



Town of Hampden
Town Planner

Memorandum

To: Town Council – For Workshop
From: Karen M. Cullen, AICP, Town Planner *KME*
Date: August 12 and 17, 2020
RE: Proposed Amendments to Marijuana Ordinance – for Referral to Public Hearing

The proposed amendments to the Marijuana Ordinance were discussed in detail at the Town Council Workshop on June 8, 2020. At the workshop held on August 9, 2020, a question was raised regarding medical marijuana registered caregiver retail stores. The impression given at the meeting was that a registered caregiver would be unable to sell or otherwise dispense of 100% of the marijuana produced unless they were allowed to have a retail store.

After researching this, I have found that a registered caregiver may, among other things:

- sell up to 75% of the mature plants grown in a calendar year, including marijuana products or marijuana concentrate, to another registered caregiver or to a dispensary [see §2423-A (2) paragraph K-1];
- provide any amount of harvested marijuana to a manufacturing facility and receive products made from that same marijuana [see §2423-A (2) paragraph N]; and
- transport harvested marijuana plants or harvested marijuana for authorized conduct in accordance with this chapter – e.g. transport harvested marijuana to a qualifying patient [see §2423-A (2) paragraph O].

In addition, a municipality may prohibit registered caregiver retail stores [see §2429-D (3)].

My concern is that, in the event the Town Council decides to allow registered caregiver retail stores, the town would have little control over them. We cannot regulate the location of all registered caregivers in town, only those operations with more than one registered caregiver. If a registered caregiver is operating in the Residential A district, and we allowed registered caregiver retail stores, then there could be such a store in a residential neighborhood. Based on conversations with the council over the past several years, I do not believe that is the council's intention, nor in the best interest of Hampden's residents.

In addition, I received the comments from the Town Attorney's review of the proposed amendments to the marijuana ordinance after the council workshop. I have edited the ordinance to address many of his concerns, and have also discussed them with him on the phone. While there are numerous changes based on his review, none are substantial enough to warrant delaying

setting the public hearing on the amendments. I have attached the updated version, with the changes from what was discussed at the June workshop highlighted with yellow.

My recommendation is to refer the proposed amendments to the Marijuana Ordinance to public hearing, to be held on September 8, 2020. Should Council decide to amend the language of the proposed amendments, that can and should be done at the public hearing.

TOWN OF HAMPDEN

The Town of Hampden Hereby Ordains
Proposed Amendments to the Marijuana Ordinance

Deletions are ~~Strikethrough~~ Additions are Underlined

TOWN OF HAMPDEN MAINE
MARIJUANA ORDINANCE

ADOPTED: August 20, 2018

EFFECTIVE: September 19, 2018

AMENDED: _____, 2020

EFFECTIVE: _____, 2020

Certified By: Gayle Decker, Town Clerk

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Article 1 – Purpose and Authority

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Hampden through regulation of marijuana related activities, including the number of marijuana plants that can be grown for personal adult use (non-medical) on a single property, as permitted under Title 28-B MRSA §1502. The Town of Hampden enacts this ordinance pursuant to 30-A MRSA §3001, municipal home rule ordinance authority.

Article 2 – Home Cultivation for Personal Adult Use Marijuana. A maximum of nine mature marijuana plants may be grown on a single property (as defined in this ordinance), with the exception that in addition to this limit, a maximum of three mature marijuana plants plus 12 immature marijuana plants plus an unlimited number of marijuana seedlings may be grown by each person age 21 or older who is domiciled on the property.

Article 3 – Medical Marijuana Registered Caregivers.

3.1 Administration

3.1.1 All proposals that involve more than one Registered Caregiver on a single property are required to submit a Major Site Plan for review and approval by the Planning Board, per §4.1 of the Zoning Ordinance.

3.1.2 All Registered Caregivers are required to obtain a local license pursuant to Article 11.

3.2 Maximum number on a single property. In order to protect the public health, safety, and welfare, the maximum number of Registered Caregivers permitted to operate on a single property, which includes cultivation, processing, packaging, and any other activity involving medical marijuana is as follows:

3.2.1 In the Residential A, Residential B, and Town Center zoning districts – 1 Registered Caregiver.

3.2.2 In the Rural zoning district:

3.2.2.1 On parcels where marijuana activity will be conducted at least 250 feet from any property line – 5 Registered Caregivers.

3.2.2.2 On parcels where marijuana activity will be conducted at least 100 feet but less than 250 feet from any property line – 3 Registered Caregivers.

3.2.2.3 On parcels where marijuana activity will be conducted less than 100 feet from any property line – 1 Registered Caregiver.

3.2.3 In the Industrial or Industrial 2 zoning districts:

3.2.3.1 On parcels where all marijuana activity will be conducted at least 500 feet from the Residential A, Residential B, or Town Center districts and at least 100 feet from any property line – 10 Registered Caregivers.

- 3.2.3.2 On parcels where all marijuana activity will be conducted at least 100 feet from the Residential A, Residential B, or Town Center districts and at least 50 feet from any property line – 5 Registered Caregivers.
- 3.2.3.3 On all other parcels – 1 Registered Caregiver.
- 3.2.4 In all other zoning districts:
- 3.2.4.1 On parcels where marijuana activity will be conducted at least 100 feet from any property line of a property in residential use – 3 Registered Caregivers.
- 3.2.4.2 On parcels where marijuana activity will be conducted at least 100 feet from the boundary of the Residential A, Residential B, or Town Center zoning districts – 3 Registered Caregivers.
- 3.2.4.3 On all other parcels – 1 Registered Caregiver.
- 3.3 Standards – In addition to the standards listed in Article 10 of this ordinance, the following applies to Registered Caregivers:
- 3.3.1 No customers or clients are permitted to visit the site for the purpose of purchasing any marijuana or related products. Registered Caregiver retail stores are not permitted in the Town of Hampden.
- 3.3.2 In all zoning districts, the following additional locational restrictions apply. The distances stipulated are measured in a straight line from the property boundary of the parcel proposed for use by one or more Registered Caregivers and the nearest property boundary of the listed use.
- 3.3.2.1 No property located between 500 feet and 1,000 feet of any parcel used for a preexisting school may have more than one Registered Caregiver.
- 3.3.2.2 No property located within 500 feet of any parcel used for a preexisting school may have any Registered Caregiver.
- 3.3.2.3 No property located within 750 feet of any parcel used primarily for a place of worship, a daycare, daycare facility, or child care center as those terms are defined in the Hampden Zoning Ordinance, or a recreational area designed for use by children up to 18 years of age may have more than one Registered Caregiver.
- 3.3.2.4 No property located within 1,000 feet of any parcel used for multiple Registered Caregivers or any type of marijuana business (medical or adult use as may be permitted by the Town) may have more than one Registered Caregiver.

Article 4 – Medical Marijuana Registered Dispensaries

- 4.1 Administration. All Medical Marijuana Registered Dispensaries require a Conditional Use approval from the Planning Board per §3.1.3 of the Zoning Ordinance, and may require Site Plan approval per §4.1 of the Zoning Ordinance.
- 4.2 Permitted Activities. A Medical Marijuana Registered Dispensary operating within the Town of Hampden may include any of the activities included in Title 22 §2428 (1-A).
- 4.3 Location Requirements. A Medical Marijuana Registered Dispensary is permitted within the Industrial, Industrial 2, or Industrial Park zoning districts. A registered dispensary must be a minimum of 750 feet from the property line of a preexisting school.
- 4.4 Adequacy of Building for the Subject Use. The property and building for a Medical Marijuana Registered Dispensary shall be adequate to accommodate sufficient interior space so as not to have outside patient queuing on sidewalks, parking areas, and other areas outside of the building(s). The size of the inside waiting area shall be calculated at a minimum of 15 square feet per person based on total client capacity.
- 4.5 Maximum Number Within the Town of Hampden. No more than one Medical Marijuana Registered Dispensary may be located within the Town. In the event of multiple applications for Conditional Use, the first complete application received will be reviewed, and if denied and the decision is not appealed, then the next application received will be reviewed, etc. until an application is approved.
- 4.6 Hours of Operation. A Medical Marijuana Registered Dispensary shall only be open for business between the hours of 8:00 a.m. and 8:00 p.m. daily.
- 4.7 Consumption, Ingestion Or Inhalation Of Medical Marijuana. The consumption, ingestion or inhalation of medical marijuana on or within the property of a Medical Marijuana Registered Dispensary is prohibited; provided, however, that a Dispensary employee who is a registered patient, as that term is defined in 22 M.R.S.A. §2422(12), as the same may be amended from time to time, may consume medical marijuana inside the building(s) on the licensed property, if such consumption occurs via oral consumption and not by smoking. For purposes of this subsection, the term "licensed property" shall include the lot or parcel of land upon which the Medical Marijuana Registered Dispensary is located.
- 4.8 Limitations of Food Products. No food products shall be sold, prepared, produced or assembled by a Medical Marijuana Registered Dispensary except in compliance with all operation 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.

Article 5 – Medical Marijuana Manufacturing Facilities

- 5.1 Administration. All Medical Marijuana Manufacturing Facilities require a Conditional Use approval from the Planning Board per §3.1.3 of the Zoning Ordinance, and may require Site Plan approval per §4.1 of the Zoning Ordinance.
- 5.2 Prohibited Activities. Medical Marijuana Manufacturing Facilities are not permitted to sell or otherwise transfer any product in any form directly to a patient; all such transfers must be made through a Caregiver, a Registered Caregiver, or a Registered Dispensary. No retail sales are permitted in the Town of Hampden except by a Registered Dispensary.
- 5.3 Location requirements. Tier 1 manufacturing facilities are permitted within the Industrial, Industrial 2, or Industrial Park zoning districts. Tier 2 manufacturing facilities are permitted in the Industrial or Industrial 2 zoning districts. A manufacturing facility must be a minimum of 750 feet from the property line of any preexisting school.
- 5.4 Maximum Number Within the Town of Hampden. No more than one Medical Marijuana Manufacturing Facility (Tier 1 or Tier 2) may be located within the Town. In the event of multiple applications for Conditional Use, the first complete application received will be reviewed, and if denied and the decision is not appealed, then the next application received will be reviewed, etc. until an application is approved.
- 5.5 Limitations of Food Products. No food products shall be sold, prepared, produced or assembled by a Medical Marijuana Manufacturing Facility except in compliance with all operation 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.

Article 6 – Medical Marijuana Testing Facilities

- 6.1 Administration. All Medical Marijuana Testing Facilities require a Conditional Use approval from the Planning Board per §3.1.3 of the Zoning Ordinance, and may require Site Plan approval per §4.1 of the Zoning Ordinance.
- 6.2 Location Requirements. Medical Marijuana Testing Facilities are permitted in the Industrial, Industrial 2, and Industrial Park zoning districts. A testing facility must be a minimum of 750 feet from the property line of any preexisting school.
- 6.3 Maximum Number within the Town of Hampden. No more than three Medical Marijuana Testing Facilities may be located within the Town. In the event of multiple applications for Conditional Use, the first complete application received will be reviewed, and if denied and the decision is not appealed, then the next application received will be reviewed, etc. until an application is approved.

Article 7 – RESERVED (Adult Use Cultivation Facilities) This article is reserved to facilitate future codification of regulations concerning this use in the event the Town Council amends this ordinance and the Zoning Ordinance to allow such use; it is not to be construed to allow said use.

Article 8 – RESERVED (Adult Use Manufacturing Facilities) This article is reserved to facilitate future codification of regulations concerning this use in the event the Town Council amends this ordinance and the Zoning Ordinance to allow such use; it is not to be construed to allow said use.

Article 9 – RESERVED (Adult Use Testing Facilities) This article is reserved to facilitate future codification of regulations concerning this use in the event the Town Council amends this ordinance and the Zoning Ordinance to allow such use; it is not to be construed to allow said use.

Article 10 – Performance Standards (Applicable to all marijuana activities regulated by this ordinance)

- 10.1 All applicable state and local laws and regulations must be complied with by anyone conducting any activity related to marijuana.
- 10.2 No outside cultivation, processing, or storage of marijuana, marijuana products, or related supplies is permitted with the exception of home cultivation for personal adult use marijuana.
- 10.3 No marijuana or paraphernalia shall be displayed or kept so as to be visible from outside the building(s).
- 10.4 For all applications before the Planning Board, Class II Buffers in accordance with §4.7.2 Buffers and Landscaping shall be provided along each lot line or at least along each line of the developed area of buildings and parking areas. The Planning Board may, at their discretion, waive this requirement only if they find the location of the proposed marijuana business (medical or adult use) is such that buffers are not necessary to protect abutters or the general public.
- 10.5 All buildings, including greenhouses, used for marijuana activities (including cultivation) must have an odor mitigation system in place prior to starting any operations. Applicants must demonstrate appropriate measures, such as carbon filtration, ventilation, and exhaust systems, facility plans, or other practices adequate to mitigate odors such that they are not detectable at the property line. For Registered Caregivers operating within a multi-family building, odors must not be detectable at the exterior of the unit where the Registered Caregiver operation is located.
- 10.6 Signage is permitted in accordance with §4.7.5 of the Hampden Zoning Ordinance, with the following exceptions:
 - 10.6.1 For Registered Caregivers, the only information permitted on such signage is the name of the property owner, the address of the property, and the words “Medical Marijuana Registered Caregiver Facility.”
 - 10.6.2 For any other marijuana business (medical or adult use), any signage is limited to displaying the following information: name of business, logo of business, address of business, hours of operation, and contact information. No other advertising of marijuana or marijuana products may be displayed on any sign in any publicly visible location. If a business logo includes an image or graphical representation of the

- marijuana plant or any marijuana product, it must not exceed 20 percent of the area of the sign face.
- 10.6.3 Signage must not make any claims of health or physical benefit, and must not be designed to appeal specifically to people under the age of 21.
- 10.6.4 No changeable signs as permitted in §4.7.5.2.8 of the Zoning Ordinance are permitted. This includes electronic message center signs.
- 10.6.5 No temporary event signs as permitted in §4.7.5.3.8 of the Zoning Ordinance are permitted.
- 10.6.6 All portable signs including feather signs and sandwich board signs are prohibited.
- 10.6.7 These restrictions apply to signage installed outdoors and on the inside of windows (facing outwards), including windows within doors.
- 10.6.8 No signage related to any marijuana activity or business is permitted within 1,000 feet of a preexisting school or within 750 feet of a place of worship, a daycare, daycare facility, or child care center as those terms are defined in the Hampden Zoning Ordinance, or a recreational area designed for use by children up to 18 years of age.
- 10.7 Measures must be made to prevent smoke, debris, dust, fluids, and other substances from exiting the property upon which a Registered Caregiver operation or marijuana business (medical or adult use) is conducted.
- 10.8 Measures must be made to limit noise emanating from the facility from exceeding normal noise levels for the vicinity as measured at the property line. Such noise could be from mechanical ventilation systems, equipment, vehicles, or other items which are atypical for the area. For example, a facility with multiple caregivers operating in the Rural district near residential properties must mitigate noise from fans.
- 10.9 Security Measures must meet or exceed the following:
- 10.9.1 Security surveillance cameras installed and operating 24 hours a day, 7 days a week, with 30 day video storage, to monitor all entrances, along with interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises.
- 10.9.2 All exterior doors and any other access points must have deadbolt locks, except windows which must have locks and bars to prevent entry from the outside.
- 10.9.3 Door and window intrusion alarm system with audible alarm and Public Safety Department notification components that are professionally monitored and maintained in good working condition.
- 10.9.4 A locking safe or its functional equivalent permanently affixed to the premises that is suitable for storage of all marijuana products and cash stored overnight on the premises.
- 10.10 Due to fire, explosion, and other hazards inherent in marijuana cultivation and manufacturing facilities, including but not limited to heavy electrical loads, hot lighting fixtures, CO²

enrichment, extraction solvents (e.g. acetone, butane, propane, ethanol, heptane, isopropanol, CO², etc.), high pressure extraction methods, and flammable contents, the owner must agree to annual inspection by the Hampden Fire Department, and furthermore must install a Knox Box at each locked entry (e.g. gate, door) for emergency access. Installation of Knox Boxes must be done in coordination with the Hampden Fire Department.

10.11 Disposal. All marijuana operations must provide for the safe, sanitary, and secure disposal of any by-products or materials resulting from the operation, and must submit an operations plan to the Planning Board with the site plan or conditional use application which details how such by-products or materials will be disposed of.

Article 11 – Local Licensing

11.1 Registered Caregivers and Medical Marijuana Businesses

11.1.1 Each Registered Caregiver or Medical Marijuana Business must obtain a license from the Town Manager to operate within the Town of Hampden. Caregivers who are not registered with the State are not required to obtain a license under this ordinance. Licenses are not transferable to any other person or entity, or to any other location.

11.1.2 Procedure:

11.1.2.1 Applicants must submit three copies of the completed application form, available from the Town Clerk, along with any supplemental documentation and the application fee per the Fees Ordinance.

11.1.2.2 The Town Manager must forward copies of the application to the Public Safety Director and Code Enforcement Officer for review, and the Public Safety Director and Code Enforcement Officer may submit written comments in response within 14 days. The Town Manager must consider these comments, the application, and other material the Town Manager deems relevant, and determine whether the application has obtained applicable Planning Board approval(s) and has provided sufficient assurances that the application meets all conditions of said approval(s).

11.1.2.3 The treasurer and tax collector must certify that all overdue sewer service charges (if applicable) and personal property taxes are paid in full, as of the date of the application. Failure to meet these requirements are grounds for denial of the application.

11.1.2.3 Within 14 days of receipt of all comments from staff, the Town Manager must approve or deny the license application, or request additional information from the applicant to ascertain compliance with all applicable provisions of this ordinance.

11.1.2.4 Applications and related documents for registered caregivers are to be kept confidential by the Town.

11.1.3 License expiration and renewal. A license is valid for a period of one year from the date of its issuance. An application for renewal must be submitted to the Town Manager at least 45 days prior to the expiration of the existing license, along with the required fee per the Fees Ordinance. Registered Caregiver operations or Medical Marijuana Businesses that continue after the expiration of a license will be subject to enforcement action under this ordinance.

11.1.4 Revocation of License. A Registered Caregiver or Medical Marijuana Business license can be revoked by the Town Manager if the licensee is convicted of selling, furnishing, or giving marijuana in any form to a person who is not allowed to possess marijuana in accordance with the applicable state statutes, or for providing materially inaccurate or incomplete information, or if the state registration is terminated for any reason.

11.1.5 Appeals. Any appeal of a Town Manager decision may be made by an applicant to the Town Council by submitting a letter detailing the reason for the appeal. The Council may consider the appeal in executive session if it includes confidential information pursuant to state statutes. Any appeal of a Town Council decision is to be made to the Superior Court, in accordance with the requirements of Rule 80B of the Maine Rules of Civil Procedure.

11.2 RESERVED (Adult Use Marijuana Businesses) This article is reserved to facilitate future codification of regulations concerning these uses in the event the Town Council amends this ordinance and the Zoning Ordinance to allow such uses; it is not to be construed to allow said uses.

Article ~~3~~12 – Enforcement

~~3~~12.1 It is the duty of the Code Enforcement Officer to enforce the provisions of this ordinance pursuant to 30-A MRSA §4452.

~~3~~12.2 It is unlawful for any person to violate any provision of this ordinance.

~~3~~4.3 The penalties contained in 30-A MRSA §4452 will apply to any violation of this ordinance.

12.4 The Code Enforcement Officer has the right to enter any marijuana operation for the purpose of checking compliance with this ordinance.

12.5 Law Enforcement Officers may at any reasonable time conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to any permit or license, and shall investigate all complaints of alleged violations of this ordinance.

Article 13 – Indemnification. By accepting a license issued pursuant to this ordinance, the licensee waives and releases the Town, its officers, elected officials, employees, attorneys, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of any Registered Caregiver or marijuana business owners (medical or adult use), operators,

employees, clients, or customers, by any state or federal official, for a violation of Federal laws, rules, and regulations. By accepting a license issued pursuant to this ordinance, the licensee agrees to indemnify, defend, and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, and insurers against all liability, claims, and demands on account of any injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of the Town’s licensing of a Registered Caregiver or marijuana business (medical or adult use).

Article 14 – Amendments

14.1 Initiation of amendments. An amendment to this ordinance may be initiated by:

14.1.1 The Town Council, provided a majority of the Council votes to initiate an amendment; or

14.1.2 Written petition of one hundred (100) registered voters of the town.

14.2 Public Hearing. The Town Council shall hold a public hearing on the proposed amendment. Notification of the hearing must be posted and advertised in a newspaper of general circulation in the town a minimum of 14 days prior to the hearing. In cases where an amendment has the potential to have a direct impact on an existing Registered Caregiver or marijuana business (medical or adult use), notification must also be mailed to all owners of said property and all owners of property within 500 feet of said property. All costs of notification for amendments submitted by petition must be paid by the petitioner; refusal to do so will result in no hearing and no action by Town Council on the petition.

14.3 Adoption of Amendment. An amendment to this ordinance requires a majority vote of the Town Council members present and voting.

14.4 Effective Date of Amendment. An amendment to this ordinance will become effective 30 days after adoption by the Town Council.

Article ~~4~~15 – Severability.

If any section or provision of this ordinance is declared by the courts to be invalid, such decision will not invalidate any other section or provision of this ordinance.

Article ~~5~~16 – Definitions

~~5~~16.1 Construction Language. In this ordinance, certain terms or words shall be interpreted as follows: The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular.

~~5~~16.2 As used in this ordinance, unless the context indicates otherwise, the following terms have the following meanings. Terms not specifically listed here which are listed in MRSA Title

28-B or Title 22 Chapter 558-C have the meanings provided in those laws. Terms not defined shall have the customary dictionary meaning in the Merriam-Webster print or online dictionary.

Adult Use Marijuana Business: A cultivation facility, a products manufacturing facility, or a testing facility for adult use marijuana.

Caregiver: A person or an assistant of that person that provides care for a qualifying patient in accordance with 22 MRSA §2423-A subsection 2.

Domicile: A person's fixed, permanent, and principal home.

Medical Marijuana Business: A registered dispensary, a manufacturing facility, or a testing facility for medical marijuana.

Property: A parcel or tract of land including all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

Registered Caregiver: A caregiver who is registered by the state pursuant to 22 MRSA section 2425-A.

School: For the purposes of this ordinance, “school” includes a public school, private school, or public preschool program as defined in 20-A M.R.S.A. §1, or any other educational facility that serves children from prekindergarten through grade 12.

Tier 1 Manufacturing Facility: A medical marijuana manufacturing facility which may possess up to 40 pounds of harvested marijuana, including marijuana in various stages of processing, at any one time.

Tier 2 Manufacturing Facility: A medical marijuana manufacturing facility which may possess up to 200 pounds of harvested marijuana, including marijuana in various stages of processing, at any one time.