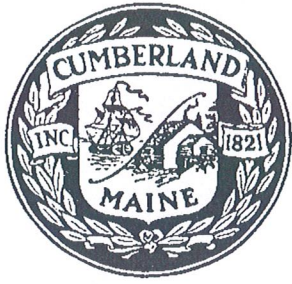


# ITEM 17-058

To send to the Planning Board for a Public Hearing and recommendation,  
ordinance language for the retail sale of marijuana



# M E M O R A N D U M

TOWN OF CUMBERLAND, MAINE

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**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** April 6, 2017  
**Re:** Retail Recreational Marijuana – Ordinance Draft

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The Ordinance Committee is recommending the Town Council consider the prohibition of Retail Marijuana. The Ordinance Committee met with the Town Attorney to discuss the impacts of the Referendum passed in November of 2016 under the “Marijuana Legalization Act”.

To prohibit the retail sales the Committee recommends changes to the following sections of the Ordinance:

*315-4 Definitions* and adding a new section *315-59.1.2 Retail Marijuana* that expressly prohibits the retail uses associated with the pending new legislation.

As you know, since this is part of our land use codes, the Planning Board will need to hold a public hearing on the proposed changes. The Ordinance Committee believed it would be helpful to use both April meetings to allow for public input at the Council level before forwarding to the Planning Board for a Public Hearing and their recommendation.

# **Proposed Ordinance Changes**



#### **§ 315-4. Word usage and definitions.**

##### **ACCESSORY BUILDING OR USE**

A subordinate building or use customarily incidental to, and located on the same lot with, the main building or use, including farm markets for the sale of agricultural and similar products where at least 60% of the gross receipts is derived from the sale of products produced or grown, or where some ingredients of products are grown or produced, on the lot. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

##### **ADDICTION TREATMENT FACILITY**

A facility for outpatient detoxification and treatment of narcotic-dependent persons which administers or dispenses drugs used to alleviate adverse physiological or psychological effects incident to withdrawal from continuous or sustained use of a narcotic drug.

##### **AGRICULTURE**

The use of a tract of land for commercial purposes for cultivation and the production of crops, truck gardening, nurseries or greenhouses, or any allied industry, but exclusive of animal husbandry and exclusive of private gardens less than 1/2 acre. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

##### **ASSOCIATED RETAIL**

A subordinate use customarily incidental to, and located on the same lot with, the main building or use. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

##### **BUSINESS AND PROFESSIONAL OFFICE**

The place of business of individuals or groups providing professional services, including but not limited to doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychologists, and counselors, or a place in which a business conducts its administrative, financial or clerical operations or provides services, including banks, credit unions and other financial services, excluding freestanding automated teller machines (ATMs). This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

##### **CAFE**

A restaurant primarily offering coffee, tea, and other beverages, and where light refreshments and limited menu meals may also be sold for consumption on or off the premises. Cafes shall be no larger than 2,500 square feet, with no drive-through and in accordance with § 315-18F(3).

##### **CATERING SERVICE**

An establishment in which the principal use is the preparation of food and meals on the premises and where such food and meals are delivered to another location for consumption.

##### **CLINIC**

An office building used by members of the medical professions for the diagnosis and outpatient treatment of human ailments. This shall not include registered dispensaries of medical marijuana or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

#### **CLUB, PRIVATE**

A building or use catering exclusively to club members and their guests for recreational purposes and not operated primarily for profit.

#### **COMMERCIAL KITCHEN**

A licensed kitchen facility providing food entrepreneurs the space and equipment to prepare and process for sale on or off premises.

#### **FARM-BASED RETAIL**

The selling of agricultural produce or products, the majority of which is grown or raised by the landowner on property owned by the landowner within the Rural Residential 1 (RR1) and Rural Residential 2 (RR2) Districts.

#### **GROCERY STORE**

A business establishment engaged in the sale of groceries.

#### **HOME-BASED OCCUPATION**

An occupation based or located within a dwelling or an accessory structure which is performed or conducted at a location or locations remote from the dwelling and which:

- A. Is accessory to a residential use;
- B. Is clearly incidental and secondary to the residential use of the dwelling unit; and
- C. Does not change the character of the dwelling.

#### **HOME-BASED RETAIL**

A retail establishment owned and operated by the owner and resident of the dwelling unit that is located on the same lot. The size of the retail space shall be no larger than 2,000 square feet.

#### **HOME OCCUPATION**

A. An occupation performed or conducted within a dwelling or accessory structure by the residents thereof which:

- (1) Is accessory to a residential use;
- (2) Is clearly incidental and secondary to the residential use of the dwelling unit; and
- (3) Does not change the character of the dwelling.

B. Home occupations may include, but are not necessarily limited to, arts and crafts work, dressmaking, tutoring, music teaching, and the use of a portion of a dwelling as a bed-and-breakfast, a day-care home, a professional office such as that of a physician, dentist, lawyer, engineer, architect, hairdresser, barber, real estate broker, insurance agent, or accountant, or similar uses.

#### **INDUSTRIAL**



The assembling, fabrication, finishing, manufacturing, packing or processing of goods or the extraction of minerals.

### **LIGHT MANUFACTURING**

An establishment which is engaged in the mechanical transformation of materials into new products, including the assembling of component parts, and which has the following characteristics:

- A. Does not create any offensive smoke, dust, odor, or other unhealthy or offensive airborne discharge;
- B. Does not create any offensive noise or vibration;
- C. Does not include any outdoor storage of equipment or material; and
- D. Is designed so that the external appearance of any building is compatible with the neighborhood in which it is located.

### **MARKET**

A retail store selling primarily food products that does not exceed 5,000 square feet.

### **PERMITTED USE**

A use specifically allowed in a zoning district, excluding nonconforming uses and special exceptions.

### **REGISTERED DISPENSARY**

A not-for-profit entity registered by the State of Maine in accordance with state statute that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Registered dispensaries include the physical location of the dispensary and any other facility under common management and operating under the same state registration that cultivates marijuana for patients of the dispensary.

### **RESTAURANT**

An establishment where food and drink are prepared and served to the public for consumption on or off the premises.

### **RETAIL MARIJUANA**

"Retail marijuana" means cannabis that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment or retail marijuana social club.

### **RETAIL MARIJUANA CULTIVATION FACILITY**

"Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

### **RETAIL MARIJUANA ESTABLISHMENT**

"Retail marijuana establishment" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

### **RETAIL MARIJUANA PRODUCT**

Retail marijuana product" means concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

#### **RETAIL MARIJUANA PRODUCTS MANUFACTURING FACILITY**

"Retail marijuana products manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

#### **RETAIL MARIJUANA SOCIAL CLUB**

"Retail marijuana social club" means an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

#### **RETAIL MARIJUANA STORE**

"Retail marijuana store" means an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

#### **RETAIL MARIJUANA TESTING FACILITY**

"Retail marijuana testing facility" means an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

#### **RETAIL STORE**

Any shop or store for the retail sale of goods or personal services, excluding any drive-up service, freestanding retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, and trailer and mobile home sales and service. This shall not include registered dispensaries of **medical marijuana** or any other addiction treatment facility as defined in this chapter and by applicable state statutes.

*\*Signs – Need to amend per sign ordinance amendments*

#### **WAREHOUSE AND STORAGE**

A use in which materials, goods, or equipment is stored for compensation or in connection with a business operation. Not to include distribution.

#### **WHOLESALE DISTRIBUTION FACILITIES**

Establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional business uses, or to other wholesalers, or acting as agents or brokers in buying merchandise for, or selling merchandise to, such individuals or companies. This shall not include registered dispensaries of **medical marijuana** or any other addiction treatment facility as defined in this chapter and by applicable state statutes.



### **§ 315-59.1. Registered dispensaries.**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, these performance standards, when enacted, shall govern any proposed registered dispensary for which an application has not been submitted and acted on by the Planning Board prior to February 10, 2014. The following standards apply to all registered dispensaries:

#### **A. Location criteria.**

- (1) No medical marijuana dispensary shall be sited within 500 feet of the lot lines of any of the following:
  - (a) Any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;
  - (b) A State of Maine licensed child-care facility; or
  - (c) A State of Maine licensed family home child-care facility.
- (2) The distance cited in this subsection shall be measured between the lot line of the proposed site for the registered dispensary and the lot line of the site of the use listed in Subsection **A(1)(a)** through **(c)** above at their closest points.

**B. Hours of operation.** Registered dispensaries may be open for business only between the hours of 8:00 a.m. and 5:00 p.m., locally prevailing time.

**C. Signage and advertising.** All signage and advertising for a registered dispensary shall comply with all applicable provisions of this Code. In addition, no signage or advertising shall use the word "marijuana" or "cannabis," or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols on the sign. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers.

**D. Security requirements.** Security measures at a medical marijuana dispensary and any associated cultivation facility 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;
  - (a) All security recordings shall be preserved for at least 30 days by the medical marijuana dispensary. The medical marijuana dispensary shall provide the Police Chief or his 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 medical marijuana dispensary.
  - (b) 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;



- (c) Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Code; and
- (d) Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).

E. Cultivation. If there is both the cultivation and dispensation of marijuana occurring on the same site, the cultivation area shall not be greater than 25% of the total floor area of the portion of the building used for dispensation of marijuana.

F. On-site consumption of medical marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited; provided, however, that a medical marijuana dispensary employee who is a registered patient, as that term is defined in 22 M.R.S.A. § 2422(12), as may be amended, may consume medical marijuana within the enclosed building area of the premises if such consumption occurs via oral consumption (i.e., eating only). For purposes of this subsection, the term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the medical marijuana dispensary's entrance.

G. Visibility of activities; control of emissions; disposal plan.

- (1) All activities of registered dispensaries, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.
- (2) No marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the premises.
- (3) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
- (4) All medical marijuana dispensaries shall have in place an operational plan for proper disposal of marijuana and related byproducts.

H. Sale of edible products. No food products shall be sold, prepared, produced or assembled by a medical marijuana dispensary except in compliance with all operating and other requirements of state and local law and regulation, including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

I. Other laws remain applicable. A medical marijuana dispensary shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.

J. Maximum number. The maximum number of medical marijuana dispensaries in the Town shall be capped at one.

K. Application submission requirements. The applicant shall provide the Planning Board with documentation of any required state approvals for the operation of a registered dispensary.

**§ 315-59.1. 2 Retail Marijuana.**

A. The following uses as defined by this Chapter and under the “Marijuana Legalization Act” (7 M.R.S.A. §§ 2441 – 2454 as may be amended and successor provisions thereof) are hereby expressly prohibited in all Districts within the Town of Cumberland:

- (1) Retail Marijuana Cultivation Facility
- (2) Retail Marijuana Establishment
- (3) Retail Marijuana Products Manufacturing Facility
- (4) Retail Marijuana Social Club
- (5) Retail Marijuana Store
- (6) Retail Marijuana Testing Facility

(7) Farm based retail ? may have to research further.