

City Council Workshop

Agenda Item #3

February 13, 2017

Retail Marijuana Policy Development

This past November Maine voters approved a citizen-initiated referendum to legalize marijuana for recreational use. In addition to possession and use of marijuana, the new law also legalizes cultivation, sale, and distribution as lawful business enterprises with certain rules and stipulations. On December 19, 2016, the South Portland City Council adopted moratoria on the licensing of retail marijuana establishments and social clubs as well as land use permitting for development of those types of businesses. The purpose of the moratoria is to provide some time for Staff, Corporation Counsel, Planning Board, and the City Council to craft thoughtful regulations related to licensing and zoning for retail marijuana businesses.

During the past month staff has begun researching and framing the various issues the City should consider, and is recommending the following actions: 1.) Define and codify each of the various retail marijuana business types; 2.) Establish licensing requirements in Ch. 14 for each retail marijuana business type, as appropriate; and 3.) Adopt zoning regulations in Ch. 27 that articulate land use policy with respect to each of the various new business activities. Once the draft amendments are complete, a City Council workshop will be scheduled and Councilors will have the opportunity to review, discuss, and offer feedback. As soon as any revisions are made, Chapter 27 will advance to the Planning Board and first reading will be scheduled concurrently for both Chapters 14 and 27.

Assistant Manager Reny has prepared a memorandum that outlines a variety of specific considerations related to licensing and zoning for retail marijuana businesses. At this time, we are seeking some initial policy guidance that will allow us, following this workshop, to begin developing the draft ordinance amendments. The new law defines five types of retail marijuana businesses (see attached memo) and provides municipalities the authority to allow or prohibit each. The Council should consider whether it intends to allow or prohibit each type of retail marijuana business, and if allowed, whether to cap the number of licenses issued for each. We would also appreciate receiving any other guidance the Council wishes to provide on the matter.



Interim City Manager



EXECUTIVE
DEPARTMENT

CITY OF SOUTH PORTLAND

P. O. Box 9422
25 Cottage Road
South Portland, ME 04116-9422

Don Gerrish
Interim City Manager

Joshua J. Reny
Assistant City Manager

MEMORANDUM

To: Mayor Smith, City Council, Interim City Manager Gerrish

From: Joshua Reny, Assistant City Manager

Date: February 8, 2017

Re: Development of Retail Marijuana Regulations

On November 8, 2016, Maine voters narrowly approved a citizen-initiated referendum to legalize marijuana for recreational use. In South Portland, the referendum received support from 58% of voters. In addition to possession and use of marijuana, the new law also legalizes cultivation, sale, and distribution as lawful business enterprises with certain rules and stipulations. On December 19, 2016, the South Portland City Council adopted moratoria on the licensing of retail marijuana establishments and social clubs as well as land use permitting for development of those types of businesses, under Chapters 14 and 27, respectively, of the South Portland Code of Ordinances. The moratoria are effective for a period of 180 days through May 19, 2017, or until such earlier time that local policy is adopted. The purpose of the moratoria is to provide some time for Staff, Corporation Counsel, Planning Board, and the City Council to craft thoughtful regulations related to licensing and zoning for retail marijuana businesses.

On January 27, 2017, the Governor signed LD 88, An Act to Delay the Implementation of Certain Portions of the Marijuana Legalization Act, which act delays the effective date of the law related to business licensing until February 1, 2018. It is likely that the framework of a State licensing regime for retail marijuana businesses will not become known for several more months, and it is possible the law will again be amended before it becomes effective. However, this should not preclude the City from developing local regulations to prepare for this type of business activity. As part of the local regulations to be developed, Staff will recommend that a provision be included within any subsequent amendments to Chapters 14 and 27 related to retail marijuana that triggers an automatic review once the State's rulemaking is complete.

Staff has done some initial research to frame the various issues the City should consider, and is broadly recommending the following actions: 1.) Define and codify each of the various retail marijuana business types; 2.) Establish licensing requirements for each retail marijuana business type, as appropriate; and 3.) Adopt zoning regulations that articulate land use policy with respect to each of the various new business activities.

Defining Retail Marijuana Businesses in Ordinance

Whether a retail marijuana business activity will require a license or be regulated by zoning (or both), the business operation and the products and/or services it provides should be clearly understood and defined in code or referenced in State law. The Marijuana Legalization Act includes four types of “Retail Marijuana Establishments”, including: 1. Retail Marijuana Cultivation Facilities, 2. Retail Marijuana Products Manufacturing Facilities, 3. Retail Marijuana Testing Facilities, and 4. Retail Marijuana Stores. There is also a fifth business category entitled “Retail Marijuana Social Clubs”.

These four types of retail marijuana establishments are defined as follows:

Retail marijuana cultivation facility – 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 products manufacturing facility – 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 testing facility – entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products

Retail marijuana store – 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.

A **retail marijuana social club** means an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises. Maine is the first state to allow social clubs, and so how these will work out is uncharted waters for the State.

Municipalities have the express authority to allow or to prohibit each of the various types of businesses. If any such use is allowed, municipalities also have the authority to regulate the location and operation of each type of use. For example, the City may choose to allow Retail Marijuana Stores, but prohibit Retail Marijuana Social Clubs. If a municipality chooses to allow one or more of these types of businesses, it has the authority to develop local regulations specific to each business type. Therefore, in the context of licensing and zoning, policymakers should consider variations in regulation rather than lumping all retail marijuana businesses into a single category. It may be prudent to impose certain limitations on business hours for a Marijuana Social Club adjacent to a residential neighborhood, but not do the same for a Marijuana Cultivation Facility located in an industrial park.

Licensing

Staff generally envisions a licensing scheme similar to that required of establishments serving alcohol or other types of businesses commonly requiring a license from the City. Licenses would require periodic renewal, subject to approval by the City Council or delegated to the City Clerk. New licenses as well as renewals may require notice given to abutters. The City should consider reasonable licensing fees to cover all administrative costs associated with application processing and any inspection program. Licenses may impose reasonable limits on hours of operation for retail establishments that generate automobile and pedestrian traffic, for example, as well as social clubs where people will congregate. Licenses may require periodic inspections related to public safety and code compliance. Another policy consideration allowed under the statute is whether to place a limit on the number of licenses issued by the City for various business types. For example, the City could limit the number of licenses issued for Marijuana Social Clubs. The City might also require geographic separation between licensed businesses (i.e., a new license for a Marijuana Social Club may not be issued if the proposed business location is within a certain distance of another licensed Marijuana Social Club).

Zoning Regulations

Each type of retail marijuana business may be restricted to certain land use zones. For example, Marijuana Cultivation Facilities may be restricted to zones that allow for industrial or light manufacturing, whereas Marijuana Stores may be limited to retail business and commercial zones. Because of the nature of these businesses and their potential impact on abutters it may be prudent to treat these businesses as a special exception use and require Planning Board approval. Some issues of concern include, but are not limited to, security, traffic, noise and odor. The City may also want to require that performance standards be met by certain types of development. For example, the Planning Board might require a Marijuana Cultivation Facility to install security fencing and/or design the building with negative air pressure or install an air filtration

system for odor control. Any such requirements would be contained in the Zoning Ordinance performance standards for such use.

As is common with certain types of businesses such as bars and adult entertainment establishments, municipalities often impose setback requirements from schools, childcare facilities, public parks, playgrounds, and recreation areas, and places of worship. It may be prudent to consider similar regulations for marijuana businesses in South Portland. Regarding Retail Marijuana Stores, the City may consider prohibiting drive-through windows and/or marijuana delivery services. The City should also consider whether to allow outdoor venues for on-site consumption and/or smoking of marijuana and the potential impact on abutters.

Staff Recommendations

Staff is recommending that Chapter 14 be referred to the City Clerk, City Manager, and Corporation Counsel to develop draft ordinance amendments for the licensing of Retail Marijuana Businesses. Staff is also recommending that Chapter 27 be referred to the Planning Board, with assistance of the Planning Director and Corporation Counsel, to develop draft ordinance amendments for zoning and land use policy relating to the location and operation of retail marijuana businesses. Once the draft amendments are complete, a City Council workshop will be scheduled and Councilors will have the opportunity to review, discuss, and offer feedback. The Council might also consider holding a public hearing immediately before the workshop to allow the public to weigh in. Once any revisions are made, first reading will be scheduled concurrently for both Chapters 14 and 27.

Before this process begins, we request the Council provide some guidance on whether it desires to allow or prohibit each type of retail marijuana business. Specific questions are as follows:

- (1) Does the City Council want to allow **retail marijuana cultivation facilities**? If so, does it want to limit the number of licenses issued for such facilities in South Portland?
- (2) Does the City Council want to allow **retail marijuana products manufacturing facilities**? If so, does it want to limit the number of licenses issued for such facilities in South Portland?
- (3) Does the City Council want to allow **retail marijuana testing facilities**? If so, does it want to limit the number of licenses issued for such facilities in South Portland?
- (4) Does the City Council want to allow **retail marijuana stores**? If so, does it want to limit the number of licenses issued for such facilities in South Portland?
- (5) Does the City Council want to allow **retail marijuana social clubs**? If so, does it want to limit the number of licenses issued for such facilities in South Portland?

Councilors may also want to express their thoughts on the various other licensing and zoning considerations outlined in this memo. This will provide Staff, Corporation Counsel and the Planning Board a good starting point to begin drafting proposed ordinance amendments.