

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #8-17/18 - Amending Chapter 27, “Zoning,” of the Code of Ordinances to establish land use regulations regarding Retail Marijuana Establishments. Passed first reading on October 2, 2017. ROLL CALL VOTE. Passage requires five (5) affirmative votes.

Position:

Following guidance provided to staff at the August 14, 2017 and September 25, 2017 City Council workshops, staff brought forward revised ordinance language for Council action regarding the licensing of marijuana establishments. This item had first reading at the October 2, 2017 City Council meeting and was referred back to the Planning Board for recommendations. The Planning Board held a public hearing on October 24, 2017 and by a vote of 4 – 2 (Boudreau, Dowling) (Carr absent), the Planning Board voted for a favorable recommendation to the City Council for passage of the marijuana zoning amendments.

These proposed zoning ordinance amendments prohibit social clubs (for now) and do not address the home occupation marijuana cultivation use (for now). These amendments rely somewhat (*e.g.*, for statutory citations and definitions) on the draft bill recently released by the Marijuana Legalization Implementation Committee that is currently under consideration by the Maine Legislature. There will most certainly need to be changes made to the zoning ordinance once the Legislature finalizes its action on the bill and related State regulations are adopted. At second reading on these amendments, a companion order will be presented to the Council for action that puts in place a six-month internal review process related to these amendments.

Attached are a memo from Planning Director Tex Haeuser and a copy of the Planning Board Report regarding this item.


Assistant City Manager Josh Reny, Planning Director Tex Haeuser, City Clerk Emily Scully, and Corporation Counsel Sally Daggett will be present at Monday night’s meeting to answer any questions.

Requested Action:

Council passage of Ordinance #8-17/18.



City Manager

To: Scott Morelli, City Manager
From: Tex Haeuser, Planning Director 
Cc: Joshua J. Reny, Assistant City Manager and Economic Development Director
Mary Perry, Executive Assistant
Michele Howard, Administrative Assistant
Date: City Council Meeting of November 6, 2017
Re: **Planning Board Public Hearing on the Proposed Marijuana Zoning Ordinance**

Planning Board Recommendation

K. Gatti motioned to recommend that the City Council adopt the proposed marijuana zoning amendments as contained in Ordinance #8-17/18. L. Dillon seconded; (4-2) (L. Boudreau and A. Dowling opposed, K. Carr absent).

Public Notice

Legal advertisements providing notice of the October 24th Planning Board public hearing appeared in the *Portland Press Herald* on October 6, 2017 and October 12, 2017. Notice was also posted on March 30th on the City's website, at City Hall, and at the Public Libraries. In addition, notices were emailed to the Conservation Commission, Planning Board, and City Council.

Additional Amendments

The draft concerning which the Planning Board held its public hearing was the marijuana ordinance that the City Council gave first reading approval to on October 2nd. It is planned to bring forward an additional set of amendments on November 6th, for first reading consideration, to add various marijuana establishments to four zoning districts that were adopted more or less contemporaneously with the original marijuana draft and thus did not yet include the proposed marijuana uses.

Draft Planning Board Hearing Minutes

The City of South Portland Council has requested Planning Board to consider proposed amendments to Chapter 27 Zoning Ordinance regarding retail marijuana establishments.

Per City Ordinance Section 27-115 (g), the Planning Board will, after the close of the public hearing, make a recommendation to the City Council regarding the proposed amendments.

Legal advertisements providing notice of the October 24th Planning Board public hearing appeared in the *Portland Press Herald* on October 6, 2017 and October 12, 2017. Notice was

also posted on the City's website, at City Hall, and at the Public Libraries. In addition, notices were emailed to the Conservation Commission, Planning Board, and City Council.

T. Haeuser welcomed Sally Daggett from Corporation Counsel and introduced the item. The state adopted the Marijuana Legalization Act which legalized four types of retail marijuana establishments, as well as marijuana social clubs. While the last workshop on this item was in the winter, the Council has continued to work on various aspects of local zoning and licensing of marijuana. They have reached a point of compromise on aspects of the zoning. The zoning ordinance amendments have three categories: adding definitions for the new types of marijuana establishments allowed under state law, 2) adding the new types of establishments to the permitted and special exception use lists of different zoning districts in which the facilities are proposed to be allowed, and 3) creating performance standards.

He explained that tonight, the Planning Board is requested to make a recommendation on the proposed zoning amendments. To move forward, the Council has agreed to leave out marijuana social clubs and the idea of home occupation cultivation, which could allow up to a 100 SF canopy.

He began by reviewing the Zoning Table for Marijuana Establishments and Controlled Environment Agriculture. He explained the new non-marijuana item called "Controlled Environment Agriculture" that would enable a mixed-used growing facility or standalone hydroponics facility. This is the idea of agriculture within buildings. It is included here to ensure it's allowed as there is one application to come forward that would likely take advantage of this definition. He noted the four new zones recently adopted by the City as noted on the table. They are not included in the October 2017 draft of the zoning and they will need to come back to pull these zones in.

He explained that part of the performance standard aspect was eliminating the existing medical marijuana dispensary standards and adding them as they are now, under a combined section with recreational. All of the wording is the same for medical but there is new content for recreational.

One performance standard is a separation from sensitive uses. He showed the map that outlined places of worship (requires a 300 ft buffer) and school properties (requires a 1000 ft buffer). The distances could change. Other performance standards include hours of operation, in which generally the policy from most Councilors is that regulations should be the same as for alcohol, a size limitation of 10,000 SF for cultivation for fear that all industrial space will be used up, separation of marijuana stores out of concern from other states where undesirable clusters were occurring, standards to ensure odors from establishments aren't perceptible outside of the building or in an adjoining use, an operation plan for proper disposal such as locking dumpsters, and standards that the sale of edibles would follow the state's rules for food sale. The majority of councilors do not want the ability for drive-through and home delivery,

defeating controlled purposes you have established for stores. There is also prohibition of the use of prohibited pesticides. He explained that there are other standards that are not included because Council has decided to let the state regulate them. There were discussions about what is here and what should go to the state, along with debate about things like separation of stores and sensitive uses.

PUBLIC HEARING OPEN

Chris O’Neil, resident of Portland, represents an outfit in Westbrook called Green Harbor Technologies, a medical marijuana caregiver in an 11,000 SF facility. His client has invested resources anticipating a retail marketplace. They currently have a robust business in the medical field and have developed strains through cloning. Seeing their technology was eye-opening for him and striking in that it is a legitimate business. They have participated with Council in workshops and would like to compliment staff, Corporation Counsel, and Councilors for doing what many communities have not done. Moratoria are good; most communities issued them and have done nothing. South Portland has been thoughtful and could be a leader in the state. He believes the first recommendation is to tell the Council well done. They question the 10,000 SF limit on cultivation facilities—it’s a great problem to have to worry if there is enough industrial space but most of the ordinance and state enacted law is to allow the marketplace to decide who survives and doesn’t. They are currently at 11,000 SF for a medical facility and anticipate finding space between 60-70,000 SF to grow. They are more concerned about retail and satisfied with the amendment as drafted. Their recommendation is to suggest the Council has done a good job and act upon it.

Russ Lunt, Brigham St., said the state is moving and hopes that makes it easier for municipalities. He thinks they’re right about medical marijuana and that part is good.

K. Gatti asked about the difference between Controlled Environment Agriculture (CEA) and a Retail Marijuana Cultivation Facility.

T. Haeuser said growing tomatoes. Vegetables and marijuana can be under the same roof but they’re distinct uses. For example, the City is interested in aquaculture, which is separate from marijuana. If they did something in Ferry Village by the water, or something on land too, this would allow it. Right now there isn’t the ability. If someone in the City wanted to grow produce as well as marijuana, this would enable them. Urban agriculture is a coming thing and this would allow it.

L. Dillon asked if the size limitation applies only to a cultivation facility and not a CEA. **T. Haeuser** said yes.

S. Daggett said the definition of CEA helps distinguish what the CEA use is. It can include marijuana but each use has to meet all relative standards.

L. Boudreau said that was the first thing that hung her up. While she understands they're looking for this kind of growing facility, she doesn't understand why they tangle it up with marijuana. To her, this is confusing.

S. Daggett said there is a prospective applicant that wants to do a CEA and possibly medical marijuana and that is why this was introduced into it. **T. Haeuser** said it's a use they need—apart from medical marijuana, it's a use to have on their books.

L. Boudreau asked why they have to add marijuana cultivation. It sounds like you have to have tomatoes to have marijuana.

K. Gatti said there's an option to have the marijuana cultivation facility if you just want marijuana.

S. Daggett said if someone wants to grow hydroponic tomatoes, it is a CEA use separate and apart from marijuana cultivation.

K. Gatti asked for the rationale as to why under Section 27-1901 (j), there is only one medical marijuana dispensary allowed in the entire City.

S. Puleo said there's regional distribution that the state provides. **S. Daggett** said with the Medical Marijuana Act, the state divided into healthcare districts and there can only be one medical marijuana dispensary per district. So, there can only be one in Cumberland County. When medical marijuana was approved, there was somewhat of an overreaction and the City wanted to make sure there would only be one in South Portland. She noted that this text is currently in Chapter 27 and been on the books. Council didn't touch anything related to medical, it's just being relocated.

A. Dowling asked why the Council hasn't reworked some parts of medical marijuana. Reading through current laws, it comes across as puritanical as opposed to what they're allowing for recreational.

S. Daggett said it is two different City Councils. Her impression was that they didn't want to tackle revisiting with so many other issues on their plate. There is also an ancillary issue about medical marijuana caregivers and if they should be regulated because the City is currently only regulating medical marijuana dispensaries. There was some thought that legislature might tighten up medical marijuana caregiver regulations.

T. Haeuser said it's almost guaranteed that the City will go back to it in the future.

M. DeRose asked if this is how it will stay. **S. Daggett** said yes, two separate state statutes. One deals with medical marijuana and hopefully a new one with guidance on adult use marijuana. Legislature had a special session and the House and Senate both approved LD

1650, a result of the Marijuana Legalization Implementation Committee. They are waiting to see if Governor LePage will veto it. If he does, Legislature will have to figure out how they can override and if not, the original enactment from November of 2016 will go into place.

T. Haeuser asked if there are implications for what they adopt if the 2016 enactment goes into place.

S. Daggett said no matter what, Ordinance #8 will need to be revisited. They want a companion order that requires City Council within six months of Ordinance #8 to have the City look at the terms of licensing and zoning ordinances to make sure it works with state law. **T. Haeuser** suggested a recommendation to include to the Council that they don't proceed immediately to go to another Planning Board hearing to add in the four new zones but wait to do it knowing they are coming back in less than a year.

S. Daggett thinks the Council will feel that property owners and potential owners or renters need to know what the rules are. By having these four newly enacted zoning districts, it puts staff and potential applicants into "no man's land."

L. Boudreau said overall she doesn't agree with approving it and all the zones. It seems cavalier. They do infill lots and the minute it comes next to your house is when you come forward. No matter how many times you advertise, it doesn't impact people until it's there at home. Council gets complaints that Planning Board isn't making good decisions, and they try to explain that they're set up for a positive recommendation. She thinks it's going to be worse with marijuana. She recognizes the City approved this with more than the majority but thinks they need to be more cautious. She would not include the residential zones or mixed use zones for agricultural marijuana and move it into other zones as a special exception (SE). They are stuck with retail stores and they'll end up being in neighborhoods. This is still considered a federal violation of the law whether the state passed it or not. As a Planning Board member thinking of what they go through, she doesn't think it's what the public wants. Council isn't getting a lot of feedback but it's because they don't realize that Willard and Meetinghouse Hill can have them approved as a SE. Call it a SE, but when it comes to the Board they are pretty much supposed to approve it. They can add conditions, but the facility will still exist in your neighborhood. She's not going to vote in favor; she thinks they need to be more cautious. Tread lightly and a year from now, see where you're at. Clearly, they put in regulations on dispensaries but they don't have any experience. They haven't had a chance to test anything. She thinks it's far too aggressive allowing this in the City.

A. Dowling said Ms. Boudreau made good points. Looking at feedback received from public, it could be interesting. He's wondering about retail marijuana testing facilities. This strikes him as a fairly low intensity use. If you're going to allow things in residential zoning districts as a SE, the testing strikes him as less intense than the controlled environment. He's thinking about G and G-3 zones. He wouldn't mind having a testing facility in the neighborhood; he can see that going into the Castle at Brickhill and no one would know it's there. He also suspects those are good paying jobs. He asked about the footnote on the bottom of the map and asked who someone interested in building goes to and how they find the best available information.

T. Haeuser said they would be within their rights to put the burden on the applicant to demonstrate they're meeting the standard. Practically, they would probably help. The point is it's not a zoning map but shows where he understands schools and places of worship to be. If he missed one or some kind of childcare center that is standalone, that could qualify and he's not 100% sure he got them all.

A. Dowling asked it would be verified if the applicant said they did an exhaustive search and are sure.

T. Haeuser said they make an effort to verify it.

A. Dowling noted that the Long Creek Youth Center may want to be included on the map as a school property.

K. Gatti asked for a reminder. If they were to recommend this and a facility was permitted by SE, they would come before the Board and what is the standard they look at?

T. Haeuser said the presumption is it's permitted. **S. Daggett** said in Section 27-1405, viewed under law, they are essentially permitted uses provided that the three review criteria are met. They are considered to be allowed uses provided that they meet the three criteria. The difference between SE and a permitted use is there is Planning Board review—a SE use requires site plan review, so there is a public process. It's not ultimately what the Council adopted in Ordinance #8 but the starting draft had a lot more of the uses as SE rather than permitted because there is a public process that way. Policy decisions have been made by the Council and this list is the one they want to proceed with.

T. Haeuser said it is an interesting situation; they would not permit a SE application if its impacts—traffic for example—were above average for that type of use. It could make it difficult because they don't have experience on what is average.

L. Boudreau said in reading it, it's presumed permitted—it compares it to the same use within the same zone. So traffic wouldn't be relevant because the use would have a fixed amount of traffic.

S. Daggett said under site plan review standards, there is a standard to review traffic. That standard would apply to the use. All SE applications require site plan review. Technically there are three standards under the SE standards in Section 27-1405 but there are also all of the site plan review standards.

S. Puleo said it's in Section 27-1426 and there are 17 criteria, such as odor and noise.

W. Laidley spoke about testing. If it is as speculated, a high end process involving well trained people with appropriate machinery, you could subcontract that to a couple labs established in the City. He's not sure how labor intensive that is.

C. O'Neil said they've done research in Colorado and Oregon. Testing facilities exist because testing is a public safety concern. Experience is they are not on every corner—it is a consolidated industry. Testing is done periodically and not high-traffic. Retail stores tend to be higher frequency traffic. Distance from home is a factor; recreational marijuana tends to be something people hoard—they don't go in daily.

W. Laidley asked if there would be a number of testing facilities depending on the market. **C. O'Neil** said yes, there will be a ratio "x testing for y cultivation." If South Portland attracts 100 grow facilities, testing facilities don't have to be contiguous with grow facilities. They can be anywhere in the state.

A. Dowling asked if Mr. O'Neil foresees if there was to be one or two testing facilities in the state of Maine.

C. O'Neil said he doesn't want to guess, but it is common knowledge that there won't be a need for many. Because of the way in which they do business, they can process testing requests on an eight-hour workday and satisfy requirements of the law.

A. Dowling asked if the size would have to be large if it's a single facility serving all of southern and central Maine and how much space a facility would need.

C. O'Neil said he can't say for sure but it's envisioned to be low impact and on any floor. The way they do business may be an office with four employees. It's really speculation. What's safe to predict is that most people won't even know they're there.

A. Dowling asked if there's anything with size of testing facilities. **T. Haeuser** said no.

L. Boudreau asked if the Council talked about security around facilities.

T. Haeuser said they were there originally; you can see it's still in the medical marijuana. They had copied it but Council chose to let it be regulated by the state.

L. Boudreau said they have undercover police for kids buying alcohol and cigarettes in convenience stores. Here, they leave it open and hope the state addresses it. This community has been active in concern about underage alcohol and smoking.

M. DeRose thinks there is a thriving black market and would rather see it regulated and licensed. At least there is an attempt to control it. It's there now, it's just not regulated. She's been a Lyme disease activist and would like to have Council revisit medical marijuana. If it's legal for one it should be for the other; there shouldn't be a distinction between the two. She thinks this is good policy, you're dealing with something new and there will be questions because there's no experience. She is in favor.

W. Laidley said if you go to the right bar and have the right appearance, someone will give you marijuana.

S. Daggett said state legislature will address security issues. The state addressed the gift and delivery; she's not sure about security but it will get addressed. That's why it's important for Council to revisit once they know what the state has done.

K. Gatti said she is for recommending it but not in favor of having CEA in residential districts. She doesn't think there is a need to have it there and for rationale for CEA in multi-family zones.

T. Haeuser said the only rationale was that knowing Council wants to pursue aquaculture and if it happens it will be Ferry Village, which is the G zone.

M. DeRose likes the idea of keeping it small with a limitation on square footage. She hopes it's young entrepreneurs.

L. Dillon thinks what they see is the result of research and deliberation and listening. They will be revisiting it, and there will be time and room. Right now, there's an opportunity to

communicate to the community that they're listening and to the business community that they're a leader. She will vote for a positive recommendation.

PUBLIC HEARING CLOSED

K. Gatti motioned to recommend that the City Council adopt the proposed marijuana zoning amendments as contained in Ordinance #8-17/18. L. Dillon seconded; (4-2) (L. Boudreau and A. Dowling opposed, K. Carr absent).



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

SCOTT T. MORELLI
City Manager

EMILY F. SCULLY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #8-17/18

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

CHAPTER 27

ZONING

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ARTICLE II. Definitions

Sec. 27-201. Definitions.

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Adult use marijuana. "Adult use marijuana" as that term is defined in 28-B M.R.S.A. § 102(1), as may be amended.

Adult use marijuana product. "Adult use marijuana product" as that term is defined in 28-B M.R.S.A. § 102(2), as may be amended.

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Controlled Environment Agriculture. Commercial food production, wholly contained within a greenhouse or building, using computer managed control technologies to optimize growing systems. For purposes of the South Portland Code of Ordinances, controlled environment agriculture (CEA) includes aquaculture as well as such other techniques as hydroponics. CEA does not include marijuana cultivation, but a CEA facility can also include marijuana cultivation if the zoning district in which the facility is located allows marijuana cultivation and all relevant standards and requirements are met.

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

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Marijuana. “Marijuana” as that term is defined in 28-B M.R.S.A. § 102(27), as may be amended.

Marijuana cultivation facility. A “cultivation facility” as that term is defined in 28-B M.R.S.A. § 102(13), as may be amended. A marijuana cultivation facility is an entity licensed to cultivate, prepare and package adult use marijuana and to sell adult use marijuana to marijuana establishments. A marijuana cultivation facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Marijuana establishment. A “marijuana establishment” as that term is defined in 28-B M.R.S.A. § 102(29), as may be amended. A marijuana establishment is a marijuana store, a marijuana cultivation facility, a marijuana products manufacturing facility, a marijuana testing facility or a marijuana social club.

Marijuana products manufacturing facility. A “products manufacturing facility” as that term is defined in 28-B M.R.S.A. § 102(42), as may be amended. A marijuana products manufacturing facility is an entity licensed to purchase adult use marijuana; to manufacture, label and package adult use marijuana products; and to sell adult use marijuana products from a marijuana cultivation facility only to other marijuana products manufacturing facilities, marijuana stores and marijuana social clubs. A marijuana products manufacturing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Marijuana social club. A “marijuana social club” as that term is defined in 28-B M.R.S.A. § 102(33), as may be amended. A marijuana social club is an entity licensed to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana products to consumers for consumption on the licensed premises. Marijuana social clubs are prohibited in all zoning districts.

Marijuana store. A “marijuana store” as that term is defined in 28-B M.R.S.A. § 102(34), as may be amended. A marijuana store is an entity licensed to purchase adult use marijuana from a marijuana cultivation facility and to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana and adult use marijuana products to consumers. A marijuana store is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

Marijuana testing facility. A “testing facility” as that term is defined in 28-B M.R.S.A. § 102(53), as may be amended. A marijuana testing facility is facility licensed to develop, research and test marijuana, marijuana products and other substances. A

marijuana testing facility is only authorized as a principal use, and not as an accessory use, and only where expressly allowed as a permitted or special exception use.

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Plant canopy. "Plant canopy" as that term is defined in 28-B M.R.S.A. § 102(40), as may be amended.

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ARTICLE V. Residential Districts

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Sec. 27-553. Special exceptions (G).

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- (h) Accessory dwelling units subject to the provisions of Sec. 27-1576 et seq.
- (i) Farmers' market subject to the provisions of Sec. 27-1580 et seq.
- (j) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-573. Special exceptions (VR).

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- (i) Farmers' market subject to the provisions of Sec. 27-1580 et seq.
- (j) Medium-scale ground-mounted solar energy systems.
- (k) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

ARTICLE VII. Mixed Use/Commercial Districts

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Sec. 27-703. Special exceptions (LB).

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(k) Farmers' market subject to the provisions of Sec. 27-1580 et seq.

(l) Medium- and large-scale ground-mounted solar energy systems.

(m) Marijuana store.

(n) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-712. Special exceptions (VC).

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(k) Farmers' Market subject to the provisions of Sec. 27-1580 et seq.

(l) Medium-scale ground-mounted solar energy systems.

(m) Marijuana store.

(n) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-721. Special Exceptions (VCW).

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(g) Farmers' market subject to the provisions of Sec. 27-1580 et seq.

(h) Medium-scale ground-mounted solar energy systems.

(i) Marijuana store.

(j) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-731. Special exceptions (SP).

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- (i) Medium-scale ground-mounted solar energy systems.
- (j) Large-scale ground-mounted solar energy systems on lots greater than or equal to three (3) acres.
- (k) Marijuana store.
- (l) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-739. Permitted uses (CS).

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- (g) Personal Services.
- (h) Medium-scale ground-mounted solar energy systems.
- (i) Marijuana testing facility.

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Sec. 27-741. Special exceptions (CS).

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- (e) Telecommunication towers.
- (f) Farmers' market subject to the provisions of Sec. 27-1580 et seq.
- (g) Large-scale ground-mounted solar energy systems.
- (h) Marijuana products manufacturing facility.
- (i) Marijuana store.

- (j) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-750. Permitted uses (CG).

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- (j) Telecommunication towers. Site plan approval by the Planning Board is required.
- (k) Medium- and large-scale ground-mounted solar energy systems.
- (l) Marijuana cultivation facility.
- (m) Marijuana products manufacturing facility.
- (n) Marijuana store.
- (o) Marijuana testing facility.
- (p) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-758. Permitted uses (PO).

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- (e) Child, adult or combined day care centers.
- (f) Medium-scale ground-mounted solar energy systems.
- (g) Marijuana cultivation facility.
- (h) Marijuana products manufacturing facility.
- (i) Marijuana store.
- (j) Marijuana testing facility.
- (k) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-764. Permitted uses (CCRT).

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(k) Educational Services.

(l) Medium-scale ground-mounted solar energy systems.

(m) Marijuana cultivation facility.

(n) Marijuana products manufacturing facility.

(o) Marijuana store.

(p) Marijuana testing facility.

(q) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-772. Permitted uses (CCR).

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(m) Educational Services.

(n) Medium-scale ground-mounted solar energy systems.

(o) Marijuana cultivation facility.

(p) Marijuana products manufacturing facility.

(q) Marijuana store.

(r) Marijuana testing facility.

(s) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-780. Permitted uses (C).

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- (k) Charitable and philanthropic organizations.
- (l) Child, adult or combined day care centers.
- (m) Marijuana testing facility.

Sec. 27-781. Special exceptions (C).

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- (i) Farmers' market subject to the provisions of Sec. 27-1580 et seq.
- (j) Medium- and large-scale ground-mounted solar energy systems.
- (k) Marijuana cultivation facility.
- (l) Marijuana products manufacturing facility.
- (m) Marijuana store.
- (n) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-801. Permitted Uses (MSCC).

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- (c) *Commercial:*

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- 4. Personal and business services.
- 5. Restaurants and other places for the serving of food or beverages, provided that such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m.

6. Marijuana testing facility.

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Sec. 27-802 Special Exceptions (MSCC).

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(b) *Commercial:*

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2. Motor vehicle repair shops provided that no unlicensed vehicles, or junked or wrecked vehicles will be permitted to be parked or stored on the premises, and no trucks, trailers, or buses will be permitted to remain parked upon the premises unless being worked upon or being serviced by employees of the shop.
3. Farmers' markets subject to the provisions of Sec. 27-1580 et seq.

4. Marijuana store.

5. Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Sec. 27-812. Permitted uses (VE).

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(c) *Commercial uses:*

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3. Personal and business services.
4. Restaurants and other places for the serving of food or beverages including coffee shops and bakeries, provided that such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m. and do not include any provisions for drive-up or drive-through services.
5. Marijuana testing facility.

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Sec. 27-813. Special exceptions (VE)

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(a) *Commercial:*

1. Outdoor sales, display and services, other than accessory uses as defined in Sec. 27-201, subject, in addition to other ordinance requirements, to the following terms and conditions:
 - (i) The Planning Board may limit the percentage of area coverage;
 - (ii) The Planning Board may restrict the outdoor sales, display, and services to a specific portion of the lot in question;
 - (iii) The Planning Board may limit the time and/or number of units involved in such outdoor sales, display or service.
2. Marijuana store.
3. Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

(e) *Other uses:*

1. Fully enclosed facilities for light manufacturing or assembly activities only as part of a mixed-use building.
2. Medium-scale ground-mounted solar energy systems.
3. Marijuana products manufacturing facility.

• • •

Sec. 27-822. Permitted uses (BC).

• • •

(c) *Commercial uses:*

• • •

3. Personal and business services.
4. Restaurants and other places for the serving of food or beverages including coffee shops and bakeries, provided that such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m. Provisions for drive-up or drive-through services are permitted in conjunction with a restaurant only if the maximum number of transactions during the AM Peak Hour or PM Peak Hour is less than twenty (20).

5. Marijuana testing facility.

• • •

Sec. 27-823. Special exceptions (BC).

• • •

(a) *Commercial:*

1. Outdoor sales, display and services, other than accessory uses as defined in Sec. 27-201, subject, in addition to other ordinance requirements, to the following terms and conditions:
 - (i) The Planning Board may limit the percentage of area coverage;
 - (ii) The Planning Board may restrict the outdoor sales, display, and services to a specific portion of the lot in question;
 - (iii) The Planning Board may limit the time and/or number of units involved in such outdoor sales, display or service.

2. Marijuana store.

3. Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

(e) *Other uses:*

1. Fully enclosed facilities for light manufacturing or assembly activities only as part of a mixed-use building.
2. Medium- and large-scale ground-mounted solar energy systems.
3. Marijuana products manufacturing facility.

• • •

Sec. 27-832. Permitted uses (MCC).

• • •

(c) *Commercial uses:*

• • •

3. Personal and business services.
4. Restaurants and other places for the serving of food or beverages including coffee shops and bakeries, provided that such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m. Provisions for drive-up or drive-through services are permitted in conjunction with a retail or service establishment only as part of a Planned Development approved under the standards of Sec. 27-834.
5. Marijuana testing facility.

• • •

Sec. 27-833. Special exceptions (MCC).

(a) *Commercial:*

• • •

2. Retail stores and service establishments that are open to the public between the hours of 12:00 a.m. and 6:00 a.m. but only as part of a Planned Development.
3. Restaurants that are open to the public between the hours of 1:00 a.m. and 6:00 a.m. but only as part of a Planned Development.
4. Marijuana store.

• • •

(e) *Other uses:*

• • •

(2) Medium- and large-scale ground-mounted solar energy systems.

(3) Marijuana products manufacturing facility.

(4) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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ARTICLE IX. Industrial Districts

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Sec. 27-902. Permitted uses (IL).

• • •

(l) Post-Secondary or adult educational Services.

(m) Medium-scale ground-mounted solar energy systems.

(n) Marijuana cultivation facility.

(o) Marijuana products manufacturing facility.

(p) Marijuana testing facility.

(q) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

Sec. 27-922. Permitted uses (S).

• • •

(n) Storing and handling of petroleum and/or petroleum products subject to the provisions of Sec. 27-1517, excluding automobile filling stations; provided, however, that any such storing and handling of petroleum and/or petroleum

products shall not include the bulk loading of crude oil onto any marine tank vessel.

(o) Medium-scale ground-mounted solar energy systems.

(p) Marijuana cultivation facility.

(q) Marijuana products manufacturing facility.

(r) Marijuana testing facility.

(s) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

Sec. 27-942. Permitted uses (I).

• • •

(3) Any use permitted in Commercial District C Zone provided that all residential uses shall meet the space and bulk regulations set forth in Sec. 27-946.

(4) Child, adult or combined day care centers.

(5) Marijuana testing facility.

Sec. 27-943. Special exceptions (I).

• • •

(g) Farmers' market subject to the provisions of Sec. 27-1580 et seq.

(h) Medium- and large-scale ground-mounted solar energy systems.

(i) Marijuana cultivation facility.

(j) Marijuana products manufacturing facility.

(k) Marijuana store.

(l) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

Sec. 27-962. Permitted uses (INR).

• • •

- (6) Meteorological tower (MET tower) on property identified by the City of South Portland as Assessor’s Map 56, Lot 4D.
- (7) Medium- and large-scale ground-mounted solar energy systems.
- (8) Marijuana cultivation facility.
- (9) Marijuana products manufacturing facility.
- (10) Marijuana testing facility.
- (11) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

Sec. 27-1203.5 Special Exceptions (CAZ).

• • •

- (a) Medium- and large-scale ground-mounted solar energy systems.
- (b) Marijuana store.
- (c) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

• • •

Sec. 27-1541. ~~Performance standards for medical marijuana dispensaries.~~Reserved.

~~Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this section, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Planning Board prior to January 11, 2010.~~

~~The following standards apply to all medical marijuana dispensaries:~~

~~(a) Location criteria. No medical marijuana dispensary shall be sited within 1,000 feet of the lot lines of any of the following:~~

- ~~(1) a church, synagogue or other house of religious worship;~~
- ~~(2) a public or private school;~~
- ~~(3) a lot zoned residential or used as a residence;~~
- ~~(4) an athletic field, park, playground or recreational facility;~~
- ~~(5) any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;~~
- ~~(6) a licensed child care facility; or~~
- ~~(7) a lot on which another medical marijuana dispensary is sited.~~

~~The distance cited in this subsection shall be measured between the lot line of the proposed site for the medical marijuana dispensary and the lot line of the site of the use listed in (1) through (7) above at their closest points.~~

~~(b) Hours of operation. Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time.~~

~~(c) Signage and advertising. All signage and advertising for a medical marijuana dispensary shall comply with all applicable provisions of the Code of Ordinances. 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 and operating 24 hours a day, 7 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;~~
- ~~(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) a locking safe permanently affixed to the premises that is suitable for storage of all prepared marijuana and cash stored overnight on the licensed premises;~~
- ~~(4) exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of the Code of Ordinances; and~~
- ~~(5) deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).~~

~~All security recordings shall be preserved for at least seventy-two (72) hours 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 24-hour on-call staff person to whom the City may provide notice of any operating problems associated with the medical marijuana dispensary.~~

- ~~(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 medical marijuana dispensaries and cultivation facilities, 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 City shall be capped at one (1).~~

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ARTICLE XIX. MEDICAL AND ADULT USE MARIJUANA PERFORMANCE STANDARDS

Sec. 27-1901. Performance standards for medical marijuana dispensaries.

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this section, when enacted, shall govern any proposed medical marijuana dispensary for which an application has not been submitted and acted on by the Planning Board prior to January 11, 2010.

The following standards apply to all medical marijuana dispensaries:

- (a) Location criteria. No medical marijuana dispensary shall be sited within 1,000 feet of the lot lines of any of the following:
- (1) a church, synagogue or other house of religious worship;
 - (2) a public or private school;
 - (3) a lot zoned residential or used as a residence;
 - (4) an athletic field, park, playground or recreational facility;
 - (5) any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;
 - (6) a licensed child care facility.

The distance cited in this subsection shall be measured between the lot line of the proposed site for the medical marijuana dispensary and the lot line of the site of the use listed in (1) through (7) above at their closest points.

- (b) Hours of operation. Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time.
- (c) Signage and advertising. All signage and advertising for a medical marijuana dispensary shall comply with all applicable provisions of the Code of Ordinances. 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 and operating 24 hours a day, 7 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;

(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) a locking safe permanently affixed to the premises that is suitable for storage of all prepared marijuana and cash stored overnight on the licensed premises;

(4) exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of the Code of Ordinances; and

(5) deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).

All security recordings shall be preserved for at least seventy-two (72) hours 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 24-hour on-call staff person to whom the City may provide notice of any operating problems associated with the medical marijuana dispensary.

(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. 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 medical marijuana dispensaries and cultivation facilities, 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 City shall be capped at one (1).

Sec. 27-1902. Performance standards for marijuana establishments.

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this section, when enacted, shall govern any proposed marijuana establishment for which an application has not been submitted and acted on by the Planning Board prior to January 1, 2017.

- (a) Separation from sensitive uses. (1) No marijuana store shall be sited within one thousand (1,000) feet of the lot lines of a public or private school, and (2) no marijuana store shall be sited within three hundred (300) feet of the lot lines of a church, synagogue or other house of religious worship.

The distance cited in this subsection shall be measured between the lot line of the proposed site for the marijuana store and the lot line of the site of the use listed in (1) or (2) above at their closest points.

The City will only verify distance of the proposed premises from existing uses listed in (1) or (2) above; once all of the City-required licenses, permits and approvals are issued, the City will not preclude a sensitive use listed in (1) or (2) above from opening at a location within the applicable buffer zones.

A marijuana store may continue to operate in its present location as a pre-existing use if a sensitive use as listed in (1) or (2) above later locates within the applicable buffer zone; however, the marijuana store does so at its own risk, and City-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a marijuana store near a sensitive use listed in (1) or (2) above.

- (b) Hours of operation. Marijuana stores are limited to the same hours of operation as those for establishments serving or selling alcoholic beverages or products as may be set forth in State statute or in the zoning district regulations for the zone in which the marijuana store is located. When there is a conflict between statute and local zoning, the more restrictive hours of operation shall apply.
- (c) Size limitation. The plant canopy of a marijuana cultivation facility shall not exceed ten thousand (10,000) square feet in area.
- (d) Separation of marijuana stores. No marijuana store shall be sited within three hundred (300) feet of another marijuana store as measured between the closest points of the storefronts.
- (e) Area of activities; control of odors and emissions; sealed walls; disposal plan.
 - (1) All activities of marijuana establishments, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana establishments are not permitted outdoor sales or services of any kind.
 - (2) Odor management. For all marijuana establishments, the odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Marijuana cultivation facilities must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. Marijuana stores, marijuana product manufacturing facilities, and marijuana testing facilities are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the City does not mandate any particular equipment specifications with regard to filtration,

all marijuana establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

- (3) Noxious gases and fumes. Marijuana product manufacturing facilities and marijuana testing facilities shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.
- (4) Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment must be provided at all times.
- (5) All marijuana establishments shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard adult use marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended and security cameras must be installed to record activities in the area of such trash receptacles.
- (f) Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana establishment 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.
- (g) Drive-through and home delivery. Marijuana stores are prohibited from having drive-through pick-up facilities, and from providing home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.
- (h) In accordance with Sec. 32-5(A) of the Code of Ordinances, relating to allowed and prohibited pesticides, the only pesticides allowed to be used in marijuana cultivation facilities are non-synthetic substances, unless specifically listed as “prohibited” on the National List, and pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.
- (i) Marijuana social clubs are prohibited in all zoning districts.

- (i) Other laws remain applicable. A marijuana establishment 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 adult use marijuana and/or marijuana establishments, the stricter law or regulation shall control.

Fiscal Note: Less than \$1,000

October 2, 2017