



## City of Caribou, Maine

Municipal Building  
25 High Street  
Caribou, ME 04736  
Telephone (207) 493-3324  
Fax (207) 498-3954  
www.cariboumaine.org

### Caribou Planning Board Regular Meeting Wednesday, December 7, 2016 • 5:30 PM Caribou City Council Chambers

#### AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes
  - a. November 10, 2016 Regular Meeting 2
- III. New Business
  - a. Presentation from Leo Trudell, Executive Director – Safe Alternatives
    - i. Discussion regarding submission of a Site Design Review Application for the operation of a Medical Marijuana Dispensary (Received by City staff on October 27, 2016)
  - b. Discussion of City Council Ordinances 12 & 13, 2016 Series
    - i. Attached are copies of the City Council Agenda Item for 14 November 2016 and copies of the ordinances – adopted on Nov 14<sup>th</sup> and Nov 28<sup>th</sup>
    - ii. Attached – City Ordinance Chapter 7 – Sec. 7-1101-1107 (Pages 428-431)
    - iii. Attached – Background pieces regarding Medical Marijuana & Land Use
      1. Maine Townsman Article – Aug-Sept 2016
      2. APA Zoning Practice Issue No. 8 Marijuana Land Use
- IV. Old Business
  - a. Chapter 13 Revision Process
    - i. Discussion of non-conforming uses and parking requirements
      1. Attached – City Ordinance Chapter 13 – Sec. 13-700 (page 868) Apartments Accessory to Commercial Uses – at the request of PB Member McDonough
- V. Other Business
- VI. Adjournment



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### **Caribou Planning Board Meeting Minutes Thursday, November 10, 2016 @ 5:30 pm City Council Chambers**

**In Attendance:** Matthew Hunter, Philip McDonough III, Todd Pelletier and Michele Smith

**Members Absent:** Phil Cyr, Evan Graves and Robert White

**Others in Attendance:** Jim Chandler –Assistant City Manager & Code Enforcement Officer, Steve Wentworth, Penny Thompson –Tax Assessor & Building Official, citizens Lu and Mike Gagnon and guest presenter Mr. John DeVeau

- I. Call Meeting to Order** – The meeting was called to order at 5:30 pm.
- II. Approval of Minutes**
  - a. September 7, 2016 Regular Meeting** – Todd Pelletier moved to approve the minutes as presented; seconded by Michelle Smith. 4-Yes.
- III. New Business** –
  - a. Public Hearing for the proposed Rezoning of 8 Scenic Drive** – Acting Chair Matthew Hunter opened the public hearing at 5:31 pm. Mr. & Ms. Mike and Lu Gagnon were representing the landowners Bradley and Amy Bouchard, making the request to return the lot to its original zoning of R-1 (which is the abutting zoning district on the eastern property boundary). Public hearing closed at 5:37, with no other individuals present to speak. Motion to approve the rezoning application as presented made by Michele Smith; seconded by Todd Pelletier. 4-Yes.
  - b. Informational Presentation from United Veterans of Maine** – Mr. John DeVeau, president of the organization, provided a handout and made a brief presentation regarding the goal of utilizing grant funds to establish a site for housing homeless veterans. The proposed location is the former Phil's Florist & Greenhouses nursery, located at 358 Washburn. The anticipated project implementation has a six-month timeline that will include the securing of appropriate permits, application for subsidized housing vouchers from the Maine Housing Authority, and Site Design Review Application review by the Caribou Planning Board.
- IV. Old Business** – None.
- V. Other Business** – None.
- VI. Adjournment** – Philip McDonough, III moved to adjourn the meeting at 5:59 pm; seconded by Todd Pelletier. Vote was unanimous.

Respectfully Submitted on behalf absent secretary Robert White by Jim Chandler, Planning/Zoning Director



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**AGENDA  
Caribou City Council  
Regular City Council Meeting  
6:00 P.M. Monday, November 14, 2016  
Caribou City Council Chambers**

1. Public Input
2. Declaration of Conflicts of Interest from the City Council regarding any agenda item.
3. Consent Agenda
  - a) Department Reports 2-8
  - b) License Renewal Applications 9
  - c) Approval of Quit Claim Deed 10
  - d) October 2016 Financials
4. 2017 Budget 11
5. Junk Yard Permits 12
6. Moratorium on Marijuana Dispensaries 13-18
7. New School Project Building Permit 19
8. Zoning Change Request 20-21
9. Other Business

**Upcoming Meeting Dates:**

Regular City Council Meeting Monday, November 28, 2016 at 6pm  
Regular City Council Meeting Monday, December 12, 2016 at 6pm

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OFFICE OF THE CITY MANAGER  
CARIBOU, MAINE

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To: Mayor and Council Members  
From: Austin Bless, City Manager  
Date: November 14, 2016  
Re: Moratorium on Marijuana Dispensaries

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A Site Design Review Application has been submitted for a Marijuana Dispensary, and given the results of the recent election, staff believes a moratorium on marijuana dispensaries is necessary to ensure the city is well positioned to protect the health, welfare, and safety of all citizens.

As such there are two ordinances being proposed tonight. Ordinance number 12 is an Emergency Ordinance as allowed by the City Charter Section 2.13. This ordinance can go into effect immediately after passage by the City Council. Emergency Ordinances are good for 60 days, unless extended by the Council.

Ordinance number 13 is a regular ordinance, stating the same things as the Emergency Ordinance. However, since regular ordinances do not go into effect until 30 days after adoption this ordinance couldn't go into effect until late December.

It is recommended Council approve Ordinance number 12 tonight. It is further recommended that Council introduce Ordinance 13 tonight, and a public hearing will be scheduled for November 28<sup>th</sup> for that ordinance.

Councilor \_\_\_\_\_ introduced the following ordinance:

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Ordinance No. 12, 2016 Series  
City of Caribou  
County of Aroostook  
State of Maine

AN EMERGENCY ORDINANCE REGARDING MARIJUANA DISPENSERIES

The City Council of the City of Caribou, County of Aroostook, State of Maine, pursuant to the requirements of the City of Caribou Charter, Section 2.13 does ordain the following:

**Section 1. Declaration of Emergency:** The City Council declares an Emergency based upon the following items:

- A. A ballot initiative to legalize, regulate and tax marijuana for nonmedicinal purposes known as the “Marijuana Legalization Act” proposed to be codified in the Maine Revised Statutes in Title 7, chapter 417, was voted on and approved by a State-wide referendum election on November 8, 2016; and
- B. The proposed Act authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the proposed Act, as well as the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities within its jurisdiction; and
- C. The unregulated location and operation of retail marijuana establishments and retail marijuana social clubs within the City of Caribou raises legitimate and substantial questions about the impact of such establishments and social clubs on the City, including questions of the compatibility of retail marijuana establishments and social clubs with existing uses and development in residential, commercial and industrial zoning districts; the possible connection of retail marijuana establishments and social clubs with medical marijuana cultivation facilities and dispensaries; the potential adverse health and safety effects of retail marijuana establishments and social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medical purposes and the potential increased burden on the public safety agencies serving the City in responding to the same; and the adequacy of the City’s streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs; and

- D. The possible effect of the location and operation of retail marijuana establishments and/or retail marijuana social clubs within the City has serious implications for the health, safety and welfare of the City and its residents.

**Section 2. Applicability and Purpose:** This moratorium shall apply to Marijuana Dispensary, as defined below, that may be proposed to be located within the City of Caribou on or after the effective date of this Ordinance.

**Section 3. Prohibition:** During the time this Ordinance is in effect, no officer, official, employee, office, board, or agency of the City of Caribou shall accept, process, approve, deny, or in any other way act upon any application for a building permit, certificate of occupancy, site plan review and/or any other permits related for such use. No person or organization shall develop or operate Marijuana Dispensaries within the City of Caribou on or after the effective date of this prohibition.

**Section 4. Enforcement, violation, and penalties:** If Marijuana Dispensaries are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate offense for this purpose. The City of Caribou shall be entitled to all rights available to, but not limited to, it in law and equity, including its reasonable attorney fees and costs in prosecuting any violations.

**Section 5. Definitions:**

As used in this Ordinance, the following terms have the following meanings:

- a. **“Marijuana”** shall have the definition set forth in Title 17-A M.R.S.A. Section 1101 (1).
- b. **“Marijuana Dispensaries”** means one or more marijuana dispensary, facility or location, whether fixed or mobile, where marijuana is made available to or distributed to any person or entity authorized to receive it under Maine Law.

**Section 6. Pending proceedings:** Notwithstanding the provisions of Title 1 M.R.S.A § 302, this Ordinance shall apply to any proposal to establish a Marijuana Dispensary, whether or not an application or proceeding to establish said use would be deemed a pending proceeding under Title 1 M.R.S.A. § 302.

**Section 7. Action by the City Council and Planning Board:** During the effective period of this Ordinance, the Planning Board, City Council and appointed staff, shall expeditiously act to review the implications of such a facility/clinic on, among other things, the health, safety, welfare, traffic, law enforcement, land use, aesthetics, property value, and environmental impacts on the City of Caribou and its citizens. Toward the end of the Moratorium, the City will hold at least one public hearing and receive input from interested parties. The Planning Board and interested parties shall endeavor to submit recommendations for permanent action to the City Council.

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**Section 8. Severability:** Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

**Section 9. Effective date:** This Ordinance shall take effect immediately upon adoption and shall remain in effect for a period of 60 days after said date, unless extended, repealed, or modified by the Caribou City Council.

This ordinance was duly passed by the City Council of the City of Caribou, Maine, this 14<sup>th</sup> day of November 2016.

\_\_\_\_\_  
Gary Aiken, Mayor

\_\_\_\_\_  
David Martin, Councilor

\_\_\_\_\_  
Shane McDougall, Councilor

\_\_\_\_\_  
Timothy Guerrette, Councilor

\_\_\_\_\_  
Philip J. McDonough II, Councilor

\_\_\_\_\_  
Jody Smith, Councilor

\_\_\_\_\_  
Joan Theriault, Councilor

Attest:

\_\_\_\_\_  
Jayne R. Farrin, City Clerk

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Councilor \_\_\_\_\_ introduced the following ordinance:

Ordinance No. 13, 2016 Series  
City of Caribou  
County of Aroostook  
State of Maine

AN ORDINANCE REGARDING MARIJUANA DISPENSERIES

The City Council of the City of Caribou, County of Aroostook, State of Maine, pursuant to the requirements of the City of Caribou Charter, Section 2.11 (7) does ordain the following:

**Section 1. Applicability and Purpose:** This moratorium shall apply to Marijuana Dispensary, as defined below, that may be proposed to be located within the City of Caribou on or after the effective date of this Ordinance. This moratorium is proposed pursuant to 30-A M.R.S.A. § 4356

**Section 2. Prohibition:** During the time this Ordinance is in effect, no officer, official, employee, office, board, or agency of the City of Caribou shall accept, process, approve, deny, or in any other way act upon any application for a building permit, certificate of occupancy, site plan review and/or any other permits related for such use. No person or organization shall develop or operate Marijuana Dispensaries within the City of Caribou on or after the effective date of this prohibition.

**Section 3. Enforcement, violation, and penalties:** If Marijuana Dispensaries are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate offense for this purpose. The City of Caribou shall be entitled to all rights available to, but not limited to, it in law and equity, including its reasonable attorney fees and costs in prosecuting any violations.

**Section 4. Definitions:**

As used in this Ordinance, the following terms have the following meanings:

- a. **“Marijuana”** shall have the definition set forth in Title 17-A M.R.S.A. Section 1101 (1).
- b. **“Marijuana Dispensaries”** means one or more marijuana dispensary, facility or location, whether fixed or mobile, where marijuana is made available to or distributed to any person or entity authorized to receive it under Maine Law.

**Section 5. Pending proceedings:** Notwithstanding the provisions of Title 1 M.R.S.A § 302, this Ordinance shall apply to any proposal to establish a Marijuana Dispensary, whether or not an application or proceeding to establish said use would be deemed a pending proceeding under Title 1 M.R.S.A. § 302.

**Section 6. Action by the City Council and Planning Board:** During the effective period of this Ordinance, the Planning Board, City Council and appointed staff, shall expeditiously act to review the implications of such a facility/clinic on, among other things, the health, safety,

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welfare, traffic, law enforcement, land use, aesthetics, property value, and environmental impacts on the City of Caribou and its citizens. Toward the end of the Moratorium, the City will hold at least one public hearing and receive input from interested parties. The Planning Board and interested parties shall endeavor to submit recommendations for permanent action to the City Council.

**Section 7. Severability:** Should any section or provision of this Ordinance be declared by any court to be invalid, such a decision shall not invalidate any other section or provision.

**Section 8. Effective date:** This Ordinance shall take effect in accordance with the City Charter and shall be effective for 180 days from November 14<sup>th</sup>, 2016 unless extended, repealed, or modified by the Caribou City Council.

This ordinance, being introduced on November 14, 2016 and a public hearing being held on \_\_\_\_\_, was duly passed by the City Council of the City of Caribou, Maine, this \_\_\_\_\_, 2016.

\_\_\_\_\_  
Gary Aiken, Mayor

\_\_\_\_\_  
David Martin, Councilor

\_\_\_\_\_  
Shane McDougall, Councilor

\_\_\_\_\_  
Timothy Guerrette, Councilor

\_\_\_\_\_  
Philip J. McDonough II, Councilor

\_\_\_\_\_  
Jody Smith, Councilor

\_\_\_\_\_  
Joan Theriault, Councilor

Attest:

\_\_\_\_\_  
Jayne R. Farrin, City Clerk

**ARTICLE XI REGISTERED NONPROFIT DISPENSARIES  
AND REGISTERED CULTIVATION FACILITIES**

**Section 1101 Purpose**

The purpose of this Article is to control the issuance of a permit to operate either a Registered Nonprofit Dispensary or Registered Cultivation Facility as may be permitted by the State of Maine and the Caribou Planning Board.

## Section 1102 Permit Required

1. *Operation of a Registered Nonprofit Dispensary or Registered Cultivation Facility:* No Permit or renewal of a Permit may be issued unless the facility is permitted by the State of Maine Department of Health and Human Services and the Caribou Planning Board to be eligible for a Certificate of Occupancy. No facility shall conduct business within the limits of Caribou without first securing a permit from the Municipal Officers of the City of Caribou.
2. *Applications for permit:* Applications for a permit shall be made in writing to the Municipal Officers through the City Clerk's Office and shall state:
  - a. The name of the Nonprofit
  - b. Location and type of Facility
  - c. State License Number
  - d. Copy of complete State of Maine DHHS Application establishing the Nonprofit
3. *Compliance with all laws:* No permit shall be issued unless the Applicant can prove full compliance with all applicable State and Local Ordinances pertaining to the type, operation, and location of the facility or mobile unit to be permitted.
4. *Fee:* A fee of \$500 per location of either a Registered Nonprofit Dispensary or Registered Cultivation Facility shall apply for first time and renewal applications to provide for the cost of advertising, notices to abutters, compliancy checks, and use of administrative time to process.
5. *Public Hearing:* The Municipal Officers shall, prior to granting any permit new or annual renewal, provide for not less than 7 days notice of a public hearing, within 30 days upon the receipt of the application, to receive written and verbal testimony from the applicant and interested members of the public pursuant to the granting of a permit.
6. *Factors in issuing permit:* In granting or denying an application, the Municipal Officers shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
  - A. Conviction of the Applicant of any Class A, Class B, or Class C crime;
  - B. Noncompliance of the licensed Dispensary or Cultivation Facility or its use with any local zoning ordinance or land use ordinance;
  - C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with, or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
  - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

E. Any violation of State Law or Caribou Code directly related to the operation under the provisions of law of the Registered Nonprofit Dispensary or Registered Cultivation Facility.

7. *Term of License:* A permit shall be valid for only one (1) year from the date of first issuance and shall be subject to meeting all requirements as set forth in this Chapter for subsequent renewal.
8. *Annually,* within 30 days prior to the license renewal date; the dispensary shall be inspected by Code Enforcement, Fire Chief and Police Chief to insure that the dispensary is in compliance for Zoning, Fire Safety and Security requirements.

### **Section 1103 Suspension of Revocation of a Permit**

The Municipal Officers may, after public hearing preceded by notice to the Applicant and interested parties, suspend, or revoke any permit issued for the operations of either a Registered Nonprofit Dispensary or Registered Cultivation Facility, which have been issued under this Article, on the grounds that the continued operations of the facility would constitute a detriment to the public health, safety, or welfare, or violates any municipal ordinances, articles, bylaws, or rules and regulations.

### **Section 1104 Rules and Regulations**

The Municipal Officers are hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension and revocation of Registered Nonprofit Dispensaries or Registered Cultivation Facilities permits and other limitations of these operations required to protect the public health, safety and welfare. These rules and regulations may specifically amend the determination of the location and size of permitted premises, the hours during which the permitted activities are permitted, or other operational considerations that would otherwise impact the public's wellbeing.

### **Section 1105 Permit and Appeal Procedures**

1. *Notice of decision.* Any Licensee requesting either a Registered Nonprofit Dispensaries or Registered Cultivation Facilities permit from the Municipal Officers shall be notified in writing of their decision no later than fifteen (15) days from the date the request was received by the City Clerk. In the event that a Licensee is denied a permit, the Licensee shall be provided with the reasons for the denial in writing. The Licensee may not reapply for a permit within 30 days after an application for a permit which has been denied.

2. *Appeal.* Any Licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the Municipal Board of Appeals as defined in 30 MRSA §2411. The Municipal Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, revocation or suspension was arbitrary or capricious, or that the denial, revocation, or suspension was not based by a preponderance of the evidence on a violation of any ordinance, article, bylaw, or rule or regulation of the municipality.

**Section 1106 Penalty**

Whoever violates any of the provisions of this Article shall be punished by a fine of not more than One Hundred (\$100) for the first offense, and up to Twenty-five Hundred Dollars (\$2,500) for subsequent offenses, to be recovered, on complaint, to the use of the City of Caribou. Penalties are set pursuant to Title 30-A MRSA §4452, 3 Civil Penalties, paragraph B, the minimum penalty for a specific violation is \$100.00, and the maximum penalty is \$2,500.00.

**Section 1107 Separability**

The invalidity of any provision of this Article shall not invalidate any other part.

Historical Note: Article XI was adopted on October 25, 2010.

## Cities, towns struggle with medical marijuana caregivers

*Growing, medical use of marijuana poses challenges because municipalities have valid concerns about marijuana operations, yet local regulation is limited.*

By Edward J. Kelleher

Local officials in Maine have struggled to cope with the emergence of a large and expanding group of “medical marijuana caregivers,” who are licensed by the state to grow marijuana for medical marijuana patients. This article highlights and attempts to address some of the more daunting issues that towns are facing.

The Maine Medical Use of Marijuana Act (the “MMJ Act”), authorizes the use of marijuana to treat a variety of legally enumerated “debilitating medical conditions.” With a doctor’s certification, an individual with one of the qualifying conditions is authorized to grow or purchase marijuana as a means of treatment. Such a person becomes a “qualifying patient.” Qualifying patients can grow their own marijuana, or can buy it from one of two sources: one of the eight large licensed dispensaries scattered throughout the state, or from a “registered primary caregiver” (a “caregiver”). Caregivers are individuals with licenses from the Maine Department of Health and Human Services to grow and sell marijuana for up to five qualifying patients (plus themselves, if the caregiver is a qualifying patient). A caregiver can grow up to six flowering female plants per qualifying patient (including themselves), for a total grow of up to 36 plants. Two people who share a household can combine their grows, for a maximum grow size of 72 flowering plants.

The drafters of the MMJ Act could not have foreseen all the ways in which the cannabis industry would change over the last few years. Consequently, the MMJ Act is somewhat ambiguous

with respect to the powers of local municipalities to regulate various aspects of the cannabis industry. These ambiguities have resulted in confusion and disputes over the extent to which caregivers are subject to local ordinances and over the power of localities to impose zoning and other rules specifically on caregivers.

### Pre-emption

Most broadly, some caregivers assert that the MMJ Act fully preempts the power of local municipalities to impose any regulation at all on caregivers. They rely on two provisions of the Act to reach that conclusion. First, 22 M.R.S.A. § 2423-E(1) provides that a “person whose conduct is authorized under this chapter may not be denied any right or privilege ... for lawfully engaging in conduct involving the medical use of marijuana authorized” by the MMJ Act. And second, 22 M.R.S.A. § 2428(10), provides, “(T)his chapter does not prohibit a political subdivision of this State from limiting the number of dispensaries that may operate in the political subdivision or from enacting reasonable regulations applicable to dispensaries. A local government may not adopt an ordinance that is duplicative of or more restrictive than the provisions of this Act. An ordinance that violates this subsection is void and of no effect.” This second provision is a subsection of a section dealing with the eight large dispensaries throughout the state.

The caregivers’ argument is a claim of express preemption. The provisions of 22 M.R.S.A. § 2428(10) provide the foundation for this preemption argument. However, while the MMJ Act does contain several provisions concerning the operations of

caregivers, there are many topics and areas of regulatory focus that the MMJ Act does not address with respect to caregivers. For instance, the MMJ Act is silent with respect to the application of life safety and building code requirements to caregiver cultivation facilities. Although not free from doubt, a court would likely conclude that a claim of express preemption should not stretch so far as to operate to deprive localities from regulating those aspects of caregiver operations to which the MMJ is completely silent. Any such reading of 22 M.R.S.A. § 2428(10) and of preemption doctrine would likely be seen as too broad. Consequently, regulations relating to building permits, site plan review, health and safety standards and zoning and siting would likely not be deemed preempted by the MMJ Act.

Additionally, the MMJ Act contains far more detailed provisions relating to the licensing and operation of dispensaries than it does to similar aspects of caregiver activities. Because dispensaries can have an unlimited number of qualifying patients and an unlimited number of employees, their operations pose a bigger public safety and welfare issue. Thus, dispensaries were a major concern of the legislature, reflected in the detailed statutory scheme applicable to them. In this context, and with 22 M.R.S.A. § 2428(10) being embedded in a section dealing only with dispensary operations, this subsection is best read as applying only to local regulations affecting dispensaries, and not generally to caregivers.

Finally, the provisions of 22 M.R.S.A. § 2423-E(1) make clear that no one can be denied a right or privilege simply as a result of engaging

Edward “Ted” Kelleher is an attorney with Drummond Woodsum, practicing out of Portland. Email him at: [kelleher@dwmlaw.com](mailto:kelleher@dwmlaw.com).

# ZONING PRACTICE

AUGUST 2016



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 8

## PRACTICE MARIJUANA LAND USE



# Regulating Medical and Recreational Marijuana Land Use

By Lynne A. Williams

Twenty-five states and the District of Columbia allow the cultivation, sale, and use of medical marijuana.

In addition, four states—Colorado, Washington, Oregon, and Alaska—have legalized the cultivation, possession, use, and sale of recreational marijuana, and the District of Columbia has legalized cultivation, possession, and use. In 2016, there will likely be at least five, if not more, states that will vote on the legalization of recreational marijuana, including Arizona, California, Massachusetts, Nevada, and Maine. (For information about individual states and the status of marijuana laws, see [norml.org/states](http://norml.org/states).)

While the legalization of medical marijuana created some land-use issues, for the most part they are simpler and less urgent compared with issues related to the legalization of recreational uses. California failed to even enact a regulatory scheme until late 2015, 19 years after legalizing medical marijuana. During that time, so-called dispensaries proliferated but towns and cities were slow to address potential land-use issues, given the lack of guidance by the state. Maine, which legalized medical marijuana in 1999, did not even allow dispensaries until 2009. So for 10 years Maine's patients got their medicine from a system of individual caregivers, most of whom operated out of their homes or farms and were limited to serving five or fewer patients. However, the legalization of recreational marijuana in a number of states, with more to follow—combined with the possibility of new dispensaries in some states—has spurred towns and cities to begin to discuss land-use issues for marijuana businesses.

Currently, towns, cities, and counties use a wide variety of regulatory tactics to control marijuana businesses and activities, and those tactics break down into two broad groups—business licensing standards and zoning. With respect to medical marijuana uses, most of the focus has been on regulating the siting of dispensaries and cultivation operations through zoning. The types of regulatory schemes es-

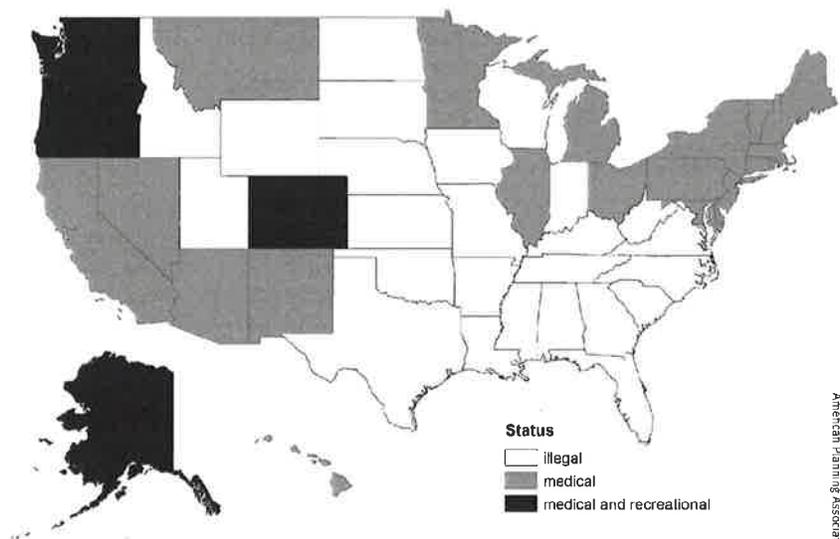
tablished in the newly legalized recreational marijuana states range from localities “opting out” to making a marijuana business a “use by right” in certain districts, with a required permit. Most tactics use both zoning and business licensing regulations, often in combination. For example, a business licensing requirement can be overlaid on a zoning ordinance, so that if a marijuana business use is an allowed use, the business must still obtain a license, and that process would address specific aspects of the business, such as safety issues, noise, odors, parking, traffic, and other impacts.

This article reviews local approaches to regulating medicinal and recreational marijuana. While both medical and recreational marijuana businesses are part of a new economic sector that involves land uses and businesses,

heretofore unseen in many communities, there are multiple options that can be implemented. The following sections discuss how these options are being implemented both in jurisdictions that have legalized recreational marijuana as well as in those that have only legalized medical marijuana.

## FEDERAL PREEMPTION

Marijuana, whether medical or recreational, continues to be listed on Schedule I of the U.S. Controlled Substances Act (CSA) and is therefore still illegal under federal law. However, the U. S. Department of Justice (DOJ), most recently in 2013, has advised federal prosecutors to refrain from using scarce federal drug enforcement resources to prosecute individuals who are in compliance with state law (Cole 2013).



American Planning Association

As of July 2016, 25 states and the District of Columbia have legalized medical marijuana. Four of those states have also legalized recreational marijuana sale and usage.

This advisory from the DOJ reduced the potential conflict between the federal government and those states that have legalized recreational or medical marijuana. And reducing conflict between the states and the federal government will consequently constrain the ability of a local jurisdiction to successfully ban marijuana businesses based on an argument that such businesses are in violation of the CSA.

Division One of the Arizona Court of Appeals is currently considering a case in which Maricopa County attempted to prevent White Mountain Health Center, a dispensary, from opening (*White Mountain Health Center, Inc. v. Maricopa County et al.*, 1 CA-CV 12-0831). The county argued that denying a dispensary a permit to open is legally permissible since such a business violates the CSA. However, while states can regulate marijuana, they are not required to enforce federal law. In this case, Arizona has legalized medical marijuana and regulates dispensaries, and White Mountain argues that the county's denial of a permit was impermissible in that it conflicted with state law. The *White Mountain* decision will likely be issued soon.

In February 2014, the Michigan Supreme Court declared a city zoning ordinance in Wyoming, Michigan, void because it prohibited uses that were permitted under state law (*Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 495 Mich. 1 (2014)). The plaintiff was a qualifying patient who wished to grow and use marijuana for medical purposes in his home. The town of Wyoming had passed an ordinance prohibiting the activity. The court held that a municipality is precluded from enacting an ordinance if the ordinance directly conflicts with the state's statutory scheme of regulation, in that the ordinance permits what the statute prohibits, or prohibits what the statute permits. In this case, the Michigan Medical Marijuana Act permitted qualified patients to grow their own medicine; therefore, the city could not prohibit such a practice.

#### **MEDICAL MARIJUANA REGULATORY MODELS**

The first medical marijuana statute was passed 20 years ago, but in many ways it is only within the last few years that those early statutes have been refined on the local jurisdictional level. Some jurisdictions were required by newly passed state regulations to create local ordinances, such as Humboldt County, California, and the municipalities within the county, while other local jurisdictions, including Detroit, took

the initiative following a period of confusion over the definition and regulation of dispensaries.

#### **Humboldt County, California**

Earlier this year, California's Humboldt County passed one of the most comprehensive land-use ordinances to date regulating medical marijuana production. The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) passed the Board of Commissioners unanimously, a testament to the many disparate groups coming together to draft the ordinance (Ordinance No. 2544). Much of Humboldt County is unincorporated land, and although there are municipalities in the county, much of the cultivation is done on unincorporated land.

The CMMLUO includes two parts: one regulating the coastal zone and the other regulating inland cultivation. Both zones are regulated according to a list of factors, including whether the applicant is a new or existing grower, the parcel size, the cultivation area size, and whether the proposed grow operation will be outdoors, indoors, or mixed-light, meaning that both natural light and artificial light will be used.

The goal of the CMMLUO is very clear: "to limit and control such cultivation in coordination with the State of California." Although the Compassionate Care Act was passed in 1996—the first medical marijuana law in the country—the state failed to enact medical marijuana regulations until late 2015. Humboldt County was proactive in enacting a countywide ordinance to immediately comply with state law. The ordinance specifically defines exactly what it is regulating. "This section applies to all facilities and activities involved in the Commercial Cultivation, Processing, Manufacture or Distribution of cannabis for medical use, in the County of Humboldt" (CMMLUO §55.4.9). The type of approval necessary for licensing is dependent on the size and current zoning classification of the parcel, as well as the type of state license that the applicant is required to obtain.

The Humboldt municipalities of Arcata and Eureka have also passed ordinances related to cultivation. Arcata essentially permits only small-scale and home cultivation, although those with special needs may request more grow space (Land Use Code §9.42.105). It also enacted a 45 percent tax increase on residences that use more than 600 percent of

#### **Medical Marijuana Terminology**

It is far easier to define recreational marijuana uses by the vocabulary of traditional businesses, such as agricultural, retail, food processing, and the like, than it is to define medical marijuana uses. There is no national consensus on terminology in the medical marijuana arena. In fact, the word "dispensary" has multiple meanings depending on location. In most, but not all, of the medical marijuana states, the term "dispensary" means the entity that distributes medicinal marijuana to qualified patients. This may be a large facility that also cultivates the marijuana (e.g., Maine and Michigan) or a small shop that purchases from independent growers (e.g., California and Arizona). The entity can be a collective, nonprofit, for-profit business, or any other form of entity legal under state law.

In certain states the caregiver system, another form of cultivation and distribution, exists side by side with the dispensary system. Caregivers are state-licensed individuals who grow, process, and distribute medicinal marijuana to a limited number of qualified patients. Caregivers are regulated under state law, but have only recently been subject to land-use regulation. (For a chart detailing the distribution laws under each state that has legalized medicinal marijuana, see [tinyurl.com/y21yn7g](http://tinyurl.com/y21yn7g).)

the energy baseline, with the aim of discouraging indoor growing (Municipal Code §2628.5). Eureka passed a much more restrictive and detailed ordinance, only allowing licensed patients to grow and process medical cannabis within a 50-square-foot area in their residence (§158.010(A)). The ordinance also states that such cultivation will constitute neither a home occupation nor an ancillary use (§158.010(C)). Patient marijuana processing is likewise narrowly regulated (§158.011).

#### **Detroit**

Detroit recently passed a medical marijuana ordinance requiring dispensaries, now called

Caregiver Centers, to apply to the city for a license (Ordinance 30-15). A subsequent zoning amendment added Caregiver Centers as permissible uses in specific zones and explicitly prohibits them in the Traditional Main Street Overlay and the Gateway Radial Thoroughfare Districts (Ordinance 31-15). Detroit seeks to distribute the Caregiver Centers rather than cluster them in a few areas, since they cannot be less than 1,000 feet from each other nor closer than 1,000 feet from a park, religious institution, or business identified as a controlled use, such as topless clubs and liquor stores. If a business is within 1,000 feet of any of these land uses, the board of zoning appeals allows for a variance process that could still allow the facility to establish or continue to operate. The city's Buildings, Safety, Engineering, and Environmental Department can also approve variances.

If, however, the parcel in question is less than 1,000 feet from the city-defined Drug Free Zones, that option is not available. No variance is allowed for parcels falling into these buffer zones, and there are many such buffers zones. The federal Drug Free School Zone applies just to libraries and K–12 schools. However, the Detroit version includes arcades, child care centers, youth activity centers, public housing, outdoor recreation areas, and all educational institutions, including all of their properties. In the industrial districts, the centers can be less than 1,000 feet from each other to allow for some clustering, and the buffer zone from residential areas is waived.

An individual who cultivates marijuana in a residence in Detroit is required to register as a home-based occupation. The city's licensing standards state: "Except for home occupations . . . no person shall dispense, cultivate or provide medical marijuana under the Act except at a medical marijuana caregiver center" (§24-13-4). That registration process involves inspection and approval by numerous city agencies.

### Maine

Maine passed its medical marijuana law in 1999, but it was not until 2009 that dispensaries were allowed there. Up until that time, patients received their medicine from a caregiver, individuals licensed to grow and distribute medicinal marijuana to no more than five patients. That system remains operational, with over 2,000 caregivers, and is greatly favored by many patients in the state. There has been little impact of land-use regulation on caregivers, for a number of reasons. The fact that an

individual is a caregiver is kept confidential by the state, so a town doesn't really know who the caregivers are. Until a year or two ago, caregivers mainly grew their plants and serviced their patients out of their homes, and many towns essentially allow home occupations with few, if any, restrictions.

In the last two years, however, there has been an increase in the number of caregivers leasing commercial space, primarily in light industrial zones. Thus the towns where this is occurring will need to decide whether they wish to develop special regulations for buildings housing multiple caregivers in industrial zones. There is no state law prohibiting this practice, even though under state law each caregiver must have his or her own locked space within the building, and that space must be inaccessible to anyone else except their one employee. Some towns maintain that any growing of plants by a caregiver, whether indoors or outdoors, is an agricultural use, thereby preventing multiple caregivers from leasing grow spaces in an industrial space. Conversely, those towns that classify caregiving as a light industrial use will have to contend with outdoor cultivation and grow operations in homes and on farms in residential districts.

Maine towns that have chosen to refine their land-use ordinances to address medical marijuana caregiving share some common goals: updating existing site plan review requirements, if needed; defining the caregiver land-use category; considering a "safe zone" as an overlay zone, thereby requiring greater setback distances than other uses in the zone; instituting fencing and setback requirements on outdoor cultivation; and considering standards for multiple caregiver facilities.

In 2009, the Maine Medical Use of Marijuana Act was amended to allow eight dispensaries in the state, one in each of eight regions. Even though the cap on dispensaries has been reached, some towns with land-use ordinances are struggling to find ways to regulate dispensary locations if the cap is lifted. State law is clear that a town cannot ban dispensaries but can limit the number to one. In general, what a number of towns are attempting to do is bring dispensary siting under site plan review and define what zone or zones are appropriate for a dispensary. Often the dispensaries are relegated to one, or a few, locations, a form of cluster zoning rather than keeping dispensaries and other marijuana businesses a distance away from each other. A few towns are looking at an



A former fast food restaurant in California was converted into a medical marijuana dispensary.

overlay district, which would impose additional controls and an additional form of review, over dispensary siting.

### RECREATIONAL MARIJUANA REGULATORY MODELS

Towns, cities, and counties within states that have legalized recreational marijuana have taken very different regulatory tacks. For example, the state of Washington has practically subsumed the Washington medical marijuana program into the recreational legalization scheme, in a bill passed in April 2015 that will be implemented in 2016. And Oregon, while keeping the medical program separate from the regulation of recreational marijuana businesses, has imposed strict new rules on the medical growers and patients.

A key issue for states that have legalized recreational marijuana is where marijuana may be smoked or vaped. None of the legalization statutes permit smoking marijuana in public, so, particularly in communities with a large number of tourists, the issue of consumption location is a critical one. Although a tourist can purchase marijuana, smoking might not be allowed in a hotel or motel room. To address this issue, some jurisdictions are looking at permitting so-called “social clubs,” similar to cigar bars, where visitors could smoke or consume marijuana. None of the four states that have legalized recreational marijuana included social clubs in their statutes. However, a pending rule change in Alaska would allow existing marijuana retail stores to purchase a separate license for a “consumption area.” And in November, Denver voters will consider a measure that would allow the consumption of marijuana—but not sales—at private social clubs and during private events if the organizers obtain a permit.

Below is a discussion of local prohibition in Pueblo, Colorado, and use by right in Pueblo County; traditional zoning and business permitting in Seattle; a focus on farmland preservation and opt-in/opt-out in Oregon; and a focus on business licensing, as opposed to zoning-based controls, in Denver.

#### Pueblo County, Colorado

In 2012, Colorado Amendment 64 gave local governments the power to decide whether and how to permit recreational marijuana within their community. A 2014 annual report stated that as of that time 228 Colorado local jurisdictions had voted to ban medical and retail mari-

juana operations. The city of Pueblo banned recreational marijuana retail stores within city limits and had formerly placed a moratorium on medical marijuana dispensaries.

However, Pueblo County, which governs all unincorporated land in the county, acted differently, making marijuana businesses a by-right use in commercial and industrial districts, thereby allowing such businesses to avoid lengthy governmental reviews (§§17.120.190–240). In addition, the county also made marijuana cultivation a by-right use, apparently the first Colorado county to do so. The county also passed rules mandating a five-mile distance between hemp growing areas and existing marijuana growing areas so as to avoid cross-contamination (§17.120.280). In addition to land-use regulation, the Pueblo Board of Water Works passed its own resolution to address the fact that the Federal Bureau of Reclamation prohibits the use of federal water for marijuana cultivation (Resolution No. 2014-04). The water board subsequently concluded that they could lease up to 800 acre-feet of water to marijuana cultivators each year (Resolution No. 2014-05).

#### Seattle

Washington voters approved Initiative 502, legalizing recreational marijuana, in 2012. The year before, Seattle had passed Ordinance 123661, clarifying that all marijuana businesses, including manufacture, processing, possession, transportation, dispensing and the like, must be in compliance with all city laws, as well as applicable state laws. In 2013, the city amended its zoning ordinance to specify where larger-scale marijuana business activities could locate (§23.42.058). The specific activities include processing, selling, delivery, and the creation of marijuana-infused products and usable marijuana. While these activities are prohibited in residential, neighborhood commercial, certain downtown, and several historic preservation and other special-purpose districts, the zoning ordinance does not require a land-use permit to specifically conduct marijuana-related activities in industrial, most commercial, and a few downtown districts.

For example, an applicant who wishes to open a marijuana retail store or an agricultural application is required to get the applicable permit, but is not required to disclose that the use is marijuana related. The ordinance does, however, impose a size limit on indoor agricultural operations in industrial areas, but this applies to all agricultural uses in industrial areas,

not just marijuana production (§23.50.012, Table A, Note 14).

Meanwhile, state law further restricts permissible locations for marijuana businesses. The state will not grant a license to any marijuana business within 1,000 feet of an elementary or secondary school, playground, recreation center, child care center, park, public transportation center, library, or game arcade that allows minors to enter.

#### Oregon

The voters of Oregon passed Measure 91 in 2014, legalizing recreational marijuana and related businesses, and the legislature enacted HB 340 in July 2015, thereby establishing a regulatory framework for such businesses.

Farmland preservation is one of the major objectives of land-use regulation in Oregon. Following the passage of Measure 91, a “local option” was created, whereby a local government in a county where at least 55 percent of the voters opposed Measure 91 could opt out of permitting marijuana businesses. The local government had 180 days from the passage of HB 340 to choose to opt out. Local governments in counties where more than 45 percent of the voters supported Measure 91 could refer an opt-out measure to the local electorate for a vote.

Many local governments have chosen to opt out, including a number of rural towns and larger municipalities such as Grant’s Pass and Klamath Falls (Oregon Liquor Control Commission 2016). Medford has banned retail marijuana businesses but permits producers and processors. However, some of the towns and cities still need to hold a general referendum on the issue in November 2016.

Portland has chosen to take a two-pronged approach to the regulation of marijuana businesses. The city’s zoning authority has not adopted rules governing the zoning of marijuana businesses, but is applying the city’s general development rules to them. Those rules include such standards as setbacks, conditional uses, parking height limitations, lot coverage, and the like that are specific to each zone. Therefore, if a marijuana retail business wishes to locate in a retail district, it would be allowed to do so provided the proposed business complies with the relevant general development rules in that district. However, the city does require that such businesses get a special license, and the licensing provisions stipulate a 1,000-foot buffer between retail marijuana

businesses (Chapter 14B.130). As another example, Bend's development code allows retail marijuana businesses in commercial zones and production and processing in industrial zones with certain restrictions, including visual screening, security, and lighting requirements (Development Code §3.6.300.P).

Oregon state law requires non-opt-out rural counties to treat cultivation businesses as a permitted farm use in the farm use zone, but these counties have discretion about how they treat production in other zones. Clackamas County, for example, treats marijuana cultivation as a farm use in other natural resource zones, including forest zones and mixed farm-forest zones (§12.841).

### Denver

Denver licenses four types of retail recreational marijuana-related businesses: retail stores, optional premises cultivation, infused products manufacturing, and marijuana testing facilities (§§6-200–220). The city made a conscious decision not to regulate marijuana businesses as distinct land-use categories, but its licensing standards do cross-reference the zoning code. Denver also grandfathered business locations that existed before the licensing regulations were implemented. This mainly benefitted medical marijuana dispensaries that had been in place before Denver adopted a new zoning code in 2010.

The city regulates medical marijuana establishments under a separate set of provisions in the Health and Sanitation section of its code (§§24-501–515).

Denver currently prohibits medical and recreational retail stores in any residential zone, any "embedded retail" district (small retail district embedded in a residential district), any location prohibiting retail sales, and within 1,000 feet of any school or child care center, any alcohol or drug treatment facility, and any other medical marijuana center or dispensary or retail marijuana store. However, the distance requirements are computed differently for medical marijuana centers versus retail stores. The medical marijuana center regulations use a measurement called a "route of direct pedestrian access," and the retail stores regulations use a computation "by direct measurement in a straight line."

Denver's retail and medical marijuana regulations allow cultivation in any location where plant husbandry is a permitted use, and grandfathering is allowed in these zones. The regulations also allow licensing for marijuana-infused products on a lot in any zone where food preparation and sales or manufacturing, fabrication, and assembly are permitted.

### PLANNING TO PLAN

Over my years as an attorney in the land-use arena, I have seen numerous towns and cities

start down the path of amending their land-use ordinance without answering certain basic questions. Often this is based on a failure to identify what sorts of as yet unheard-of businesses or other operations might, one day, file for site plan review—or, more troubling, *not* file for site plan review because the use is not covered by the land-use ordinance. However, it is at just this time that the local government must act thoughtfully and not overreact. Rather, the locality should answer certain questions.

First, should marijuana businesses be subject to special regulatory controls? If not, what category of use does a specific marijuana business fall into? Without special regulatory controls it will be governed just as any similar use is governed.

For example, California passed the first medical marijuana law in 1996, but since then there has been a problem defining a medical marijuana business. Is a dispensary retail or light industrial? Is a caregiver agricultural, home occupation, or light industrial? Is an outdoor cultivation operation agricultural and an indoor cultivation operation a home occupation or light industrial? Additionally, will the regulation of marijuana businesses include only land-use controls, only licensing requirements, or a combination of both? There are no clear answers to these questions, but in order to regulate successfully, each town must find its own answers.



A combination gas station and recreational marijuana store in Colorado.

Additionally, since all operative medical and recreational marijuana laws are based on statewide statutes, a locality must also address whether a proposed ordinance is in compliance with state law. In most, if not all, statewide marijuana laws, there is either a statement, or an unstated inference that the state has occupied the field of marijuana regulation, and that local ordinances cannot conflict with, or frustrate the intent of, state laws.

Many courts throughout the country have expressed the following sentiment: "A municipality may prescribe the business uses which are permitted in particular districts but to prohibit the sale of all intoxicating beverages or other activities where such sale has been licensed by the state is to infringe upon the power of the state" (*Town of Onondaga v. Hubbell*, 8 N.Y.2d 1039 (1960)). Even home rule, in home-rule states, has its limitations.

Even using zoning in combination with business licensing can create problems. A case currently making its way through the Maine court system is a challenge to a local ordinance that requires medical marijuana caregivers to come to a public meeting in order to request a business permit.

The plaintiffs argue that the ordinance is a violation of state law, which clearly states that the identity of all caregivers must remain confidential, and makes disclosure of such information a civil violation with a fine imposed (*John Does 1–10 v. Town of York*, ALFSC-CV-2015-87). However, as caregivers begin to move away from home cultivation into leased industrial space, a town could conceivably require a non-caregiver landlord, who rents to caregivers, to obtain a business permit.

Conversely, under adult recreational statutes in those states that have legalized recreational marijuana—as well as under the initiatives to be voted on in November 2016—

the identity of the businesses seeking state licensure is not confidential. Municipalities and counties will therefore be able to determine the proposed business use, its suitability in a zone or district, and whether or not a business license is required, thereby moving marijuana land-use away from the often vague regulatory system of medical marijuana to the well-known structure of land-use regulation and business licensure.

Medical marijuana regulatory systems will still exist in most states that have legalized it, but it is likely that the majority of businesses in the marijuana sector will be recreational, rather than medical, and therefore more easily regulated by municipalities and counties.

#### CONCLUSION

The public is overwhelmingly in support of legalization of recreational marijuana. A recent Associated Press/University of Chicago poll indicated that 63 percent of those polled support legalization, although when broken down into medical and recreational, a smaller number, yet still a majority, supported recreational. That said, however, 89 percent of millennials, now the country's largest generation, support complete legalization (Bentley 2016). As with medical marijuana legalization, as more states legalize, even more states will likely follow suit.

It is, therefore, incumbent on towns, cities, and counties to become educated on their state's statutes and the local regulations that have been passed or will likely be passed in the future, and to draft land-use ordinances that address, in the ways most appropriate to the locality, the proliferation of medical marijuana and recreational marijuana uses.

Since most states have not yet legalized recreational marijuana, now is definitely the time to study and address the land-use issues that legalization may raise.

#### ABOUT THE AUTHOR

Lynne A. Williams is an attorney based in Bar Harbor, Maine, and she practices throughout the state. Her practice consists of land use, administrative litigation, and cannabis law. She was formerly the chair of the Bar Harbor Planning Board and is currently a member of the Harbor Committee of Bar Harbor.

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The following General Requirements are applicable to land use activities within the City, to include site design review and subdivisions. These standards are intended to clarify review criteria and provide guidance. In reviewing a proposed development, the CEO or Planning Board, whomever conducts the review, shall review the application for conformance to the applicable standards and make findings of fact for each prior to approval of the Final Plan. The burden of proof of conformance is with the applicant, who shall provide clear and convincing evidence that the proposed Final Plan meets the standards and the review criteria.

### 1. Apartments Accessory to Commercial Uses.

The Planning Board may allow residential dwelling units in a commercial structure provided the following are met:

- A. The residential dwelling units shall be clearly incidental to the principal commercial use of the structure.
- B. Each dwelling unit shall be provided with a private space 500 square feet minimum per dwelling unit adjacent to each unit.**
- C. Each dwelling unit shall be provided one (1) off-street parking space separate from customer parking.
- D. Subsurface sewage disposal, where applicable, shall be provided that complies with the State of Maine Subsurface Sewage Disposal Rules.
- E. Each dwelling unit shall have access to and use of private storage space within the individual dwelling unit or in common storage facilities.**
- F. No access to a residential dwelling unit shall be through the commercial space.
- G. All provisions of the City Building Code, Property Maintenance Code and the Life Safety Code shall be met.

### 2. Archaeological Sites.

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the CEO or Planning Board shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the CEO or Planning Board. The CEO or Planning Board shall consider comments received from the Commission prior to rendering a decision on the application.

### 3. Basement Drainage.

The applicant shall show that the floor of any basement(s) can be drained to the ground surface, or storm sewers, if they are required to be installed, or that the spring water table is one (1) foot below the level of the basement floor.

### 4. Bed and Breakfast.

- A. There shall be no less than one parking space on the property for each rental room in addition to the spaces required for the dwelling unit.
- B. There shall be one bathroom provided for the rental rooms, in addition to the bathroom for the dwelling unit.
- C. Each rental room shall have not less than ten by twelve (10 X 12) feet horizontal dimensions.

### 5. Buffers and Screening.

- A. A landscaped buffer strip of no less than fifteen (15) feet in width and six (6) feet in height shall be provided to minimize the visual impact of adverse characteristics such as, but not limited to, storage areas, parking spaces, driveways, loading areas, exposed machinery, sand and gravel extraction operations, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, and to protect abutting residential properties from the intrusion of noise, light, and exhaust fumes from such non-residential buildings and uses. The buffer areas shall be maintained and vegetation replaced to ensure continuous year round screening.
- B. Where no natural vegetation or berms can be maintained, or due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges, or combinations thereof.
- C. Any abutting residential property shall be effectively screened by a continuous landscaped area no less than six (6) feet in height along lot lines adjacent to the residential properties, except that driveways shall be kept open to provide visibility for entering and leaving.