

ITEM

21-119

To hear a report from Councilor Storey-King re: Marijuana
Caregiver Licensing Ordinance

DRAFT

Chapter 86

Medical Marijuana

Registered Caregiver Licensing

§ 86-1 Title.

This Chapter shall be known and may be cited as "Medical Marijuana Registered Caregiver Licensing."

§ 86-2 Purpose; authority; interpretation.

The purpose of this Chapter is to provide for and regulate the issuance of local licenses for Registered Caregivers in the Town of Cumberland. Such licensing shall provide for annual review of and reasonable control over Registered Caregivers practices and to ensure that life safety and nuisance concerns are properly addressed.

This Chapter is adopted pursuant to the Town of Cumberland's home rule authority, under Art. VIII, Part Second of the Maine Constitution, and 30-A M.R.S. § 3001. This Chapter is also adopted consistent with the Town's statutory authority pursuant to 22 M.R.S. § 2429-D, as may be amended or recodified.

This Chapter does not authorize the operation of adult-use "marijuana establishments" as that term is defined in 28-B M.R.S. § 102(29), as may be amended or recodified. In addition, this Chapter does not authorize the operation of medical marijuana "caregiver retail stores," medical marijuana "manufacturing facilities," medical "marijuana testing facilities," or medical marijuana "registered dispensaries," as those terms are defined in 22 M.R.S. §§ 2422(1-F), 2422(4-R), 2422(5-C), and 2422(6), respectively, as may be amended or recodified.

This Chapter does not, and shall not be interpreted to limit the rights and privileges afforded by the Maine Medical Use of Marijuana Act, 22 M.R.S. § 2421, et seq.

§ 86-3 Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

Cardholder: A "cardholder," as that term is defined in 22 M.R.S. § 2422(1), as may be amended or recodified.

Disqualifying Drug Offense: "Disqualifying drug offense," as that term is defined in 22 M.R.S. § 2422(4), as may be amended or recodified.

Licensed Premises. The physical structure where a Registered Caregiver is licensed to operate,

consistent with a Registered Caregiver License issued by the Town Council under this Chapter.

Medical ~~marijuana~~Marijuana: Marijuana possessed or used by a Cardholder for medical use, in accordance with 22 M.R.S. § 2423-A, as may be amended or recodified. For the avoidance of doubt, “medical marijuana” does not refer to marijuana possessed or used by an individual of at least 21 years of age for recreational purposes, as more particularly defined and permitted by Title 28-B of the Maine Revised Statutes, as may be amended or recodified.

Registered Caregiver: A “registered caregiver,” as defined in 22 M.R.S. § 2422(11), as may be amended or recodified, that is required to ~~registered~~register with the State of Maine Office of Marijuana Policy pursuant to 22 M.R.S. § 2425-A. For the avoidance of doubt, a “Registered Caregiver” does not include those categories of caregiver expressly exempted from state registration requirements, as more specifically listed in 22 M.R.S. § 2423-A(3)(C)(1) – (3), as may be amended or recodified.

Registered Caregiver Cultivation Area: An indoor area used by a Registered Caregiver for cultivation of medical marijuana that is enclosed and equipped with locks or other security devices that permits access only by a person authorized to have access to the area under Maine law. For the avoidance of doubt, the cultivation of marijuana outside of an enclosed, roofed space, is expressly prohibited.

§ 86-4 Applicability and effect.

A. No Registered Caregiver may operate within the Town of Cumberland in a physical location that is not within the Registered Caregiver Overlay District, as established and defined in § 315-28.5 of the Town of Cumberland Code of Ordinances, unless that Registered Caregiver was legally existing and operating in that physical location prior to November 26, 2018 and has not materially expanded their operation since that date.

B. Regardless of its physical location, beginning on the effective date of this Chapter, no Registered Caregiver may operate within the Town of Cumberland without first receiving a Registered Caregiver License from the Town Council in a manner consistent with the procedures and requirements of this Chapter.

§ 86-5 Effective date; initial licensing application deadline.

This Chapter shall be effective upon adoption by the Town Council. All Registered Caregivers operating within the Town of Cumberland on the Effective Date shall submit licensing applications to the Town Clerk within ninety (90) days of the Effective Date. Failure to do so shall subject a Registered Caregiver to enforcement action, and potential civil penalties, as detailed in § 86-12 of this Chapter.

§ 86-6 License required; application procedure.

A. The operation or performance of conduct consistent with a Registered Caregiver without first receiving a Registered Caregiver License from the Town Council shall be considered a violation of this Chapter, subjecting the violating party to civil fines and other penalties as further outlined

herein.

B. The Town Council shall be empowered to issue licenses to individuals to operate as Registered Caregivers in the Town of Cumberland. Registered Caregiver Licenses issued under this Chapter shall be reviewed and approved, approved with conditions, or denied at a Town Council meeting to be held following public notice and public hearing.

C. Each applicant for a new or renewal Registered Caregiver License shall complete and file an application on a form prescribed by the Town Council, together with a Three Thousand Dollar (\$3,000) non-refundable application fee, in addition to any additional annual license fees required by the Town of Cumberland Code of Ordinances. Such application shall contain the following:

(1) A copy of the applicant's State medical marijuana caregiver registration application, and all supporting documentation as filed with the State of Maine Office of Marijuana Policy, and any amendments thereto.

(2) Evidence of state registration and other approvals (if any) required to operate as a Registered Caregiver, including but not limited to the Registered Caregiver's caregiver registration card.

(3) If not included in the applicant's State medical marijuana caregiver registration application, a description of the form of ownership of the business enterprise together with the attested copies of any articles of incorporation, bylaws, operating agreement, partnership agreement or articles of association that govern the entity that will own and/or operate the Registered Caregiver operation.

(4) If not included in the applicant's state license application, an affidavit that identifies all owners, officers, members, managers, or partners of the applicant, their ownership interests and their places of residence at the time of the application and for the immediately preceding three (3) years.

(5) A release for each applicant and for each officer, owner, member, manager, or partner of the applicant seeking a license, allowing the Town of Cumberland to obtain criminal records and other background check information related to the individual.

(6) Evidence of all land use approvals or conditional land use approvals required to operate a Registered Caregiver pursuant to the Town of Cumberland Code of Ordinances, including but not limited to, a building permit, and/or a certificate of occupancy.

(7) If the proposed Licensed Premises is not owned by the applicant, then a signed letter of approval from the proposed Licensed Premises' owner shall be provided. ~~If the proposed Licensed Premises is located within a condominium or homeowners' association, then a signed letter of approval from the president of the condominium association or homeowners' association shall also be provided.~~

(8) A ~~description~~detailed depiction of the proposed Licensed Premises, ~~including a plan of the premises prepared by a licensed surveyor or engineer.~~

D. Registered Caregiver License applicants submitting applications and supporting information that is confidential under 22 M.R.S. § 2425-A(12), as may be amended or recodified, and the Maine Freedom of Access Act, 1 M.R.S. § 403(3)(F), as may be amended, shall mark such information as confidential. An individual who possesses a valid State medical marijuana registered caregiver registration card need not identify themselves in an application for a Registered Caregiver License under this Chapter. The Cardholder must, however, identify themselves and provide all relevant application materials to the Town Clerk for examination, but the identity of the Cardholder shall not be a public record and the Town shall not share the identity of the Cardholder, except as necessary by law in the performance of the Town's official functions. At the time that the application is submitted, the Cardholder may appoint a representative to appear before the Town Council on their behalf. Advertisements for the requisite public hearing shall contain the location of the proposed Licensed Premises and the identity of the owner of the real estate and the identity of the designated representative.

§ 86-7 Public hearing; granting license; term; renewal.

A. The Town Council shall hold a public hearing within ~~thirty (30)~~sixty (60) days of receipt of a completed licensing application, as determined by the Town Clerk. At such a public hearing, the testimony of the applicant and that of any interested members of the public shall be taken.

B. Property owners whose property lines are within 500 feet of the proposed Licensed Premises shall be notified in writing by the Town of the public hearing for the initial licensing application and all subsequent licensing renewals sought.

C. Following a public hearing, the Town Council shall consider the application and determine whether the application is consistent with all provisions of this Chapter, as well as all other applicable portions of the Town of Cumberland Code of Ordinances. In line with this determination, applications for licensure shall be granted, granted with conditions, or denied by the Town Council. Conditions may be imposed on any Registered Caregiver License issued pursuant to this Chapter as necessary to protect the health, safety, and welfare of the public and to achieve the goals and objectives of this Chapter.

D. A Registered Caregiver License shall be valid for a period of one (1) year from date of issuance and must be renewed annually.

E. Applications for renewal of existing Registered Caregiver Licenses shall include all materials required by § 86-6(C) of this Chapter, and shall be processed in the same manner as initial licenses and shall be subject to all provisions of this Chapter. Applications for the renewal of a Registered Caregiver License shall be submitted to the Town Clerk at least sixty (60) days prior to the expiration of the existing license and shall be considered by the Town Council in the manner prescribed for initial license applications in this Section. In considering applications for renewal of existing Registered Caregiver Licenses, the Town Council shall also consider any and all fire, EMS, and/or police reports, as well as all code enforcement complaints and notices of violation (if any), related to the Licensed Premises created during the previous licensing term.

§ 86-8 License performance standards.

No Registered Caregiver License may be granted or renewed by the Town Council and no Registered Caregiver may operate, even after issuance of a Registered Caregiver License, except in compliance with the performance standards contained in this Section. Such performance standards shall automatically be incorporated into all Registered Caregiver Licenses granted by the Town Council as conditions of approval:

- A.** Access. Convenient and safe access for the ingress and egress of pedestrian and vehicular traffic exists.
- B.** Traffic. The establishment of a Registered Caregiver operation will not create an unreasonable increase in the frequency or intensity of vehicle traffic in proximity to the Licensed Premises.
- C.** Location. No Registered Caregiver may operate in a location that is less than 500 feet from the property line of a pre-existing public or private school serving grades Pre-K through 12th grade, or a day care center licensed by the State of Maine.
- D.** Safety.
 - (1)** Where an electrical system is installed within the Licensed Premises, it shall be installed and maintained in accordance with the provisions of the applicable state standards and regulations and the Town's electrical codes.
 - (2)** The Licensed Premises shall be maintained and used in a manner as to prevent fire and in accordance with the applicable local fire prevention regulations.
 - (3)** Internal and external foot traffic and security control shall meet requirements of the applicable state and local law enforcement agencies.
 - (4)** The Town of Cumberland Police and Fire Departments have determined that adequate public safety protection equipment is available to provide service to the Licensed Premises.
- E.** Noise. No amplification of sound shall occur on or from the Licensed Premises as measured by a sound-level meter and frequency-weighting network (manufactured according the standards prescribed by the American National Standards Institute), inherently and recurrently generated, shall not exceed a maximum of 60 decibels, as detected at any lot line of the Licensed Premises.
- F.** Number of plants; Location of Cultivation Area. No more than thirty (30) mature marijuana plants, or 500 square feet of plant canopy, and sixty (60) immature plants, may be cultivated on a Licensed Premises. All marijuana must be cultivated in an indoor Registered Caregiver Cultivation Area, as that term is defined in this Chapter. No outdoor cultivation or storage of marijuana is allowed.

G. Marijuana cultivation by a Registered Caregiver is prohibited where any portion of the Licensed Premises lies within the Shoreland Zone.

H. Ventilation. All Registered Caregivers shall have an odor mitigation system installed within the Licensed Premises, the design of which has been approved by a Maine licensed engineer. The odor control system installed shall be sufficient to ensure that no odors will be perceptible from any adjoining property line of the Licensed Premises.

I. Waste disposal. Any marijuana waste generated on the Licensed Premises must be disposed of in a manner consistent with all rules established by the Maine Office of Marijuana Policy, as the same may be amended from time to time. The Licensed Premises shall not dispose of waste and/or residue from the growth, cultivation, processing, and storage of medical marijuana in an unsecured waste receptacle not in its possession and control.

J. Loitering. The Registered Caregiver shall make adequate provisions to prevent Cardholders or other persons from loitering on the Licensed Premises. It shall be the Licensee's obligation to ensure that anyone found to be loitering or using marijuana or marijuana products in the parking lot or other outdoor areas of the Licensed Premises is ordered to leave.

K. Security. The Licensed Premises must meet the following security requirements:

(1) The Licensed Premises shall have lockable doors and windows and shall be served by an alarm system that includes both an audible alarm and a police department notification component. Said alarm systems must also be professionally monitored, and maintained in good working condition.

(2) The Licensed Premises shall have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system shall be operated with continuous recording twenty-four (24) hours per day, seven (7) days per week, and video shall be retained for a minimum duration of thirty (30) days. Such records shall be made available to law enforcement agencies when investigating a criminal complaint.

~~(3) The Licensed Premises shall maintain exterior lighting that illuminates the exterior walls and complies with all other applicable provisions of the Town of Cumberland Code of Ordinances.~~

L. Insurance; indemnification.

(1) Each Licensee shall procure and maintain occurrence-based commercial general liability insurance coverage in the minimum amount of \$1,000,000 per occurrence / \$2,000,000 aggregate for bodily injury, death, and property damage. Such coverage shall not include any bodily injury or property damage restrictions or exclusions associated with cultivation or sale of medical marijuana.

(2) Evidence of insurance required herein shall be a condition of the issuance of any Registered Caregiver License under this article, and shall be submitted to the Town as part

of the applicant's license application. Certificates shall guarantee ten days' notice to the Town of termination of insurance or any material change from the insurance provider or agent. The Town's acceptance or lack of such evidence shall not be construed as a waiver of the applicant's obligation to obtain and maintain such insurance as required by this Chapter.

(3) By accepting a Registered Caregiver License from the Town, the Licensee knowingly and voluntarily waives, releases, and discharges the Town from all claims, causes of action and demands, both known and unknown, which it has ever had, or may have against the Town, officers, agents, employees, representatives, insurers, successors, and assigns for any injuries, damages or liabilities, resulting from the arrest, prosecution or other consequence of the Registered Caregiver or its parties of control for a violation of local, state or federal laws, rules or regulations.

M. Frequency of patient visits; hours of operation. If a Registered Caregiver's Licensed Premises are not located within the Registered Caregiver Overlay District, as shown on the Town of Cumberland's Official Zoning Map and further defined in § 315-28.5 of the Town of Cumberland Code of Ordinances, said Registered Caregiver may not sell or dispense marijuana to more than five (5) Cardholders in a 24-hour period and may only do so between the hours of 9 AM to 5 PM Monday through Friday.

N. One Registered Caregiver Per Licensed Premises. In spite of any language to the contrary and for the avoidance of doubt, only one (1) Registered Caregiver License may be granted for each Licensed Premises. As such, only one (1) Registered Caregiver may operate consistent with a Registered Caregiver Licensed granted under this Chapter, on a single parcel of property, as more particularly shown on the Tax Maps of the Town of Cumberland.

§ 86-9 Inspections.

A Licensee and its agents and employees shall, at any reasonable time, permit inspection of the Licensed Premises by the Town if necessary to ensure compliance with the provisions of this Chapter or any other applicable portion of local ordinance or state law.

§ 86-10 Decision on licensing application; revocation of license.

A. Any applicant requesting a Registered Caregiver License from the Town Council shall be notified in writing of the Town Council's decision no more than fourteen (14) calendar days from the date of the Town Council's decision. In the event that a license application is denied, or is granted with conditions, the applicant shall be provided with the reasons for the denial or the conditional grant in writing. The applicant may not reapply within thirty (30) days after an application for a license that has been denied.

B. The Town Council may, after notice and hearing, suspend or revoke a Registered Caregiver License issued under this Chapter if the Licensee, or any of the Licensee's officers, members, directors, or partners:

(1) Fails to maintain compliance with all requirements of this Chapter, or with any applicable provision of state law or administrative regulation, including but not limited to 22

M.R.S. § 2421, *et seq.*, as may be amended or recodified;

- (2) Has not acquired and maintained all necessary State of Maine and local approvals prior to and during the term of the License;
- (3) Has been convicted of a disqualifying drug offense;
- (4) Has had a license issued under this Chapter, or any other applicable state or local approval revoked;
- (5) Has provided false or misleading information in connection with the license application; or
- (6) Has, after receiving written notice and demand, refused to allow the Licensed Premises to be inspected for compliance with this Chapter, or has otherwise interfered with a Town officer, official, or employee's performance of their official duties.

§ 86-11 Appeals.

Any appeal of a decision of the Town Council to grant, grant with conditions, deny, suspend, or revoke a Registered Caregiver License pursuant to this Chapter, shall be to Maine Superior Court within thirty (30) days of the date of the decision, in a manner consistent with Rule 80B of the Maine Rules of Civil Procedure.

§ 86-12 Violations and penalties.

The Town of Cumberland shall enforce this Chapter through its Code Enforcement Officer. In addition to revocation and/or suspension of a Registered Caregiver License as provided in this Chapter, any violations of this Chapter shall be subject to a minimum fine of \$100.00 per day and a maximum fine of \$2,500.00 per day, pursuant to 30-A M.R.S. § 4452. Each day that a violation remains constitutes a separate violation. The Town Council, or its authorized agent, is authorized to initiate legal proceedings in Maine District Court to enjoin the unlawful operation of a Registered Caregiver, as provided in this Chapter. If the Town is the prevailing party in such proceedings, the Town shall be entitled to recover its costs of enforcement, including its attorney's fees.

§ 86-13 Waivers.

The Town Council may, in its discretion, waive any of the requirements under § 86-6 of this Chapter if it finds the submittal of certain materials is unnecessary or irrelevant to the review of a particular Registered Caregiver License application.

§ 86-14 Transfer of license.

A Registered Caregiver License may not be assigned or transferred to another person or entity. Any change in ownership or change in officers of the licensee requires a new license. The new owners of any Registered Caregiver, as defined in this Chapter, shall apply to the Town Council for a new license prior to beginning operation. Registered Caregiver Licenses are limited to the premises for

which they are issued and are not transferable to any other property. All Licensees who desire to relocate to a new location shall apply to the Town Council or its designee for a new license and if approved they shall relinquish their permit/license from the previous location.

§ 86-15 Validity and severability.

Should any section or provision of this Chapter be declared by any court of competent jurisdiction to be invalid, such decision shall not invalidate any other section or provision of this Chapter.

Chapter Originally Adopted December____, 2021

§ 315-28.5. Registered Caregiver Overlay District. [Added 11-26-2018]

- A. Purpose. The purpose of the Registered Caregiver Overlay District is to establish areas of Town where registered caregivers may operate, as well as to establish land use requirements for this use.
- B. District. The Registered Caregiver Overlay District, as delineated on the official Town of Cumberland Zoning Map, is hereby designated as an overlay district in specified areas of the Town for the purposes designated herein. Properties in this Overlay District shall continue to be governed by the regulations applicable to the underlying zoning district except as specifically provided herein.
- C. Standards and review. In addition to the permitted uses allowed in the underlying zoning districts and notwithstanding anything to the contrary in the regulations for the underlying zoning districts, the following use is allowed in the Registered Caregiver Overlay District, subject to review and approval by the Code Enforcement Officer, in consultation with the Police and Fire Departments, subject to the standards set forth in this section:
 - (1) Registered caregiver. A registered caregiver, subject to the following standards:
 - (a) A caregiver must meet all applicable requirements of state law and must have all required state registrations and approvals.
 - (b) Each registered caregiver located on a site shall be allowed to cultivate no more than 30 mature marijuana plants and 60 immature marijuana plants. There shall be no limit on the number of seedlings that may be cultivated.
 - (c) All cultivation or processing of marijuana shall take place in an enclosed, secure area that is equipped with locks or other security devices that only allow the person authorized to cultivate and process the marijuana to enter the area. No processing or cultivation shall be visible from the exterior of the building in which the registered caregiver operation is located.
 - (d) A registered caregiver must provide for the control of odors and emissions. Marijuana odor shall not be perceptible at the exterior of the building or at any adjoining property boundary. Appropriate ventilation and filtration systems shall be provided, including but not limited to air scrubbers and charcoal filtration systems. No smoke, debris, dust or other substances shall be allowed to exit the building.
 - (e) No signage shall be placed or otherwise used within 1,000 feet from the property line of any preexisting public or private school, daycare or nursery school. Signage must comply with all applicable requirements of state law and regulation, as well as the requirements of § 315-63 of this chapter.

- (f) The Fire Department may require the installation of smoke detectors, sprinklers or other safety devices when the Department determines that such devices are necessary due to the size, condition or age of the structure, or if there are other uses in the building.
- (g) Security measures shall include, at a minimum, the following:
 - [1] Security surveillance cameras installed, recording and operating 24 hours a day, seven days a week 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. All security recordings shall be preserved for at least 30 days by the registered caregiver. The registered caregiver shall provide the Police Chief or his/her designee with the name and functioning telephone number of a twenty-four-hour on-call staff person to whom the Town may provide notice of any operating problems associated with the operation.
 - [2] Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition.
 - [3] Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Code.
 - [4] Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
- (h) A registered caregiver shall not operate a retail store as part of the caregiver operations.
- (i) The hours of operation shall be limited to between 8:00 a.m. and 5:00 p.m.
- (j) A marijuana caregiver shall provide one on-site parking space for the caregiver and an additional space for each employee of the caregiver, in addition to two parking spaces for patients.

MC Zone Along Rt 100 to be eliminated

