 and the Filling of that Vacancy on that Date by the City Council President.



COUNCIL RESOLVE

Resolve, Recognizing the Vacancy in the Office of Mayor as a Result of the Formal Resignation of Shane Bouchard on March 8, 2019 and the Filling of that Vacancy on that Date by the City Council President.

Whereas, on Friday, March 8, 2019, Mayor Shane Bouchard called a media conference at Lewiston City Hall at which City Council President Kristen Cloutier was present at Mr. Bouchard's request; and

Whereas, at the conference, Shane Bouchard publicly stated, "Please consider this formal notice that I am resigning from the position of Mayor;" and

Whereas, upon resignation of the Mayor within 12 months of the next regular municipal election, the Charter of the City states that the president of the council shall serve the remainder of the unexpired term as the mayor of the city with all the powers, privileges, and authority of the mayor; and

Whereas, Shane Bouchard recognized at the press conference that City Council President Cloutier filled the vacancy of Mayor when he gave formal notice of his resignation and promised to work with "incoming Mayor Kristen Cloutier" and she accepted the responsibility of mayor at the press conference;

Now, therefore, be it resolved by the City Council of the City of Lewiston that

The City Council hereby recognizes the resignation of Shane Bouchard from the position of Mayor of the City of Lewiston effective on March 8, 2019 and the filling of the vacancy created by that resignation by City Council President Cloutier.

LEWISTON CITY COUNCIL

MEETING OF MARCH 12, 2019

AGENDA INFORMATION SHEET: AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session regarding consultation with the City Attorney.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings. Discussing a legal matter with the City Attorney is a topic permitted under the statutes.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The state statutes outline the issues allowed to be discussed in an executive session.

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)(E) to discuss a legal matter with the City Attorney.



EXECUTIVE

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

March 7, 2019

To: Honorable Mayor and Member of the City Council
Fr: Edward A. Barrett
Su: Lake Auburn Water Quality

Jason Levesque, Mayor of Auburn, has suggested that an ad-hoc committee or committees be formed by the Cities of Auburn and Lewiston to review water quality issues in Lake Auburn and specifically to investigate moving to water filtration. Members of the City Council have asked that this workshop be held to provide background information on this issue.

1. The City of Lewiston and the Auburn Water District share the rights to use water from Lake Auburn for domestic purposes. Nationally, the general rule is that surface water must be treated, including filtration, for that water to meet and be used for drinking water purposes. Exceptions can, however, be granted to the filtration requirement where it can be shown that water quality standards can be met without adding this treatment step. Both Lewiston and the Auburn Water District separately have such exemptions. They are separate exemptions because, although elements of the treatment and supply system are combined, there are also separate elements, such as the respective distribution systems, that can create water quality issues that would lead to a revocation of the filtration exemption. Theoretically, either entity could lose the exemption individually while the other maintained it.
2. At this point, it is difficult to predict when or if the cities will lose the exemption from filtration. Over the years, the City and District have faced and overcome a number of issues that threatened the exemption, ranging from bird dropping into the Lake to algae growth problems. In addition, changing climatic conditions may be placing additional stress on the Lake.
3. One of the challenges of Lake Auburn is that, relatively speaking, it is not a large body of water and the length of time for the water in the lake to fully flush and be replaced is lengthy, allowing for the concentration of, for example, phosphorus in lake water.
4. The most significant threat to the lake is algae growth which, along with possible odor and taste concerns, can increase the turbidity of the lake. If turbidity exceeds a certain level, filtration would likely be required.
5. There may be some benefit to undertaking a review of water quality issues facing the lake to, first, evaluate the need and feasibility for continuing and enhancing efforts to manage the watershed, particularly in regard to managing

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City Hall, 27 Pine Street, Lewiston, ME 04240 • Tel. (207) 513-3121 • TTY/TDD (207) 513-3007 • Fax (207) 795-5069

Email: ebarrett@lewistonmaine.gov • ddauteuil@lewistonmaine.gov

Web Page: www.lewistonmaine.gov

phosphorus, and, second, to have some advanced information on the actual costs that will be required should the filtration exemption be lost. Since we can't accurately estimate when or if this will happen, the downside of doing this now is that technology and regulatory requirements may change (for better or worse) as time passes between undertaking this review and being required to act. It is likely, however, that costs will only increase in the future.

6. Should filtration be required, the capacity of the plant required to meet the demand from Lewiston and Auburn is likely to be in the range of 20 million gallons per day. This will meet current peak demand with some capacity for growth.
7. Capital costs. We have been estimating capital costs in the range of \$35 to \$40 million. A recent google search produced some examples: Grants Pass Oregon (2015): 20 MGD plant \$42,700,000 cost estimate; Wichita Kansas (2018) opened a new 5.4 mgd plant at a cost of \$22 million; Wellington, Colorado, 4 mgd plant \$11.8 million estimate; Willsonville, Oregon: expansion from existing 15 mgd to 20 mgd estimated at \$15 million. While the actual cost of a filtration plant will depend on the nature and design of that plant and local conditions, it is clear that it will carry a significant cost. There may be some local complications given the site of the current treatment operation on a peninsula in Lake Auburn.
8. Operating costs. We have estimated annual operating and maintenance costs in the range of \$1.5 to \$2 million. Here again, this will be influenced by the design and size of the plant.
9. Capital payments. Assuming an initial \$40 million capital costs, annual and total lifetime payments can vary based on how the bond issue is structured in terms of length and repayment method (flat annual payments vs annual flat principal payments with declining annual interest payments.) The following chart shows first year payments and total principal and interest payments over time for each major option.

Term	First Year Flat Principal	Total P&I	Fixed Annual	Total P&I
20 Year	\$3.4 M	\$54.7 M	\$2.8 M	\$56.3 M
30 Year	\$2.7 M	\$61.7 M	\$2.175 M	\$65.2 M

As you can see, there is a tradeoff between first year costs and lifetime principal and interest costs. The lowest initial first year payment of \$2.175 million would be for a 30 year bond with fixed annual payments; however, total lifetime payments would be the highest at \$65.2 million. Alternatively, the lowest lifetime principal and interest costs would be for a 20 year flat principal payment bond at \$54.7 million. Under that option, the first year payment would be the highest at \$3.4 million.

10. Taking capital and operating costs into account, a new filtration plant will have a significant annual cost impact ranging from \$3.675 million to \$4.9 million depending on the bond option chosen. Assuming these costs are evenly split between Lewiston and Auburn, our first year costs will likely be \$1.837 million to \$2.5 million. Given our current water budget of \$5,718,127, debt service and operating costs for a filtration plant alone would have a significant impact on water rates that could fall in the range of a 32% to a 44% increase. Keep in mind that this does not include any increases due to other operating costs or capital projects such as our on-going water distribution line replacement/upgrade efforts or the planned project to provide a second pipeline to bring water into the City. Our last water rate increase was in 2013, and another increase will likely be needed over the next few years since the utility is currently operating a deficit that is being offset by accrued cash.
11. It should be noted that, from time to time, some have questioned these costs estimates. To date, I am not aware of the basis for this questioning or any supporting documentation that justifies this position.
12. It appears that some of the interest in this proposal may be related to allowing for an increase in recreational use of the Lake and increasing the level and density of development in the Lake's watershed. What is not clear is the extent of the actual change that could happen since EPA/DEP will likely still require some level of watershed protection, even with filtration present. This needs to be explored and understood. In addition, such changes may result in additional stress on the quality of water in the lake that could result in the need for further enhancing treatment ability and increasing cost. For example, filtration can become more expensive with high concentrations of algae given that this can result in clogged filters and the need to improve/clean intake lines. Also note that while expanded recreational use of the Lake may have regional benefits, the City of Lewiston will not be directly impacted by additional development since it will largely take place in Auburn.
13. An economic analysis would be useful to evaluate the cost/benefit of filtration for both communities. This should take into account the impact of increased water rates on existing and potential future customers and, for Auburn, an estimate of the amount and value of additional development likely to occur in the watershed and the length of time required to reach build out. An argument can be advanced that filtration will lead to reduced restrictions in the watershed resulting in an increase in development that will produce tax revenue in excess of the additional costs related to water supply and the new municipal services, such as road maintenance, plowing, education, and solid waste, that will be required. This hypothesis should be tested. The economic issue in Lewiston is more straightforward and involves evaluating the impact of increased water rates and the cost implication of filtration undertaken sooner versus later, recognizing that there is no guarantee the filtration waiver can be indefinitely maintained.
14. There has also been discussion of filtration addressing this summer's taste and odor issues. As I understand it, basic filtration cannot guarantee that issues with

taste and odor associated with algae growth will be addressed. It may take additional capital investment to ensure that these issues are overcome.

15. Given the size of the investment required, Lewiston will need to seek public approval through the referendum process in order to issue debt for the project. Financing in Auburn is not as clear given that water service is provided by the Auburn Water District and, as such, the City is not required to issue debt for a treatment plant. That would likely be done by the Auburn Water District.
16. In light of the need for political and public support under the assumption that the costs of a new plant will be split between Lewiston and Auburn, Lewiston officials will need to publicly justify the expense and explain the benefit of such an expenditure to our voters. This will be a hard political sell for Lewiston in the absence of a regulatory requirement to install filtration.

Support for the formation of such a committee was recently discussed by the Auburn City Council, which tabled the item. At this time, therefore, Auburn has taken no action.

Given this, we have several options. We can defer any action pending a decision by the City of Auburn or we could proceed to appoint a Lewiston Committee to operate either independently or in concert with an Auburn Committee, if created.

If the Council is interested in appointing a Lewiston committee, I would recommend that it receive a more limited initial charge than what was initially suggested in Auburn per the attached Auburn resolve. That charge would be to undertake a review of all existing pertinent documents and information and to present a summary of that information to the City Council along with identifying any additional information, studies, or work that should be done to fill any information gaps or address unanswered questions. Based on this initial report, the Council could then decide how to proceed.

Holly C. Lasagna, Ward One
Robert P. Hayes, Ward Two
Andrew D. Titus, Ward Three
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five
Belinda A. Gerry, At Large
David C. Young, At Large

Jason J. Levesque, Mayor

CITY COUNCIL

RESOLVE 03-03042019

Whereas the Mayor has formed an Ad Hoc Committee on Water Quality to address the feasibility and advantages to building a water filtration plant for Lake Auburn and the ability of current programs and efforts to maintain the existing filtration waiver, including the following activities:

- Gather information on the current quality of Lake Auburn water and issues that pose a threat to future water quality, such as taste and odor;
- Investigate any and all alternative sources of water supply;
- Provide a best estimate as to the length of time the existing filtration waiver is likely to be maintained;
- Develop a concept plan for a water filtration plant with an estimate of construction and operating costs;
- Develop financial pro-formas, including estimates of the impact on water rates for additional non-filtration efforts, as well as constructing and operating a water filtration plant, and for using other alternative sources of water;
- Investigate potential sources of funding;
- Undertake an economic analysis to evaluate the cost/benefit of a water filtration plant, including the level of development that might be supported and the cost of additional municipal services to support such development and the extent to which new tax revenues would offset these costs;
- Recommend a preferred alternative.

Whereas the Ad Hoc Committee will have regularly scheduled meetings for a period not to exceed 6 months.

Whereas the Ad Hoc Committee will need to be supported by City Staff in order to accurately and efficiently bring forth proposed changes to the City Council for deliberation and possible action, and be provided documents and reports relating to its work.

It is hereby ordered that the City Manager delegate appropriate staff time and resources to the formation of the Mayors Ad Hoc committee, as well as the ongoing support of the committee once it has been formed, comparable to staff time and resources delegated to past Ad Hoc Committees for a period of time not to exceed 6 months.



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor and City Council
FROM: David Hediger, Director of Planning and Code Enforcement
DATE: March 7, 2019
RE: Discussion regarding medical and adult use marijuana uses

On December 4, 2018, the Council adopted language amending the Code of Ordinances, Article XV, Medical Marijuana – Distribution and Cultivation, to remove references to registered dispensaries and clarify that the city has not opted in under state law to authorize registered caregiver retail stores, registered dispensaries, marijuana testing facilities, or marijuana manufacturing facilities. That action resulted in only registered caregiver grow operations (up to 30 mature plants) being allowed as a permitted use in four zoning districts: Highway Business, Office Service, Industrial, and Urban Enterprise. Any registered caregiver retail stores currently existing are now legally nonconforming (i.e. grandfathered).

At the December meeting, Councilors made clear their desire to continue the discussion of where and what type of marijuana operations should be allowed in Lewiston. At the Council workshop on February 12, 2019, staff recommended regulating medical marijuana and adult use marijuana similarly. Adult use marijuana and medical marijuana are governed by two separate statutes, the Adult Use Marijuana Act (28-B M.R.S. §§ 101-1504) and the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B). While each statute contains distinct language on local authority to regulate marijuana use and distribution for each particular purpose, staff is proposing the two uses be regulated similarly from a local zoning, licensing, and performance standards perspective.

What may municipalities regulate?

Municipalities may regulate adult use marijuana establishments locally. This includes cultivation facilities, products manufacturing facilities, testing facilities, and stores. Cultivation facilities are further divided into four tiers based on the square footage of plant canopy. There is also a fifth category of cultivation facility called a “nursery cultivation facility.” Nurseries may only cultivate up to 1,000 square feet of plant canopy, but they are authorized to sell immature plants, seedlings, and seeds directly to consumers without a separate store license. Municipalities may regulate home cultivation, but may not generally prohibit, zone, or license the activity.

Municipalities may regulate medical marijuana establishments locally. This includes registered caregiver retail stores, registered dispensaries, marijuana testing facilities, or marijuana manufacturing facilities. Municipalities cannot prohibit or limit number of caregivers.

Municipalities may not allow a marijuana store licensee that is also a registered caregiver or a registered dispensary to sell or offer for sale to consumers adult use marijuana and adult use marijuana products within the same facility or building in which the licensee also sells or offers for sale to qualifying patients marijuana and marijuana products for medical use pursuant to the Maine Medical Use of Marijuana Act, pursuant to 28-B M.R.S. §504.5

Recommendations for the council’s consideration

Definition Recommendations

Adult use and medical marijuana should be regulated similarly. Staff is recommending medical marijuana and adult use marijuana establishment be subject to the same local licensing, zoning, and performance standards. At this time, we do not believe there needs to be a distinction between the two uses, other than drafting definitions that reference the specific state statute definitions contained in the Adult Use Marijuana Act (28-B M.R.S. §§ 101-1504) and the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B).

Adult Use Marijuana Act Use Groups	Medical Use of Marijuana Act Use Groups	Proposed Lewiston Ordinance Use Groups
Cultivation facilities	Not defined	Marijuana cultivation facility
Manufacturing facilities	Marijuana manufacturing facilities	Marijuana manufacturing facility
Testing facilities	Marijuana testing facilities	Marijuana testing facility
Stores	Caregiver stores	Marijuana store
Nursery cultivation facilities	Not defined	Marijuana nursery
Not defined	Dispensaries	Marijuana dispensary

Zoning District Recommendations

Zoning districts must be reviewed for suitability of marijuana uses. Staff has identified the following zoning districts as possibly appropriate for the marijuana use groups noted above:

- Districts in which the city currently permits industrial and light industrial uses are to be considered for cultivation, manufacturing, testing, nurseries, and dispensaries: Industrial, Urban Enterprise, Mill, Highway Business and Office Service.
- Marijuana stores are to be considered in those districts that currently permit retail uses: Riverfront, Community Business, Highway Business, Centreville, Urban Enterprise and Mill. Staff does not recommend including the Downtown Residential or Neighborhood Conservation “B” districts, which currently allow retail uses, since the majority of uses in these districts are residential.

Performance Standards Recommendations

Establishing performance standards is really where the City may establish requirements to ensure marijuana business activity is conducted in a safe and fair manner for the health, safety, and welfare of the community. The following are standards are being recommended:

- Odor: demonstrate and ensure all uses are adequately 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

- off-site of the premises that are under the custody or control of the establishment or create odor that is a public nuisance at common law.
- Require that all use groups must be located within fully enclosed permanent structures.
 - Locational requirements:
 - Require 1000' setbacks from schools, religious facilities, daycare facilities, child nurseries, and city owned parks and open space. This setback is consistent with areas the city has identified having significant concentrations of children existing under city ordinance 54-8 "Public drinking of alcoholic beverages prohibited" and 54-9 "Designation of Drug-Free "Safe Zones". Required setbacks shall be measured as the most direct, level, shortest, without regard to the intervening structures or objects, straight-line distance between the school property line and the outer wall of the space occupied by the business.
 - Require 300' setbacks from any legally existing nonconforming or conforming residential uses and/or from any residential zoning districts, either in existence prior to the establishment of the business or which could be legally established thereafter. This provision and setback is similar that that required of adult business establishment and drinking places.¹
 - The minimum distance between a marijuana store, nursery, and/or dispensary and any two other marijuana stores, nurseries, and/or dispensaries in the same or adjoining zoning district shall be 500 feet for businesses located in any other district as measured along the ordinary course of travel between the main entrances of each premises.
 - More than one Marijuana Business (Store and/or Cultivation Facility and/or Manufacturing Facility and/or Testing Facility) may be co-located and operated within the same building, structure, or portion thereof, as long as all ordinance and application requirements are met, and the establishment is not being operated as a collective.
 - Limit the size of businesses and stores.
 - Limit the hours of operation.
 - Drive-through and home delivery: Marijuana stores and marijuana dispensaries are prohibited from having drive-through pick-up facilities. Marijuana retail stores are prohibited from providing home delivery services; provided, however, that medical marijuana registered caregivers (and not medical marijuana assistants unless they are also medical marijuana registered caregivers) may provide home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.
 - Security: Ensure sufficient and appropriate security measures are in place and operating at all times to include, at a minimum, the following:
 - a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week, with thirty (30) day video storage, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises; and
 - b. Door and window combination video and motion detector intrusion system with

¹ We are currently in the process of mapping these exclusion zones to determine their impact. Based upon what that mapping shows, we may need to revisit the proposed distances.

audible alarm and smart phone monitoring, maintained in good working condition; and

- c. A locking safe permanently affixed to the premises that is suitable for storage of all marijuana, marijuana products, and cash stored overnight on the licensed premises; and
 - d. Exterior lighting that illuminates the exterior walls of the licensed premises from dusk to dawn that is either constantly on or activated by motion detectors and designed and shielded to avoid undue adverse impact on neighboring properties and rights-of-way.
 - e. Deadbolt locks on all exterior doors and any other exterior access points, excepting windows which shall have locks and bars; and
 - f. Methods to ensure that no person under the age of twenty-one (21) shall have access to marijuana and marijuana products.
- Signs: All signs used by and all marketing and advertising conducted by or on behalf of the marijuana business may not involve advertising or marketing that has a high likelihood of reaching persons under 21 years of age or that is specifically designed to appeal particularly to persons under 21 years of age. The signs, marketing, or advertising is prohibited from making any health or physical benefit claims. All signage shall meet the City's sign ordinance requirements and may use an image or images of the marijuana plant or plants, or parts thereof, as long as they do not exceed 20% of the sign face, but there shall be no pictorial representations of other marijuana products, by-products, or paraphernalia associated with the use or distribution of retail marijuana. The exterior of all marijuana businesses shall display a 1' x 1' image of any universal symbol for Medical Marijuana or adopted by the State's Department of Administration and Financial Services.
 - Adopt criteria that will automatically disqualify an applicant from obtaining a local license, including:
 - Felony conviction within the past 10 years;
 - Misdemeanor convictions (or equivalent local ordinance violations) involving a controlled substance, dishonesty, theft, or fraud within the past 5 years;
 - Knowingly submitting an application that contains false information;
 - Failure to demonstrate the ability to maintain adequate premises liability and casualty insurance;
 - Failure to meet other criteria established by the State;
 - Tax delinquency issues at the local, state, or federal level.

Fee structure recommendations

The current license application fee in Lewiston is \$550 annually. Given the unforeseen number of existing establishments and the potential for more, as well as the amount of time and resources involved by various departments in processing and inspecting establishments (i.e. clerks, police, fire, planning/code enforcement) there is a justifiable need to increase the fee. Fees for consideration include:

- Marijuana Store: Annual Operation Permit/License Fee: \$1,500
- Marijuana Manufacturing Facility: Annual Operation Permit/License Fee: \$1,000
- Marijuana Testing Facility: Annual Operation Permit/License Fee: \$500
- Marijuana Cultivation:
 - Tier 1: 250 to 500 SF of plant canopy: Annual Permit/Licensing Fee: \$1,000.

- Tier 2: 501-2,000 SF of mature plant canopy: Annual Permit/License Fee: \$1,500.
- Tier 3: 2,001-7,000 SF of mature plant canopy: Annual Permit/License Fee: \$2,500.
- Tier 4: 7,001-20,000 SF of mature plant canopy: Annual Permit/License Fee: \$5,000.
- Nursery Cultivation: Cultivation of not more than 1,000 SF of plant canopy in compliance with 28-B M.R.S. §501.3: Annual Permit/License Fee: \$1,500 (Plant canopies of individual Nursery Cultivations are permanently capped at 1,000 SF.)
- Dispensary: Annual Operation Permit/License Fee: \$1,500

Exemptions

Each person of 21 years of age or older who is domiciled at that parcel or tract of land is not subject to the above referenced provisions, whether growing as a primary caregiver for themselves and or for their personal adult use as allowed per state law, as long as cultivation is located within fully enclosed structures and any odor from marijuana plants or other marijuana products will remain confined within the premises and not be detectable off-site of the premises that are not under the custody or control of the establishment or create a public nuisance at common law.

Additional provisions will need to be considered with respect to license application requirements, nonconformance provisions for existing operations, appeal provisions, etc. Review of any ordinance drafted by the city attorney must also occur. However, at this time, staff is looking for direction from the council on how they would like staff to proceed with the above referenced recommendations



CITY OF LEWISTON

Department of Planning & Code Enforcement

TO: Mayor Bouchard and the Lewiston City Council

FROM: Douglas Greene, AICP, RLA; Deputy Director/City Planner

DATE: March 12, 2019

RE: A Discussion of Sober Houses

1. Existing Regulations for Addiction and Recovery Facilities

The opioid epidemic has wreaked havoc on the communities of Maine and created a huge need for treatment and recovery. Individuals seeking to break their addiction hopefully can receive addiction treatment, which can then be followed by an addiction recovery process. Until recently, the City of Lewiston addressed (through licensing and/or land use regulations) addiction recovery/treatment facilities as professional offices specializing in the care, treatment, and/or rehabilitation of persons suffering with addictions and *Outpatient Addiction Treatment Clinics*. Other uses such as Group Care Homes (over 8 persons) and Community Living Arrangement (under 8 persons) may provide intellectual or substance abuse assistance in a residential setting. All these facilities must be licensed by the State of Maine. The following summary describes in more detail Lewiston's existing licensing and land use regulations governing Addiction and Recovery Facilities.

A. *Group care facility* means a boarding care facility **for more than eight (8) individuals** wherein children under eighteen (18) years of age or adults over sixteen (16) years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Uses within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes but do not include foster family homes. Group homes provide, in a protective setting, 24-hour non-nursing supervision of individuals with intellectual disabilities, substance abuse disorders, or persons with related conditions. Facility staff assumes the coordination of habilitation, health and rehabilitation services in order to assist each individual in reaching his/her maximum level of functioning capabilities.

A *Group Care Facility* must be licensed with the city (Code of Ordinances, Chapter 22, Business Licenses) and is also regulated by the zoning ordinance as a conditional

use (requires Planning Board or Board of Appeals approval) in 2 zoning districts and as a permitted use in 10 zoning districts.

B. *Community Living Arrangement* is found as within the definition of *Dwelling* (Single Family attached or detached). A *Community Living Arrangement* has been defined as a housing facility for up to 8 persons with disabilities that is approved or certified by the State. *Community Living Arrangements* includes group homes, foster homes or intermediate care homes. Per the Fair Housing Act and state law, municipalities must allow these facilities as a matter of right wherever single-family uses are allowed as long as there are no more than 8 persons.

C. Outpatient Addiction Treatment Clinics

Lewiston regulates Outpatient Addiction Treatment Clinics through the City's Code of Ordinances, Chapter 22, Business Licenses. These clinics provide a program or facility operated for the purpose of and specializing in the care, treatment and/or rehabilitation of persons suffering with addictions and which is certified to dispense medication to clients. The Outpatient Addiction Treatment Clinics licensing regulation (Article XIV) goes into great detail and contains: a purpose statement, definitions, application requirements, administration and approval (planning board recommendation and city council approval), locational criteria, screening requirements, meetings with the chief of police, non-conforming uses and penalties.

D. Other important factors to consider in Addiction and Recovery Facilities:

- Group Homes, Community Living Arrangements and Outpatient Addiction Treatment Clinics all require State approval, certification and licensing.
- All of the persons involved in Addiction and Recovery are considered disabled as per the American's with Disabilities Act (ADA).
- All the facilities mentioned above must comply with the Fair Housing Act (FHA), which generally requires a community to make reasonable accommodations for disabled persons.

2. Sober Houses

Across the country, another Addiction Recovery model has emerged -- **the Sober House**. What is a Sober House? A Sober House, also frequently called an Alcohol and Drug Free House, is defined as "A business operated on a residential premises tailored for people in recovery from substance abuse disorders that may or may not be occupied under the definition of a family as defined by the Zoning Code and that is not a state-licensed housing facility."

Last year, Journey House, (a Sober House) opened at 77 Oak Street. The opening of Journey House raised a number of land use and fire code questions and concerns.

- Sober Houses are not regulated by the State of Maine at this time.

- Does a Sober House have the same land use as a single family dwelling? (see Community Living Arrangement)
- Does establishing a Sober House require a change of use permit?
- Do the ADA and FHA regulations preclude the City from making licensing and inspection requirements or land use regulations that might limit Sober Houses?
- Does the City have the right to license and inspect Sober Houses?

At the local level, Sober Houses are being operated primarily in single family homes with residents having to follow strict house rules that may include drug testing and no drugs or alcohol. Residents work together in a group support setting under the direction of a Sober House operator. Sober Houses are established by the owners/operators with the premise of having a legal right to operate under ADA disability rights without discrimination. Typically, a single family home can be purchased and a Sober House established without any special approvals or public notice. Essentially, they function similar to a lodging house without licensing requirements. Sober Houses have generated opposition from nearby residents who claim their property values are being reduced and public safety issues raised without the benefit of a public hearing process. It is important to note that the neither the State of Maine or the City have an established licensing program for Sober Houses, that there are no requirements that counseling services or assistance be provided, and that there is no real oversight of their operations.

3. Legal Issues of Regulating Sober Houses (Recovery Facilities)

Across the country, courts have ruled that individuals recovering from addiction are considered to have a disability and are protected by the American's with Disabilities Act (ADA) and the Fair Housing Act (FHA). Some municipalities have responded to Sober Houses by attempting to regulate them using local government's police power (zoning and land use code); however, that police power is preempted by the concept of reasonable accommodations as set out in the ADA and FHA laws.

"Sources of protections for Sober Living Operators are the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) and the federal Rehabilitation Act (RA). The rights of substance abusers to live in supportive housing in residential areas is protected by the FHA, ADA and RA only if the residents qualify as "handicap" or "disabled" and for FHA purposes, also that the premises qualifies as a "dwelling". Under the FHA, illicit discrimination occurs when a township refuses "to make reasonable accommodations in rules, policies and practices, or services when such accommodations may be necessary to afford a handicapped (disabled) person equal opportunity use and enjoy a dwelling."1

1 Regulation of Sober Living Houses Presentation, Maddren Law Office, slides 2 and 4.

4. What's next?

The Staff has looked for other communities that have addressed the complexities of Sober Houses. Last year, the City of Sanford passed an ordinance that requires the licensing and inspection of Sober Houses (they call them Alcohol and Drug Free Housing).²

Some of the basic premises and purposes of Sanford's ordinance are:

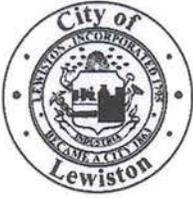
1. Reasonable accommodation must be made for people with disabilities.
2. In all cases, renting housing to another person requires a license.
3. All housing must meet the Property Maintenance Code, Fire Code, Zoning Code, and other building codes.
4. Limiting proximity of licenses of the same kind is reasonable to prevent exploitation of people and lessen negative impacts to the community and the facility. (Sober Houses must be 500 feet from another Sober House)
5. Protect the residents living in those living situations from exploitation.
6. Maintain adequate health and safety standards for protection of residents and neighbors.
7. Ensure adequate fire, police, and emergency response; and
8. Facilitate appropriate emergency response for residents who may require special assistance during an emergency.

5. Conclusion:

Addiction is having a severe, detrimental impact on Lewiston and the rest of the country. As new methods emerge to combat this epidemic, we need to continue to support the treatment and recovery of addicted individuals. That, however, does not preclude the need for the City to protect residents from life safety issues or possible exploitation due to a lack of oversight. Laws have been passed that protect disabled persons and to provide them with reasonable accommodations. Any new licensing requirements or land use regulations should be considered very carefully. Licensing seems to be a reasonable method to protect public safety while not infringing on the rights of disabled persons.

Additional information is attached with this memo and the Staff invites the City Council to discuss this issue in greater detail as needed.

² See Attached Sober Supplemental Information for the complete ordinance



CITY OF LEWISTON

Department of Planning & Code Enforcement

Sober House Supplemental Information

1. Lewiston's Existing Land Use Regulations for Addiction and Recovery Facilities-

- a. Land Use Regulations- the zoning ordinance regulates *Group Care Facilities* and *Community Living Arrangements*. Alcohol and drug recovery/treatment facilities have been defined and regulated in the Zoning Ordinance as either *Group Care Facilities* (over 8 persons and licensed by the State) or *community living arrangements* (under 8 persons). In both cases, these uses are licensed by the State of Maine. As of today, Sober Houses are not licensed by the State of Maine.
- b. *Group care facility* means a boarding care facility **for more than eight (8) individuals** wherein children under eighteen (18) years of age or adults over sixteen (16) years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Uses within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes but do not include foster family homes.

A *Group Care Facility* is limited where they can be located by the zoning ordinance as a conditional use (requires Planning Board or Board of Appeals approval) in the Medium Density Residential district (MDR), Neighborhood Conservation "B" district (NCB), and is a permitted use in the Riverfront district (RF), Office Residential district (OR), Downtown Residential district (DR), Institutional Office district (IO), Community Business district (CB), Highway Business district (HB), Centreville district (CV), Office Service district (OS), Urban Enterprise district (UE) and Mill district (M). A Sober House would not be regulated as a Group Care Facility due the different number of residents and the lack of State Licensing.

- c. *Community Living Arrangement* is found within the definition of *Dwelling* (Single Family attached or detached). Community Living Arrangement is a dwelling or housing facility for up to 8 persons with disabilities that is approved, certified or licensed by the State. Community Living Arrangements includes group homes, foster homes or intermediate care homes.

Dwelling means any building or structure or portion thereof designed or used for residential purposes.

- (1) *Single-family detached dwelling*. A structure having a length to width ratio of less than four (4) to one (1), and a minimum horizontal dimension at its narrowest point of at least sixteen (16) feet and containing only one (1) dwelling unit occupied by not more than one (1) family. If a dwelling otherwise meets these criteria, a single-family

detached dwelling is deemed to include a dwelling occupied by a group of individuals housed within a "community living arrangement" which is a housing facility for eight (8) or fewer persons with disabilities that is approved, certified or licensed by the State of Maine. A community living arrangement may include a group home, foster home or intermediate care facility. A single-family detached dwelling shall not include mobile homes as defined herein, but shall include any other manufactured housing meeting these criteria.

- (2) *Single-family attached dwelling.* A building containing single-family dwelling units each with two (2) or more vertical fire separation walls, or one (1) vertical fire separation wall in the case of a dwelling unit at the end of a group of attached units; which have no dwelling units above or below them; and which have no common hallways. If a dwelling otherwise meets these criteria, a single-family attached dwelling is deemed to include a dwelling occupied by a group of individuals housed within a "community living arrangement" which is a housing facility for eight (8) or fewer persons with disabilities that is approved, certified or licensed by the State of Maine. A community living arrangement may include a group home, foster home or intermediate care facility.

* Note that both Group Care Facilities and Community Living Arrangements must be approved, certified and licensed by the State. This is not the case for Sober Houses.

2. Lewiston's Business Licensing Regulations for Addiction and Recovery Facilities-

- a. Licensing- The City's Code of Ordinance, Chapter 22, Business Licenses regulates Addiction and Recovery Facilities by requiring licenses for Outpatient Addiction Treatment Clinics and Group Care Facilities. The Outpatient Addiction Treatment Clinics licensing regulation goes into great detail and contains:
- a purpose statement
 - definitions
 - application requirements
 - administration and approval (planning board recommendation and city council approval)
 - locational criteria
 - screening requirements
 - meetings with the chief of police
 - non-conforming uses and
 - penalties

Group Care Facilities require a license but does not have a special section in the Code of Ordinances for Licensing and must also be approval by the Planning Board.

- b. The entire Code of Ordinance section for Outpatient Addiction Treatment Clinics is found below:

ARTICLE XIV. OUTPATIENT ADDICTION TREATMENT CLINICS

Sec. 22-410. Purpose.

The city council recognizes that an outpatient addiction treatment clinic can be a valuable component of our health care system. The city council also recognizes that the appropriate siting of such clinics, including restricting their proximity to schools, churches, family day care homes, small day care facilities, day care centers, and public parks and play grounds as well as other locations where children and other young adults may frequent is important in order to protect the public. In addition, the city has devoted substantial resources and made significant efforts to attract retail and commercial development in the Southern Gateway Development District, South Lewiston Retail Growth District, and Western Gateway Development District. The city council finds that it is in the best interests of the city to protect areas where efforts are currently being made to stimulate new business investment, and encourage focused and planned economic growth, which includes the districts identified above. Siting of outpatient addiction treatment clinics in these areas could detract from these efforts. Proper siting will also work to minimize potential adverse law enforcement impacts and overburdening of police and rescue resources. The city council finds that with the reasonable and necessary siting restrictions listed herein, there remain sufficient suitable areas within the city to site outpatient addiction treatment clinics. Licensing of these facilities will enhance community relations with the providers of such clinics and will establish lines of communications with the clinics. Licensing of these facilities is appropriate and consistent with the city's policies and practices to review and license business activities that impact its citizens. The licensing is not meant to duplicate the licensing done at the state level pursuant to 14-118 CMR Ch. 4 *Regulations for Licensing/Certifying Substance Abuse Treatment Programs in the State of Maine*, but to provide separate and additional requirements as necessitated by the above findings.

(Ord. No. 06-06, 5-4-06)

Sec. 22-411. Applicability.

This article shall apply to any outpatient addiction treatment clinic which is located within the city.

(Ord. No. 06-06, 5-4-06)

Sec. 22-412. Definitions.

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

Church means a building, together with its contiguous accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Day care center means a building, structure or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of the day providing protection and child care for more than 12

children under 13 years of age, who are unattended by parents or guardians for any part of the day, and which holds all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Family day care home means child care for three to 12 children under 13 years of age (not related by blood or marriage to, or legal wards of the operator, or foster children living in the private family residence (i.e. dwelling unit) serving as the day care home) who are unattended by parents or guardians for any part of the day. A family day care home shall be operated by a person who is domiciled and a resident within the private family residence, and who is the holder of all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Outpatient addiction treatment clinic means a program or facility operated for the purpose of and specializing in the care, treatment and/or rehabilitation of persons suffering with addictions, that is certified to dispense medication to clients under 42 Code of Federal Regulations, Part 8.

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.

South Lewiston Retail Growth District. The area identified as a special retail growth area by the Lewiston City Council, which includes the contiguous land area defined in a map entitled (South Lewiston Retail Growth District), dated February, 2006 and kept on file with the Lewiston City Clerk.

Southern Gateway Development District. The land area identified as per appendix A, article XVI, section 2 of this Code.

Small day care facility means child care for three to 12 children under 13 years of age who, are unattended by parents or guardians for any part of the day, in a nonhome setting. Small day care facilities shall not be operated within a private family residence (i. e. dwelling unit).

Western Gateway Development District. The land area identified as per appendix A, article XVI, section 3 of this Code.

(Ord. No. 06-06, 5-4-06; Ord. No. 17-07, 7-20-17)

Sec. 22-413. Application requirements.

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 and contact information including a phone number of the applicant and all other persons having a legal interest in the clinic and property and the individual(s) hired by the applicant to manage operation of the facility, if any.
- (2) The location of the premises for which a license is sought by identification of city tax map number and street address.

- (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:
- (5) The boundary lines of the property for which a license is sought.
- (6) The location of all existing and proposed buildings and structures.
- (7) The location of all existing and proposed parking areas and walkways and any other site improvements.
- (8) The location and characteristics of all existing and proposed vegetation which is proposed to be maintained for required screening.
- (9) The location and characteristics of all existing and proposed fencing proposed to be maintained for required screening.
- (10) A site location map at a scale of not greater on 1" to 100' showing all adjoining residential uses and any schools, churches, family day care homes, small day care facilities, day care centers and public parks and play grounds.
- (11) The location and characteristics of all vehicular entrances and exits serving the property.
- (12) A detailed description of the proposed outpatient addiction treatment clinic to include the following: population to be served, client services, methods of treatment, identification of controlled substances to be kept on site, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, etc.
- (13) Identification of any other approvals required the City of Lewiston, by any state agency or department or of any federal agencies.
- (14) A nonrefundable application fee in accordance with the city's policy manual as approved by the city council and an original and 15 copies of the license application and all supporting documentation.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

Sec. 22-414. Administration.

- (a) *City council review.* License applications for outpatient addiction treatment clinics shall be filed with the city clerk and the clerk will order a background check from the police department 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. If the application is deemed to be complete, the application will be forwarded to the planning board for a recommendation regarding the location requirements contained in this article. In the event that development review approval is required pursuant to appendix A, article XIII of this Code, the planning board shall not provide a recommendation to the city council until it

conducts a site plan review hearing on the proposed clinic.

- (b) *Planning board recommendation.* Once the city clerk receives the recommendation from the planning board, the clerk shall schedule public hearings for the city council to consider the request to establish the proposed outpatient addiction treatment clinic. The city council shall conduct two public hearings on the application for a license to allow adequate time for public comment and review.
- (c) *Conditions of license approval.* The city council may impose conditions on the approval of any license application 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:
 - (1) That the applicant provide 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 clinic operations.
 - (2) 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.
 - (3) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board upon development review, shall be installed, completed and approved by staff prior to the issuance of any license under this article.

(Ord. No. 06-06, 5-4-06)

Sec. 22-415. Location criteria.

Applicants for licenses must demonstrate to the satisfaction of the city council that all of the standards contained in this section are met in order to approve a license to operate an outpatient addiction treatment clinic.

- (1) *Location criteria.*
 - a. No clinic may be located within 1,000 feet of any church, school, family day care home, small day care facility, day care center, or public park or playground.
 - b. No clinic may be located within the bounds of the following revitalization and/or growth areas: South Lewiston Retail Growth Area, Southern Gateway, and the Western Gateway.
- (2) *Neighborhood compatibility standards.* No license shall be approved if the city council finds that the granting of the license would violate one or more of the following neighborhood compatibility standards:
 - a. Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the value or quiet possession of surrounding properties. The city council

may not find that this standard is satisfied unless it finds that:

1. The size of the proposed use is comparable to the size of surrounding uses;
 2. The amount and type of traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces are comparable to surrounding uses;
 3. The generation of noise, dust, odor, vibration, glare, smoke, litter and other nuisances is comparable to that generated surrounding uses;
 4. The impact of the use on the quality and quantity of groundwater available to abutting properties is comparable to that for surrounding uses;
 5. Unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, do not aggravate adverse impacts upon surrounding properties.
- (3) Vehicular and pedestrian access and circulation to, from, into and within the site will be safe and no public way will be overburdened or made hazardous as a result of the new use of and/or development of the property. The city council may not find that this standard has been satisfied unless it first finds that:
- a. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Adequate capacity means that: Intersections on major access routes to the site within a one-half mile radius of any entrance road will function after development at a minimum at Level of Service C, as defined in Maine Department of Transportation regulations, 17-229 C.M.R. Ch. 305, *Rules and Regulations Pertaining to Traffic Movement Permits* (2000); or
 - b. If any such intersection is functioning at a Level of Service D (as defined in MDOT regulations Chapter 305, cited above) or lower prior to the development, the project will not reduce the current level of service. The city council may approve a license for an application not meeting this requirement if the applicant demonstrates that: A public agency has committed funds to construct the improvements necessary to bring the level of access to said standard, or the applicant will assume financial responsibility for the improvements necessary to bring the level of service to said standard and will guarantee the completion of the improvements within one year of approval of the license.
- (4) The topography of the site shall permit the construction of all driveways, entrances or proposed streets to meet the standards set forth in appendix A, article XIII, subsection 4(c) of this Code.
- (5) Adequate facilities are present to assure the safety of pedestrians passing by or through the site.

- (6) Municipal or other facilities serving the proposed use will not be overburdened or made hazardous. The city council may not find that this standard is satisfied unless it finds that: The capacity of sewerage and water supply systems is adequate to accommodate the proposed use; the capacity of the storm drainage system is adequate to accommodate the proposed use; and the ability of the fire department to provide necessary protection services to the site and development is adequate.
- (7) The soils on the proposed site shall have adequate capacity and stability to support all loadings, including fill, developed by the proposed use and the use will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water to the extent that a dangerous or unhealthy condition may result on the site or upon the land of abutters. In considering whether this standard is satisfied, the city council shall take into account the elevation above sea level of the site and surrounding properties, its relation to floodplains, the slope and vegetation of the land and their effects on drainage.
- (8) The scale and design of the proposed structures with respect to materials, scale and massing shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

(Ord. No. 06-06, 5-4-06)

Sec. 22-416. Screening requirements.

All clinics 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. Said fencing is to screen the clinic entrance and parking lot from ordinary view from all directly adjoining properties.

(Ord. No. 06-06, 5-4-06)

Sec. 22-417. Meetings with the chief of police.

Meetings will be conducted at the clinic, held at the discretion of the chief of police, to allow the applicant and city staff the opportunity to discuss issues with the chief of police and or his designee. The purpose of said meetings is to establish a good working relationship between the police department and the owner and operators of clinics.

(Ord. No. 06-06, 5-4-06; Ord. No. 15-12, 11-19-15)

Sec. 22-418. Nonconforming uses.

Any outpatient addiction treatment clinic in lawful existence on the effective date of this article may remain in operation in its present location for 12 months following the effective date of this article. Thereafter, such clinics shall be required to comply with all the provisions of this article except the location and screening requirements set forth in sections 22-415 and 22-416 *supra*.

(Ord. No. 06-06, 5-4-06)

Sec. 22-419. 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 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 in accordance with the provisions of section 22-44 of this chapter.
- (3) *Civil penalties.* A violator may be required to pay the penalties imposed by section 1-8 of 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.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

- c. Group Care Facility is defined in the Code of Ordinance, Chapter 22, Business Licenses as follows:

Group care facility means a boarding care facility for more than eight individuals wherein children under 18 years of age or adults over 16 years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Group care facilities within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes, but do not include foster family homes.

3. City Sanford- Licensing Regulation for Sober Houses (Alcohol and Drug Free Housing)

AN ORDINANCE REGULATING ALCOHOL AND DRUG FREE HOUSING

CHAPTER 149: LICENSING- ALCOHOL AND DRUG FREE HOUSING

§ PURPOSE.

The regulation of businesses that provide living facilities for people in recovery from substance abuse disorders is necessary in order to protect the public health, safety, and welfare and:

- (1) Protect the residents living in those living situations from exploitation;
- (2) Maintain adequate health and safety standards for protection of residents and neighbors;
- (3) Ensure adequate fire, police, and emergency response; and
- (4) Facilitate appropriate emergency response for residents who may require special assistance during an emergency.

§ APPLICABILITY.

This article shall apply to all businesses operating alcohol and drug free houses that are not licensed by the State of Maine.

§ EXCEPTIONS.

A license shall not be required under this license category from State-licensed community living facilities, supported living arrangements, or nursing homes.

§ DEFINITIONS.

In general, all words, phrases, and terms used in this article shall have their customary and usual meanings; as used in this article, the following words, phrases, and terms shall have the meaning indicated.

Alcohol and drug free house. A business operated on a residential premises tailored for people in recovery from substance abuse disorders that may or may not be occupied under the definition of a family as defined by the Zoning Code, as a community living facility for eight or fewer people residing at that premises and that is not a state-licensed housing facility. An alcohol and drug free house is also known as a sober house or recovery house.

Operator. The lawful owner of an alcohol and drug free house or a person, firm, or corporation employed and designated by the owner to have primary responsibility for the daily operation of such house and for maintaining standards and conditions in such house that create an environment supportive of substance use disorder recovery. The operator may be a resident of the alcohol and drug free house.

§ LICENSE REQUIRED.

No person, firm, or corporation may operate an alcohol and drug free house until such person, firm, or corporation first obtains a license for such purpose from the City. Licenses under this article shall not be issued unless the City Clerk receives affirmation from the Inspection Team, that the applicant's proposed operation meets all applicable requirements. Any person carrying out such activity without a license is in violation of these provisions. Failure to comply with any of these requirements shall be deemed in violation of this article and is adequate grounds for the denial, revocation, or suspension of a license.

§ PROCEDURE AND FEES

License applications under this article shall be processed according to the procedures established in this article and Chapter 149, Licensing. A license may be issued after the fee required has been

paid through the City Clerk's Office. The fee for a license shall be established under Chapter 149, Licensing, §149-1.3, Fees, of this Code, for alcohol and drug free house.

§ APPLICATION FOR LICENSE

A license application shall be made to the City Clerk by the operator on a form furnished by the City Clerk for such purpose and shall include in addition to any other required information established under Chapter 149, Licensing:

- (1) The name of the applicant (operator), business name, and contact information including name, mailing address, phone number and email address;
- (2) An affidavit from the operator, which shall be a statement of having met the requirements of the section concerning the OPERATOR.
- (3) An affidavit from the owner of the property, which shall state that the owner understands their property is being used for such business activity.
- (4) Copy of the house rules for the facility, demonstrating having met the minimum standards set expressed in this article or documentation of certification by the Maine Association of Recovery Residences.
- (5) The number of residents.

§ ISSUANCE OF LICENSES; CONDITIONS

A license pursuant to this article may only be issued to the operator named and for the address provided on the approved license application. Only one license may be issued for each address and operator named on the approved license application. No transfer of a license is allowed between the names or addresses; any change of ownership or address requires a new license.

§ OPERATOR.

An alcohol and drug free house must be operated or managed by a person, firm, or corporation with at least two years' experience working with people with substance abuse disorders.

§ MINIMUM HOUSE RULES.

An applicant shall provide as documentation with their license application unless providing documentation of certification by the Maine Association of Recovery Residences, a set of house rules or documentation of policies and procedures that state, at a minimum:

- (1) Absolutely no alcohol or non-professionally administered drug use on or off the premises;
- (2) Eviction for failing to submit a urine sample when asked by house staff and for committing or threatening violence;
- (3) No visitors allowed without manager's consent and no guests allowed overnight;
- (4) No borrowing money from staff or other residents;
- (5) Signing-out when leaving and returning to house; and

- (6) Adherence to house curfew.
- (7) Providing residents access to staff 24 hours a day, seven days a week.
- (8) Prohibition against anyone with an outstanding criminal warrant to live there;
- (9) Providing furnished living space to all residents;
- (10) Prohibiting smoking anywhere in the house;
- (11) Emergency procedures.

§ LIFE SAFETY AND PROPERTY MAINTENANCE CODE REQUIREMENTS

- A. The residential premises shall be in compliance with the appropriate chapter(s) of the NFPA 101 Life Safety Code as adopted by reference.
- B. The residential premises shall be in compliance the International Property Maintenance Code as adopted by reference.
- C. The residential premises shall be in compliance with the Zoning Code.

§ CERTAIN LOCATIONS PROHIBITED FROM OBTAINING A LICENSE

No license may be issued to a business location within 500 feet of another business of the same kind.

4. Impacts of Americans with Disabilities Act and the Fair Housing Act on Addictive Recovery Facilities*

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate.

State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes. Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

*Joint Statement of the Department of Housing and Urban Development and the Department of Justice pg. 13