



AGENDA
TOWN COUNCIL WORKSHOP
SEPTEMBER 13, 2018
LISBON TOWN OFFICE
6:00 P.M.

Town Council
Allen Ward, Chairman
Chris Brunelle, Vice Chairman
Norm Albert
Kris Crawford
Kasie Kolbe
Fern Larochelle
Mark Lunt

1. CALL TO ORDER & PLEDGE TO FLAG

2. ROLL CALL

___ Councilor Albert ___ Councilor Brunelle ___ Councilor Crawford ___ Councilor Kolbe
___ Councilor Larochelle ___ Councilor Lunt ___ Councilor Ward

Town Clerk reading of meeting rules

3. MARIJUANA ORDINANCE DISCUSSION WITH PLANNING BOARD – THURSDAY EVENING

1) Local Regulation

- a) Land Use Regulations
- b) General Authorization of Marijuana Establishments
 - 1. Marijuana Stores
 - 2. Cultivation Facilities
 - 3. Products Manufacturing Facilities
 - 4. Testing Facilities
- c) Limitation on Number of Marijuana Establishments
- d) Local Licensing
 - 1. Conditional License
 - 2. Existing Business License
 - 3. Marijuana - Specific License
 - 4. Governed Entirely by State

2) Next Steps

- a) Land Use Regulations – Planning Board
- b) Simple Ordinance-Dan Stockford, Esquire

4. ADJOURNMENT

SUMMARY OF LISBON COUNCIL MEETING RULES

This summary is provided for guidance only. The complete council working rules may be found on the town website www.lisbonme.org on the Town Officials, Town Council page.

The meeting agenda is available from the town website under Council Agendas and Minutes.

1. Please note the order that agenda items may be acted upon by the Council, however, if necessary, the Council may elect to change the order of the agenda.
2. The Council Chairman presides over the meeting. When the Chairman is not present, the Vice Chairman serves that function. The chair shall preserve decorum and decide all questions of order and procedure subject to appeal to the town council.
3. Public comment is not typically allowed during Council workshops. There may be occasions where public comment may be recruited, but normally, workshops are reserved for Council members to discuss and educate themselves on a variety of issues facing the Town. Prior to the conclusion of a workshop, if time permits, the chair may allow questions from the public.
4. During audience participation, anyone wishing to address council will wait to be recognized by the chair before beginning any remarks. Audience members will move to the lectern to address council, and shall provide name and address prior to addressing the council.
5. Note that "Consent Agenda" items (if there are any) are acted upon first, voted upon as a group, and will most often be voted on without discussion as these items often involve "housekeeping" issues (such as minor parking changes). On occasion "Consent Agenda" items are separated out as stand-alone action items by the Council to allow for more discussion.
6. Public comment on agenda items. General comments on agenda items should be made during audience participation. After introduction of an agenda item, appropriate motions, and time for explanation and council questions, the public may be allowed to comment on that agenda item at the discretion of the chair. During that period of time, the public comment shall address only the agenda item before council.
7. Action on agenda items. As each item on the agenda for any meeting is brought to the floor for discussion:
 - a. The town clerk reads the agenda item and the action being requested of council.
 - b. The sponsor of each item or, if there is no council sponsor, the town manager, or town staff, shall first be allowed to present their initial comments for consideration by the public and councilors.
 - c. Following this introduction of the issue, there will be time devoted to any questions of the sponsor or the town manager or staff regarding the agenda item which any councilor may have which would help to clarify the question presented by the agenda item. The chair may allow questions from the public during this time however; no debate or discussion of collateral issues shall be permitted.
 - d. When authorized by the chair, any additional public comment shall be no longer than two minutes per person and must be to request or furnish new or undisclosed information or viewpoints only.
 - e. Once an agenda item has been explained and clarified by any questioning, the discussion on the specific agenda item will remain with the council. Additional public comment, prior to final council vote; will only be allowed at the chairman's discretion.
8. New business is for the council to receive input on town matters not on the agenda for that meeting. It is not intended, nor shall it be construed as an opportunity for debate of previous agenda items or reinforcement of a point made by another speaker. Comments shall be to furnish new or undisclosed information or viewpoints and limited to a time period of two minutes or less and shall be directed through the chair.
9. If an "Executive Session" is conducted by the Council, State Statute prohibits public attendance for any discussion of the action to be addressed by the Council. Any action taken by the Council on any "Executive Session" matter must be acted upon in a public meeting, and may occur at the end of the "Executive Session" (which has no time element relative to the length of the discussion involved in the "session").

BRANN & ISAACSON
ATTORNEYS AND COUNSELORS AT LAW

DANIEL C. STOCKFORD | Partner
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MEMORANDUM

To: Lisbon Town Council
Diane Barnes, Town Manager
From: Daniel C. Stockford
Re: Town Authority to Authorize and Regulate Marijuana Establishments
Date: August 10, 2018

This memorandum summarizes the Town of Lisbon's options for authorizing and regulating both adult use (i.e., recreational) marijuana businesses and medical marijuana businesses, in light of recent legislative changes.

I. Adult Use (Recreational) Marijuana Businesses

In May, the Legislature adopted the Adult Use Marijuana Act, which amends and supersedes the citizen-initiated recreational marijuana law that voters approved in 2016. The law allows four different types of adult use establishments to be licensed by the State Department of Administrative and Financial Services:

1. *Marijuana stores* authorized to sell marijuana and marijuana products directly to consumers.
2. *Cultivation facilities* authorized to grow, prepare and package marijuana.
3. *Products manufacturing facilities* authorized to blend, infuse or extract components of the marijuana plant to make marijuana products such as ointments, tinctures or edibles, for sale to marijuana stores or other marijuana products manufacturing facilities.
4. *Testing facilities* authorized to conduct research, analysis and testing of marijuana and marijuana products for contamination, potency and safety.

The new law prohibits any of these adult use establishments from operating in a municipality unless and until the municipality has voted to authorize their operation. 28-B M.R.S. §402(1). The authority to determine whether one or more types of adult use marijuana

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facilities will be allowed within the Town of Lisbon rests with the Town Council. The Town does not have authority to consider any applications for authorization of adult use marijuana establishments unless the Council votes to authorize such establishments.

The Town Council has three general options for its approach to regulating adult use marijuana businesses. First, the Council could choose not to authorize any type of adult use marijuana establishment, in which case none of these establishments would be allowed to operate in Lisbon. Second, the Town could adopt a simple ordinance authorizing the operation of some or all types of adult use marijuana establishments. This simple approach would leave the operation of authorized adult use marijuana establishments to be governed entirely by the State of Maine licensing process. Finally, the Town could take a more active role in regulating adult use marijuana establishments. The law provides that municipalities have broad home rule authority with respect to regulating adult use marijuana establishments, including, but not limited to, the authority to adopt the following types of regulations and restrictions:

1. General authorization or limitation of marijuana establishments, including the right to limit the number of any type of adult use marijuana establishment that may be authorized to operate within the Town;
2. Land use regulations, and
3. Municipal licensing requirements, including the adoption of municipal licensing fees.

28-B M.R.S. §401.

The threshold issue for consideration by the Council is whether the Council wishes to authorize one or more types of adult use marijuana establishments within the Town. If the Council does choose to authorize one or more types of adult use marijuana establishments, the Council should consider the following additional issues:

1. **Does the Council wish to consider limitations on the number of any of the authorized types of adult use marijuana establishments that may operate?** This limitation can be adopted in the ordinance authorizing one or more types of marijuana establishments.
2. **Does the Council wish to consider restrictions on the location of some or all of the authorized types of adult use marijuana establishments, or requiring performance standards for such establishments?** If so, the Council may request the Planning Board to propose amendments to the Zoning Ordinance, as permitted under Section 70-7(a) of the Zoning

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Ordinance. The Council could develop either a new stand-alone ordinance governing the location and/or performance standards for such establishments, or the Council could adopt amendments to the existing Zoning Ordinance. If the Council were to consider amendments to the existing Zoning Ordinance that are not recommended by the Planning Board, current ordinance provides that such amendments must be approved by a two-thirds majority vote of the Council. Lisbon Code of Ordinances at §70-7(b). Any zoning regulations must be consistent with the Town's Comprehensive Plan, and must be adopted in accordance with the notice and hearing requirements of state law and local ordinance. *See* 30-A M.R.S. §4352.

3. **Does the Council wish to require that adult use marijuana establishments be licensed by the Town, either through existing business licensing ordinances or through marijuana-specific licensing requirements?** If so, state law requires that any licensing fees must reasonably reflect the Town's costs associated with the licensing procedure and licensing enforcement. 30-A M.R.S. §3702.

II. Medical Marijuana Businesses

Municipal regulation of medical marijuana businesses is governed by the Maine Medical Use of Marijuana Act. During the Second Special Session of the 218th Maine Legislature in June, the Legislature adopted two different bills that clarify the authority of municipalities to regulate medical marijuana facilities. While both of the bills were vetoed by Governor LePage, the Legislature overrode the vetoes of both bills on July 9, 2018.

L.D. 238, which was passed as emergency legislation and is now in effect, provides that municipalities have the authority to regulate the following types of medical marijuana businesses under their home rule authority, except that municipalities do not have the authority to prohibit or limit the number of registered primary caregivers:

1. *Registered primary caregivers* authorized to cultivate medical marijuana for qualifying patients.
2. *Registered dispensaries* authorized to cultivate and dispense medical marijuana to qualifying patients and caregivers.
3. *Marijuana testing facilities* authorized to test medical marijuana for contamination and potency.

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4. *Manufacturing facilities* authorized to manufacture marijuana products and marijuana concentrate for medical use.

LD 1539, which was passed as nonemergency legislation, will become effective 90 days after adjournment of the Legislature's Second Special Session. This statute provides that municipalities have the authority to regulate the above listed types of medical marijuana businesses, as well as registered caregiver retail stores, under their home rule authority. The statute authorizes caregivers to operate one retail store to sell marijuana to qualifying patients for the patients' for medical use. While L.D. 1539 provides that municipalities do not have the authority to prohibit or limit the number of registered primary caregivers, the statute prohibits registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities not operating on the effective date of the legislation from beginning to operate in a municipality until the municipal legislative body has voted to adopt or amend an ordinance allowing such entities to operate. Municipalities are not authorized to prohibit such entities that are already operating with municipal approval prior to the effective date of L.D. 1539.

The effective date of L.D. 1539 will be no earlier than November, 90 days after the Second Special Session of the 218th Legislature is finally adjourned. Because L.D. 1539 has not yet taken effect and Lisbon does not have currently have any ordinances in effect that limit or regulate medical marijuana businesses, there is a possibility that new marijuana medical businesses could be established in Lisbon between now and the date that L.D. 1539 takes effect. Therefore, the Council may wish to consider whether to adopt an emergency moratorium on registered caregiver retail stores, registered dispensaries, medical marijuana testing facilities and medical marijuana manufacturing facilities, to allow time for the Town to decide whether or not to allow new businesses in these categories. The maximum time period for a moratorium would be 180 days. A moratorium could not apply to registered caregivers that do not operate a retail store, because current law provides that municipalities do not have authority to prohibit or limit the number of registered primary caregivers

Regardless of whether the Council decides to adopt a temporary moratorium on medical marijuana businesses until L.D. 1539 takes effect, the Council will need to determine whether to allow registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities once L.D. 1539 takes effect. As with adult use marijuana establishments, the Town Council has three general options for its approach to regulating these types of medical marijuana businesses. First, the Council could choose not to authorize any of these types of medical marijuana establishments, in which case none of these establishments would be allowed to operate in Lisbon once L.D. 1539 takes effect, unless they already were lawfully established. Second, the Town could adopt an ordinance that simply authorizes some or all types of these medical marijuana establishments. This simple approach would leave the operation of authorized medical marijuana establishments to be governed entirely by the State regime for regulation of

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medical marijuana. Finally, the Town could take a more active role in regulating medical marijuana establishments.

Both L.D. 238 and L.D. 1539 provide that municipalities have home rule authority to regulate medical marijuana establishments. Although not specifically stated in these new laws, the home rule authority to regulate medical marijuana business likely includes authority to adopt (1) limitations on the number of any type of medical marijuana establishment that may be authorized to operate within the Town (except for registered primary caregivers which cannot be prohibited or limited by number); (2) land use regulations, including zoning and performance standards, applicable to medical marijuana businesses; and (3) licensing requirements including licensing fees applicable to medical marijuana establishments.

As with adult use marijuana businesses, the threshold issue for consideration by the Council is whether to authorize one or more types of the following medical marijuana establishments within the Town of Lisbon: registered caregiver retail stores, registered dispensaries, marijuana testing facilities or manufacturing facilities. If the Council does choose to authorize one or more types of these medical marijuana establishments, the Council should consider the following additional issues:

- 1. Does the Council wish to consider limitations on the number of registered caregiver retail stores, registered dispensaries, marijuana testing facilities or manufacturing facilities that may operate?**
- 2. Does the Council wish to consider restrictions on the location of some or all of the authorized types of medical marijuana establishments, or requiring performance standards for such establishments?**
- 3. Does the Council wish to require that medical marijuana businesses be licensed by the Town, either through existing business licensing ordinances or through marijuana-specific licensing requirements?**

Depending on which direction the Council wishes to proceed on the issues summarized in this memo, I am available to assist with drafting and review of proposed ordinances.

DCS/lh

**MMA Legal Services Update:
Effective Date of New Medical Marijuana Laws**

There appears to be much confusion as to the effective date of recently enacted medical marijuana legislation. In July, Maine's Legislature enacted two amendments to the Maine Medical Use of Marijuana Act. One, PL 2017, c. 447 (LD 238) was enacted as emergency legislation and took effect immediately.

However, the other, PL 2017, c. 452 (LD 1539), which includes a sweeping reform to the entire medical marijuana statute and creates an "opt in" system for medical marijuana retail stores, testing facilities, manufacturing facilities and dispensaries, is not yet in effect. Contrary to what we have seen reported, LD 1539 will not take effect this October. The law will take effect 90 days after the date the Legislature adjourns. Although currently in recess, the Legislature is still in session. It is unknown when the Legislature will return to complete its work and adjourn *sine die* (finally). As a result, LD 1539 will not become effective until at the earliest, late November and possibly as late as early Spring, 2019.

When LD 1539 does go into effect, it will establish an "opt-in" system similar to the laws regulating liquor. However, medical marijuana retail stores, testing facilities, manufacturing facilities and dispensaries that are operating "with municipal approval" as of the effective date of LD 1539 law will be grandfathered. For this reason, municipalities may wish to consider enacting a moratorium on medical marijuana establishments to cover the time period before LD 1539 becomes effective. For more information on marijuana legislation and a sample moratorium ordinance, see the [Marijuana Resources Page](#) on MMA's website.

In addition, because of the Legislature's delayed adjournment, the legislative update by MMA's State & Federal Relations staff originally planned for the August/September issue of *Maine Town & City* will be published in a later issue.

8/17/18

New Laws on Medical Marijuana Retail Stores

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

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

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

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

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

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

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

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

Two New Laws Recognize Home Rule Authority to Regulate Medical Marijuana Operations *State and Federal Relations Department Update*

Yesterday, the Legislature overrode Governor Lepage's veto of LD 238, *An Act To Amend the Maine Medical Use of Marijuana Act*, as well as his veto of LD 1539, *An Act To Amend Maine's Medical Marijuana Law*, finally enacting both proposals into law.

Each bill replaces the relatively limited local control authorizations in the pre-existing Medical Use of Marijuana Act, which had allowed for municipal school setback moratorium ordinances and regulation of dispensaries, with express recognition of the home rule authority to comprehensively regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers, are not allowed.

Descriptions of these newly enacted laws are found below. LD 238 is designated "emergency" and therefore became effective July 9, whereas LD 1539 becomes effective 90 days after the Legislature finally adjourns the second special session that is currently underway.

LD 238 - "An Act To Amend the Maine Medical Use of Marijuana Act" *Emergency Enacted, Public Law 2017 chapter 447 (July 9, 2018)*

This bill provides for accredited third-party testing of medical marijuana, authorizes the manufacture of medical marijuana products using non-hazardous extraction and concentration processes, and requires processors who utilize hazardous substances to be certified as safe by a state-licensed professional engineer. The manufacture of medical marijuana products using non-hazardous extraction and concentration processes is authorized for all persons, subject to any forthcoming state rules, with "tier 1" processors authorized to possess up to 40 pounds of harvested marijuana, while "tier 2" processors are authorized to possess up to 200 pounds of harvested marijuana. The same is true for processing utilizing hazardous substances for extraction, provided the processors are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.

(Note: The term "primary caregiver" is replaced with "registered caregiver" in LD 1539).

LD 1539 - "An Act To Amend Maine's Medical Marijuana Law" *Enacted, Public Law 2017 chapter 452*

This bill re-writes much of Maine's Medical Use of Marijuana Act. Amendments made to the Act as a result of this legislation include the following:

Local Control. The Act's pre-existing municipal school setback and dispensary regulation authorities are replaced with express recognition of the comprehensive home rule authority to regulate registered medical marijuana caregivers, dispensaries, and testing and manufacturing facilities. Two general limitations are imposed on home rule: municipal prohibitions on registered caregivers, as well as limitations on the number of registered caregivers, are not

allowed. Another limitation, described below, grandfathered caregiver retail stores operating on the effective date of this law while applying a municipal opt-in requirement to storefronts aiming to open after the effective date.

Qualifying Patients. Four key changes are made with respect to patient activities:

- (1) Patients may now receive written prescription certifications to use medical marijuana for any medical condition their physician believes may be alleviated by the patient's use of marijuana;
- (2) The maximum per-patient prescription limit is expanded from 2.5 ounces to up to 2 pounds, and the amount that may be possessed by patients is expanded from 2.5 ounces to up to 8 pounds;
- (3) Each patient may grow a maximum of 6 mature plants, 12 immature plants, and unlimited seedlings;
- (4) Patients may share seeds and plants with one another;
- (5) Patients may use medical marijuana in certain assisted living and residential care facilities provided the use is consistent with facility policies; and
- (6) Patients may designate multiple primary caregivers rather than only one caregiver.

Caregivers. Seven key changes are made with respect to caregiver activities:

- (1) The term "primary caregiver" is replaced with a new distinction between un-registered and registered caregivers. Caregivers who only serve two household or family members are not required to register with the state. All other caregivers are required to register with the state and are referred to in the new law as "registered caregivers";
- (2) Registered caregivers are authorized to operate retail stores;
- (3) Each caregiver may grow a maximum of 30 mature plants, 60 immature plants, and unlimited seedlings;
- (4) Caregivers are allowed to employ any number of assistants (under the pre-existing Act employees were capped at one person per designated patient served);
- (5) Caregivers may transfer products between one another (under the pre-existing Act caregivers were only allowed to transfer products to dispensaries);
- (6) Tracking and reporting on seed and plant sourcing and sales is required of registered caregivers and dispensaries;

Municipal Opt-in Requirement and Grandfathering. Registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities not operating on the effective date of the legislation are prohibited from beginning to operate in a municipality until its legislative body has voted to adopt or amend an ordinance or approve a warrant article allowing such entities to operate. Municipalities are not authorized by the terms of this law, however, to prohibit those entities already operating with municipal approval prior to the effective date.

Dispensaries. This law authorizes the state to issue six additional dispensary certifications (in addition to the existing eight) until 2021, after which time there will be no cap on the number of dispensary certificates issued statewide. The law also removes the previous requirement that dispensaries operate as non-profits.

State Verification For Code Enforcement. State officials are required to verify within two business days the validity of registration identification cards and conduct authorized pursuant to that registration upon the request of a code enforcement officer, and the location at which the conduct is authorized if necessary to verify the card to the code enforcement officer. The code enforcement officer, or other municipal officer in municipalities without code enforcement officers, are required to keep the information received confidential.

Inspections. State inspection authority is limited to registered caregivers, dispensaries, testing, and manufacturing facilities. Such inspection is authorized on demand of the Department of Health and Human Services, but is disallowed in areas where marijuana-related activities are not taking place and, in the case of registered caregivers, when the caregiver is not present. Two or more absences on the part of the caregiver are grounds for state revocation of their certification.

Immunity. The pre-existing immunity for dispensary employees and directors is extended to registered caregivers and their employees as well as to hospitals and long-term care facilities and their directors, employees or agents.

Testing. Accredited third-party testing of medical marijuana is authorized.

Extraction and Concentration. The same language included in LD 238, authorizing the manufacture of medical marijuana products using non-hazardous extraction and concentration processes for all persons, subject to any forthcoming state rules, is included in this legislation as well. “Tier 1” processors authorized to possess up to 40 pounds of harvested marijuana, while “tier 2” processors are authorized to possess up to 200 pounds of harvested marijuana. The same is true for processing utilizing hazardous substances for extraction, provided the processors are certified as safe by a state-licensed professional engineer and have notified the state in advance of their intent to engage in marijuana extraction using inherently hazardous substances.