INFORMATIONAL MEETING AGENDA

THURSDAY, DECEMBER 13, 2018
6:30 P.M.
CITY HALL (COUNCIL CHAMBERS)

A. Items for discussion submitted by the City Council and/or the City Manager:

1. Ice Skating Rinks – Councilor O’Brien
2. Potential Sale of City Property Behind Queen’s Court Mall – City Manager
3. Commercial Street Redesign – City Manager
4. Changes to Recycling Program – City Manager
5. Continued Discussion on Marijuana Ordinances – City Manager

B. Persons wishing to address the City Council who have submitted a formal request in accordance with Section 2-61 of the Code of Ordinances:

C. Open comment period for any persons wishing to address the City Council:
MEMO

To: Bill Bridgeo  
From: Keith Luke  
CC: Matt Nazar  
Date: December 10, 2018

Queen’s Court Property – 1 Park Street

The City of Augusta acquired the 1 Park Street property, which is located behind Queen’s Court (Dairy Queen) on Bangor Street, in 2009 at the same time it acquired other properties that had been part of the Augusta Tissue mill. A large smokestack that served the Tissue Mill was subsequently demolished and removed from the site.

The vacant land was held off the tax-acquired property list until recently due to its location adjacent to the Riverside Cemetery. In the summer of 2018 the conservation committee reviewed the property and determined that it was not suitable for any expansion of the cemetery, clearing it for listing as a tax-acquired property for the city.

The assessed value on the 1.85ac property is $32,400. There are issues which impact the developable area including a significant slope over much of the property. It is in the Kennebec Locke zone district, which is among the city’s most flexible multi-use zoning districts.

The city can either market the property through seal bid, or use its designated real estate broker for tax-acquired properties. The broker commission would be 8% of the sales price or $2,000 – whichever is greater. If offered by sealed bid, the city would have advertising costs of $1,000 or less.
MEMORANDUM:

TO: City Council
    William Bridgeo, City Manager
    Steve Langsdorf, Corporation Counsel

FROM: Matt Nazar, Director of Development Services

DATE: November 6, 2018

RE: Augusta Marijuana regulation

Background – How we got here

Just over a year ago, the existing laws regarding adult-use marijuana required municipalities to “opt-out” of the law if the municipality did not want it sold in its boundaries and the laws and rules regarding marijuana were still in Legislative limbo at the state. The Council discussed the issue of opting out, and agreed that was unlikely to be the approach of the Council. Adult-use marijuana was expected to be sold in Augusta and the Mayor should appoint a subcommittee of the Council to recommend regulations regarding its sale, processing, and use. Without a majority agreement on sales within the city, the work of a subcommittee was unnecessary.

Just under a year ago, the City Council created a Council subcommittee with five members, assisted by two staff people. Councilor Alexander (Chair), Councilor Grant, Councilor Elliot, Planning Board member Alison Nichols, and resident and industry expert Catherine Cobb were the subcommittee members. Kristin Collins and I were staff. The original charge of that subcommittee was related to adult-use marijuana, but as the subcommittee got to work, it became evident that medical marijuana was inextricably linked to the adult-use market and that regulations for one must take into account the other.

A very important consideration is that there are two different state laws regulating marijuana. One regulates medical marijuana the other regulates adult-use (aka recreational) marijuana. Most communities in Maine are choosing to regulate these two uses pretty much the same way with the same zoning and licensing schemes. Regulating registered caregivers and growing for personal use are the only areas where some variation seems to be happening.

The committee met seven times and visited a medical marijuana cultivation and processing facility in Auburn. During the time the subcommittee was meeting between January 2018 and June 2018, the legislature had not yet finalized the changes to the laws regarding both adult-use and medical marijuana. The fact that the details of the law were still unknown made it difficult to do more than speak conceptually about the area the subcommittee was interested in
addressing once the law was finalized. The subcommittee set its work aside for the summer, expecting to start work again in the fall, after the Legislature put the finishing touches on both the adult-use and medical marijuana laws. The Legislature overturned the last of the Governor’s vetoes related to marijuana on July 9, 2018, and the landscape for regulating both adult-use and medical marijuana was finally stabilized.

However, by late Spring the subcommittee felt they had enough information to send an initial recommendation to the Council on one aspect of the medical marijuana caregiver system – home occupation standards. The subcommittee sent that recommendation to the Council, who sent it to the Planning Board for public hearing, who then sent it back to the City Council for consideration or adoption. It is at this point that things shifted significantly.

The City Council held an Informational Meeting on August 9, 2018, and several things happened during that meeting. First, it became evident that there were significant differences of opinion among Councilors regarding caregiver home occupations, and home occupations in general, opinions that appeared in conflict with the recommendations of the Council subcommittee. Several Council members expressed concern that unique standards were being proposed for medical marijuana caregivers different from other home occupations. One Councilor expressed concern regarding all home occupations and a desire to expand the discussion beyond medical marijuana caregivers. The Mayor expressed a concern about odor from individuals growing marijuana for personal use, since the issue of odor had been raised for home occupations. The discussion ranged from whether or not the medical marijuana caregiver system would collapse now that adult-use marijuana was legal to both medical marijuana retail stores and adult-use marijuana sale.

The issue of Medical Marijuana Dispensaries was placed on the August 23, 2018, Council Informational Meeting. Based on this meeting and subsequent meetings, the discussion was expanded by the full Council into the areas previously being reviewed by the subcommittee. With this expansion by the full Council, the subcommittee has not reconvened. Given the diverse opinions on the full Council that have become apparent in the last few meetings, the full Council may be the more appropriate place for the discussion. Staff will certainly assist whichever way the Council wishes to approach this issue – via subcommittee or the full Council – as we move forward. The Council’s last meeting on the issue resulted in a request for full ordinance and licensing language for all aspects of marijuana regulation. That information is attached as a draft starting point.

Several issues arose during both the Council’s and the subcommittee’s discussions that may be worthy of additional Council consideration:

1. Medical marijuana caregiver laws have changed significantly with the veto override in July 2018. The previous law theoretically limited caregivers to five patients and six plants per patient. Clearly the previous caregiver law was intended to enable small home-based businesses and it did that job well, creating thousands of such small businesses across the state. The change in the caregiver law eliminates the limit on the number of patients and only limits the number of plants to 30 flowering with the opportunity to purchase additional product from other growers. With 30 flowering plants and additional product available, it will be possible for a medical marijuana
caregiver business to legally be much larger than previously intended and clearly no longer appropriate in a neighborhood by almost any standard. It seems like a majority of Councilors do not want caregivers located in some or all of the city’s dense residential neighborhoods - West Side Neighborhood, East Side Neighborhood, Mayfair, Ganneston, and perhaps a few other residential neighborhoods. Is this the case?

2. Municipalities may not prohibit or limit the number of registered primary caregivers. However the law related to medical marijuana (22 MRSA §2423-A, sub-$14) grants municipalities the authority to regulate registered primary caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities.

3. The idea of creating overlay zones for marijuana retail uses, processing, and manufacturing uses (medical and adult-use) was discussed with the overlays narrowing the possible locations within existing commercial districts. This approach would tightly control where these uses could locate. It would be the only use in the city that was regulated in this way, which does complicate the regulatory process. An alternative might be to simply allow the use by Conditional Use permit in the same basic areas as other retail or manufacturing uses, as has been done in most other municipalities in Maine. Does the Council favor allowing retail, processing, and manufacturing in existing commercial and industrial districts?

4. There may be a set of performance standards that are important to discuss and potentially adopt regarding growing areas, processing, and sales. Those include:
   a. Buffers from sensitive uses. Churches, Day Cares, Schools, etc.
   b. Odor Control.
   c. Security systems.
   d. Prove compliance with State Electrical Codes by getting certification from a Master Electrician of the system to handle the proposed operation.
   e. Hours of Operation.
   f. Maximum size of a retail operation. At least one municipality has limited the retail floor area to 2,000 square feet.
   g. Permit or Prohibit deliveries.
   h. Permit or Prohibit outdoor growing.
   i. Permit or Prohibit growing for personal use on a property that does not have an occupied residence on it.

5. Licensing can limit the number of each type of marijuana related use, except medical marijuana caregivers. Does the Council want to limit the number of available licenses for retail, processing, manufacturing, testing, and commercial growing?

6. To what extent does the Council want to regulate personal growing?
Possible Zoning Changes. These would require Planning Board public hearing and recommendation, as this issue has not gone to the Planning Board beyond the idea of Caregiver Home Occupations.

1. The following Definitions would be added to the LUO and may need refining, as they blend the Medical and Adult Use definitions in state law so that the city can treat them the same from a land use perspective.

Marijuana Cultivation or marijuana cultivate. "Marijuana Cultivation" or "marijuana cultivate" means the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. It does not include manufacturing, testing or marijuana extraction.

Marijuana cultivation facility. "Marijuana cultivation facility" means a facility licensed under state law to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package marijuana; to sell marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

Marijuana manufacturing or marijuana manufacture. "Marijuana manufacturing" or "marijuana manufacture" means the production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. It does not include cultivation or testing.

Marijuana plant. "Marijuana plant" means all species of the plant genus cannabis, including, but not limited to, a mother plant, a mature marijuana plant, an immature marijuana plant or a seedling.

Marijuana product. "Marijuana product" means a product composed of marijuana or marijuana concentrate and other ingredients that is intended for use or consumption. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include marijuana concentrate.

Medical or adult use marijuana store. "Medical or adult use marijuana store" means a facility licensed under state law to purchase medical or adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase marijuana and marijuana products from a products manufacturing facility and to sell marijuana, marijuana products, immature marijuana plants and seedlings to consumers.

Marijuana testing facility. "Marijuana testing facility" means a facility licensed under
state law to develop, research and test marijuana, marijuana products and other substances.

Registered caregiver. "Registered caregiver" means a caregiver who is registered by the State Department of Administrative and Financial Services pursuant to State law to dispense medical marijuana to qualified patients.

2. Medical and adult-use marijuana store (from Registered Caregiver to Dispensary to general sales) could be allowed as conditional uses in the CB, CC, CD, MED and KBD1 zoning districts. Please see the enclosed zoning map regarding the locations of those zones, but generally, that’s Western Ave, Whitten Road, Augusta Crossing, Civic Center/MarketPlace area, Bangor Street, Water Street, and the southern segment of State Street. Existing Registered Caregivers that can prove they were operating in the location they currently operate could be allowed to continue operation for a set period of time, then sunsettled. This would require them to move to locations where the use is allowed, or stop operating, but would allow time to comply so their business and patients are not unreasonably impacted.

3. Marijuana Manufacturing and Testing facilities could be allowed to co-locate with stores in the same zoning districts also as conditional uses, or not. The IA zoning district seems to be an appropriate district.

4. Marijuana Cultivation Facility could be allowed to co-locate with retail stores or manufacturing facilities, or operate on their own. The subcommittee appeared to be going down the road of recommending no outdoor cultivation facilities. Cultivation facilities might be appropriate in some of the more rural areas of the city as well as the urban areas, both with adequate performance requirements on security and odor control.

5. Create a Performance Standards Section in Chapter 5 of the LUO that regulates some or all of the performance standards outlined earlier in this memo.

Finally, in addition to the zoning discussed above, the City can and should adopt a licensing system for both medical and adult use marijuana facilities – cultivation, process, testing, and sales. Corporation Council has created a licensing regulation that dives deep into the requirements for each licensed use. The question the Council will need to address is how many of each license will the city grant, with the caveat that the state does not allow municipal limitation on the number of Registered Caregivers. Please see the attached material regarding licensing.
### New Maine Marijuana Statutes Cheat Sheet

<table>
<thead>
<tr>
<th><strong>Adult Use Marijuana Act</strong> – P.L. 2017 c. 409 (LD 1719)</th>
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<tbody>
<tr>
<td>- Legalizes the use and commercial sale of marijuana for recreational purposes</td>
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<td>- Enacted May 2, 2018 as emergency legislation</td>
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<td>- Completely replaces the citizen-initiated Marijuana Legalization Act</td>
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<tr>
<td>- Establishes state licensing process for adult use marijuana establishments (no social clubs)</td>
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<tr>
<td>- <strong>Default is prohibition</strong> – municipalities must vote to “opt in” to operation of adult use marijuana establishments within the municipality</td>
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<tr>
<td>- State licensing conditioned on municipal approval</td>
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<tr>
<td>- State licensing of adult use marijuana establishments will not begin until at least summer 2019</td>
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<tr>
<td>- Municipalities may regulate adult use marijuana establishments locally</td>
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<td>- Municipalities may regulate home cultivation, but may not generally prohibit, zone or license the activity</td>
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<tr>
<th><strong>Medical Marijuana Law Amendments</strong> – P.L. 2017 c. 447 (LD 238)</th>
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<tr>
<td>- Amendment to the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)</td>
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<tr>
<td>- Enacted July 9, 2018, as emergency legislation</td>
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<tr>
<td>- Carve-out of some provisions of LD 1539</td>
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<tr>
<td>- Establishes state registration requirements for medical marijuana products manufacturing</td>
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<td>- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers</td>
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<tr>
<th><strong>Medical Marijuana Law Amendments</strong> – P.L. 2017 c. 452 (LD 1539)</th>
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<td>- Complete overhaul of the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)</td>
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<tr>
<td>- Enacted July 9, 2018, but not yet in effect - effective date is December 13, 2018</td>
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<td>- Authorizes registered caregivers to operate medical marijuana retail stores</td>
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<tr>
<td>- Allows six additional registered dispensaries, eliminates cap on dispensaries after 2021</td>
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<tr>
<td>- Establishes state registration requirements for medical marijuana products manufacturing</td>
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<td>- Local code enforcement officers can obtain caregiver registration information from State</td>
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<tr>
<td>- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers</td>
</tr>
<tr>
<td>- <strong>Default will be prohibition</strong> – After December 13, 2018, municipalities must vote to “opt-in” to operation of registered caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities</td>
</tr>
<tr>
<td>- Medical marijuana establishments already in operation with municipal approval as of December 13, 2018, will be grandfathered</td>
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New Laws on Medical Marijuana Retail Stores

Many municipalities have been struggling with how to handle requests from registered caregivers to operate medical marijuana retail stores. Existing law has been completely silent on the legal status of these stores and unclear as to municipal authority to regulate them. These ambiguities have created a breeding ground of confusion – some towns have refused to permit them, others have permitted them on the assumption they must, and others have taken no action either way. Two new laws provide some clarity, but may also pose a problem before both laws finally become effective. Here’s a summary:

On July 9, 2018 the Legislature enacted two amendments to the Maine Medical Use of Marijuana Act which recognize municipal home rule authority to regulate registered caregivers. The smaller of the two, PL 2017, c. 447 (LD 238), was enacted as an emergency and took effect immediately – municipalities may now, by ordinance, regulate registered caregivers.

The larger of the two, PL 2017, c. 452 (LD 1539), is a sweeping reform to the entire medical marijuana statute. One part authorizes registered caregivers to operate medical marijuana retail stores. However, caregivers may only do so if the municipality has voted to allow them generally. In other words, once this law takes effect, new medical marijuana retail stores are prohibited unless the municipal legislative body affirmatively votes to allow their operation. This is similar to the municipal “opt-in” requirement for adult use marijuana establishments under the Adult Use Marijuana Act.

But herein lies the rub: this opt-in requirement will not apply to medical marijuana retail stores until LD 1539 takes effect, which will not be until sometime in late 2018 or later. In addition, LD 1539 expressly grandfathers stores “operating with municipal approval” prior to the law’s effective date. This means medical marijuana retail stores will have at least several months to become grandfathered before new stores are prohibited from operating without a municipal vote to “opt-in.”

For municipalities that want to prohibit medical marijuana retail stores, or for municipalities that may want to allow them but need time to amend local ordinances to regulate them, we recommend adopting a moratorium ordinance. Since LD 238 is already in effect, there is no doubt that a moratorium applying to registered caregivers is now authorized.

Note that LD 238 also imposes new state registration requirements for medical marijuana manufacturing facilities. In addition LD 1539 will grandfather medical marijuana dispensaries, testing facilities and manufacturing facilities that are “operating with municipal approval” prior to the law’s effective date (again, sometime in late 2018 or later). Municipalities wanting to regulate or prohibit these establishments should consult with local counsel about including them in a moratorium ordinance.

For MMA Legal Services’ Sample Moratorium Ordinance Regarding Medical Marijuana Retail Stores, see the following link:

https://memun.org/Documents?Command=Core_Download&EntryId=11969
Adult Use Marijuana

MMA Legal Services Information Packet

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

Date of last revision: 06/2018

This packet includes the following attachments:

- Adult Use Marijuana Act
- Sample warrant articles generally authorizing adult use marijuana
- South Portland Marijuana Zoning Laws
- South Portland Marijuana Licensing Process

Important issues and considerations include:

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

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

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

I. Background on the Repealed Marijuana Legalization Act

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

The citizen-initiated law provided significant local control over commercial aspects of the industry. However, municipalities had to take action to “opt-out” of commercial marijuana activity if they wanted to limit or prohibit the operation of marijuana establishments within their jurisdictions. The citizen-initiated law also contained several drafting errors and ambiguities that made the licensing approval process unworkable and needed to be fixed. (For more on the progression of legislative efforts after passage of Question 1, please see the following Legal Notes from December, 2016 through February, 2018.)
On May 2, 2018, after a year and a half of deliberation and one failed attempt to override the Governor’s veto of overhaul legislation in November of 2017, the Legislature enacted as an emergency a new law outlining a workable regulatory process for commercial sale of recreational marijuana, the Adult Use Marijuana Act.

II. Adult Use Marijuana Act (Current Law)

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

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

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

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

III. Types of Adult Use Marijuana Establishments

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

- **Marijuana Store**: A marijuana store is a facility authorized to sell marijuana and marijuana products directly to consumers. 28-B M.R.S. § 102(34). Marijuana stores are also authorized to sell marijuana paraphernalia, and other non-consumable products (like clothing), as well as consumable products that do not contain marijuana, (like soda or candy). Marijuana stores may not sell tobacco or alcohol products that do not also contain marijuana. Adult use marijuana sales with the use of vending machines, drive-through windows, internet-based platforms, and deliveries, are prohibited. 28-B M.R.S. § 504.

- **Cultivation Facility**: A cultivation facility is a facility licensed to grow, prepare, and package marijuana. 28-B M.R.S. § 102(13). Cultivation licensees are authorized to sell the marijuana they grow and package to other establishments licensed under the Adult Use Marijuana Act, but they may not sell marijuana to registered caregivers or dispensaries distributing marijuana pursuant to Maine’s medical marijuana laws. They also cannot sell marijuana to consumers unless they have a separate marijuana store license. 28-B M.R.S. § 501(8). A cultivation licensee may fall within one of 4 tiers of cultivation facility licenses, depending on the plant canopy square footage. 28-B M.R.S. § 301.

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

- **Products Manufacturing Facility**: A products manufacturing facility is authorized to blend, infuse, or extract components of the marijuana plant to make marijuana products such as ointments, tinctures, or edibles, for sale to marijuana stores or other marijuana products manufacturing facilities. 28-B M.R.S. §§ 102(26), (33), (43). Products manufacturing sometimes requires extraction of marijuana concentrate using hazardous solvents such as butane or methyl alcohol. A products
A manufacturing facility that is going to perform this type of extraction must obtain certification from a professional engineer that the proposed extraction method is safe. 28-B M.R.S. § 502(7)(B).

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

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

### IV. State Licensing Process

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

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

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

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

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

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

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

**Multiple licenses:** Licensees may obtain multiple licenses of any license type, as long as having multiple licenses does not result in the applicant having a direct or indirect financial interest in more than three cultivation facilities, or more than 30,000 square feet of plant canopy (although licensees can exceed this canopy cap through approved increases in plant canopy, authorized for tier 4 cultivation licenses). Until January 2022, licensees are also limited from having direct or indirect financial interest in more than 4 marijuana stores. Testing facility licensees can obtain multiple testing facility licenses, but are prohibited from being caregivers, or having any interest in medical dispensaries, cultivation facilities, products manufacturing facilities, and marijuana stores.28-B M.R.S. § 205(2).
Each license issued by DAFS is separate. For example, a products manufacturing licensee cannot operate a marijuana retail store at the same location without first applying for a store license, or open another products manufacturing facility at a separate location without applying for another products manufacturing license. 28-B M.R.S. § 205(5).

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

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

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

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

V. Local Regulatory Authority

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

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

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

• **Zoning:** Through zoning ordinances, municipalities have the ability to divide the municipality into districts and apply different regulations for each district. A municipality with zoning may wish to limit adult use marijuana establishments to one or a few districts in the municipality, where such activity is more consistent with surrounding activities. For example, municipalities may want to restrict cultivation facilities to agricultural districts, retail stores to commercial districts, or testing facilities to industrial districts. In Maine, zoning must be done pursuant to and consistent with a comprehensive plan adopted by the legislative body. 30-A M.R.S. § 4352(2). Maine law also establishes special notice and hearing requirements for the adoption or amendment of zoning ordinances. 30-A M.R.S. §§ 4352(9), (10). For additional information on zoning, see Chapter 7 of MMA’s Planning Board Manual.
**Other land use ordinances:** Municipalities are not required to enact zoning ordinances to regulate marijuana establishments. Pursuant to 30-A M.R.S. § 3001, municipalities have broad home rule authority to enact or amend municipal-wide land use ordinances that apply standards to marijuana establishments wherever located in the municipality. Examples of non-zoning land use regulation for adult use marijuana establishments could include, but are not limited to: odor control, pesticide control, performance standards, site plan review, home occupation permits, building permits for new structures, signage restrictions or parking setback requirements.

**Licensing:** Municipalities have the authority to impose licensing requirements and associated fees on the various types of adult use marijuana establishments. Municipalities can require adult use marijuana businesses or owners to be licensed, either through a general business licensing ordinance, or through marijuana-specific licensing requirements. Any fees established pursuant to this authority must reasonably reflect the municipality’s costs associated with the license procedure and enforcement. 30-A M.R.S. § 3702.

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

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

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

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

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

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

1. the legislative body has voted to generally authorize the type of establishment that is the subject of the application;
2. the location of that establishment meets the appropriate setback from the property line of a school, and the applicant has shown proof of entitlement to the premises; and
3. the applicant has met all applicable local land use, zoning, permitting, or licensing requirements, if any.
DAFS form completion; failure to act: A municipality has 90 days to complete the certification form and return it to DAFS. If the municipality still needs time to complete all necessary local review and approval processes required of the conditional licensee, then the municipality can notify DAFS of this fact before the 90 days have expired to extend the deadline an additional 90 days. If a municipality fails to act on a conditional licensee’s request within the allowed timeframe, it is deemed a denial, which is a final governmental action appealable to Superior Court pursuant to Rule 80B. 28-B M.R.S § 402(5).

VI. Personal Use and Cultivation

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

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

Home solvent based extraction using hazardous substances is strictly prohibited.

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

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

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

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

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

• generally prohibit the home cultivation of marijuana for personal adult use within the municipality;
• restrict the areas within the municipality in which home cultivation of marijuana for personal adult use is allowed; or
• charge a license or other fee for home cultivation of marijuana for personal adult use within the municipality.
Even if a municipality chooses not to regulate home cultivation directly, the use of a parcel by multiple non-domiciled individuals for home cultivation may require municipal review under Maine’s subdivision laws. A subdivision is defined as the division of a tract or parcel of land into 3 or more lots, “whether the division is accomplished by sale, lease, development, buildings, or otherwise.” A parcel with 3 or more written agreements sectioning off parts of the parcel for home cultivation could qualify as a subdivision under this definition.

VII. Taxation on Adult Use Marijuana

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

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

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

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

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

VIII. Adult Use Marijuana in the Workplace

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

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

IX. Medical Marijuana

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

With that said, there are certain provisions in the Adult Use Marijuana Act that authorize an overlap of the medical and adult use industries. For example, registered caregivers may apply for any adult use marijuana establishment license (except testing facility licenses). Registered caregivers and dispensaries are also authorized to cultivate medical and adult use marijuana in the same facility but only if they have licenses under both the medical and adult use statutes and they keep the cultivation process for each separate. 28-B M.R.S. § 501(5). The same is true for products manufacturing facilities. 28-B M.R.S. § 502(4).
There is also a provision that sunsets two years after the date of enactment of the Adult Use Marijuana Act, allowing registered caregivers and dispensaries to sell plants and seeds to adult use cultivation facilities that also possess caregivers/dispensaries licenses. 28-B M.R.S. § 501(6). The purpose of this sunset provision is to ensure there is a sufficient amount of marijuana for the adult use market once licenses become available. DAFS will only allow new licensees this opportunity for the first two years, and cultivation facilities will not retain this authorization upon renewal of their licenses.

X. Federal Marijuana Law

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

To date, there has been very little enforcement of federal law against those operating in compliance with state marijuana laws. Under the Obama Administration, a guidance memo from Deputy Attorney General James Cole memorialized a hands-off approach to federal prosecution of marijuana-related activity that complied with state law. The current Attorney General, Jeff Sessions, has since rescinded Cole’s guidance memo. However, even without the Cole Memo in place, U.S attorneys must prioritize prosecution in their respective jurisdictions based on available resources and the cumulative impacts of crimes in the region. For the U.S. Attorney for the District of Maine, the priority when it comes to drug-related crimes is activity related to the opioid crisis (see Maine U.S. Attorney Statement on Marijuana Enforcement).
City of Augusta
Base Zones
Does NOT Show Overlay Zones
City of Augusta
Bureau of Planning
October 25, 2016

BP - Institutional/Business/Professional
CB - Local Business
CC - Regional Business
CD - Civic Center
CON - Contract or Conditional
GS - Government Services
IA - Industrial
KBD1 - Kennebec Business 1
KBD2 - Kennebec Business 2
KL - Kennebec Lockes
MED - Medical
PD - Planned Development
PD2 - Planned Development 2
RA - Low Density Residential
RB1 - Medium Density Residential
RB2 - Medium Density Residential
RBV - Riggs Brook Village
RC - High Density Residential
RC - High Density Residential
RD - Resource Development
RPDS - Rural Ponds
RR - Rural River
RR2 - Rural River 2
RRES - Rural Residential
RV - Rural Village