

DrummondWoodsum

ATTORNEYS AT LAW

LEGAL UPDATE 2024

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15th Annual Maine Code
Conference

Sugarloaf Mountain Resort
May 21, 2024

Local Regulation of Medical and Adult-Use Marijuana

Maine Medical Marijuana Act – 22 M.R.S. §§ 2421, *et seq.*

- Significant changes were adopted in 2018; further changes in 2024
- Municipalities have home rule authority over:
 - Registered Caregivers
 - Registered Caregiver Retail Stores
 - Registered Dispensaries
 - Testing Facilities
 - Manufacturing Facilities
- Municipalities must “opt in” to allow (1) medical marijuana retail stores, (2) dispensaries, (3) testing facilities, and (4) manufacturing facilities to operate in that municipality

Maine Medical Marijuana Act – 22 M.R.S. §§ 2421, *et seq.* (Cont'd)

- “Caregiver” is defined (as of August 8, 2024) as:
 - “...a person or an assistant of that person that provides care for a qualifying patient in accordance with [this chapter]”
- Definition is VERY broad
- Municipalities cannot prohibit or limit the number of registered caregivers
- Municipalities likely also cannot regulate the medical marijuana activities of qualifying patients
 - “Qualifying Patient” (as of August 8, 2024) is defined as “an individual who has been a resident of the State for at least 30 days and who possesses a valid written certification regarding medical use of cannabis...”
- Definitions are currently in flux because of LD 40

What Can Caregivers and Qualified Patients Do?

- Caregivers can cultivate:
 - 30 mature plants / 500 square feet of plant canopy
 - 60 immature plants / unlimited seedlings
- Qualifying Patients can cultivate:
 - 6 mature plant
 - 12 immature plants / unlimited seedlings
- They may manufacture medical marijuana products from their own marijuana
 - Can qualify as “manufacturing facilities” if:
 - they use inherently hazardous substances in extraction and / or they manufacture edibles or tinctures using outsourced marijuana

Maine Adult Use Act – 28-B M.R.S. §§ 101, *et seq.*

- Significant changes were adopted in 2018; further changes in 2024
- Creates a state licensing system for (1) cultivation facilities; (2) products manufacturing facilities; (3) testing facilities; and (4) marijuana retail stores
 - State license requires certification that proposed use is allowed in municipality
- Municipalities must opt-in to allow 4 uses, may regulate by:
 - Authorizing some or all types of marijuana establishments;
 - Limiting the number of marijuana establishments;
 - Imposing land use regulations on marijuana establishments; and/or
 - Setting licensing requirements and fees applicable to marijuana establishments

Home / Personal Cultivation

- Adult Use Act legalizes personal possession and cultivation by persons 21 years and older
 - Up to 3 mature plants, 12 immature plants, and unlimited seedlings
- Adults may cultivate marijuana on land owned by someone else
 - Each adult is limited to their own allotment; must have written permission
 - But no limits on how much can be grown on a parcel, so multiple people can grow on the same parcel
- Municipalities can choose to limit the number of plants per parcel
 - Floor is 3 mature plants, 12 immature plants, and unlimited seedlings per adult domiciled on the parcel
- Municipalities can regulate under home rule, except:
 - Cannot prohibit home cultivation
 - Restrict areas of home cultivation
 - Charge license or other fee for home cultivation

Options for Local Regulation

- “Opt in” or “opt out”: Allow or ban some or all (1) adult use marijuana establishments (cultivation, products manufacturing, testing, stores) and (2) medical marijuana establishments (dispensaries, testing, manufacturing, stores).
- Limit the Number of Marijuana Businesses: Restrict the total number of some or all marijuana businesses.
 - Town may not prohibit or limit the number of registered medical marijuana caregivers.
- Limit the Location of Marijuana Businesses: Restrict the location of some or all non- personal uses and/or medical marijuana caregiver operations through zoning / land Use ordinances.
 - Town may not limit or prohibit adult use or medical home cultivation.
- Adopt Performance Standards: Establish standards (including odor control, safety and security measures, signage restrictions, setbacks and buffers), and permitting requirements (home occupation permits, building permits, and conditional use permits).
- Require Annual Licenses: Establish a business license ordinance and impose licensing fees
 - Can't apply to adult use or medical home cultivation.

LAND USE	LOCAL REGULATION ALLOWED?	MUNICIPAL "OPT IN" REQUIRED?
Medical Marijuana		
Qualifying patients – possession, cultivation (up to 6 mature plants)	Probably not	No
Registered caregivers – possession, cultivation, limited manufacturing, transfer/sale to qualifying patients (up to 30 mature plants or 500 square feet of plant canopy, 60 immature plants and unlimited seedlings)	Yes, but may not prohibit or limit number of caregivers	No
Caregiver retail stores*	Yes	Yes
Registered dispensaries*	Yes	Yes
Testing facilities*	Yes	Yes
Manufacturing facilities*	Yes	Yes
Adult Use Marijuana		
Personal adult use – possession	Probably not	No
Personal adult use – home cultivation (up to 3 mature plants per adult)	Yes, but may not prohibit home cultivation, restrict home cultivation by location, or charge fees	No
Marijuana Establishments:* - Cultivation facilities - Products manufacturing facilities - Testing facilities - Marijuana stores	Yes	Yes
* The uses marked with an asterisk (*) are collectively referred to as "Non-Personal Uses" in this memorandum.		

Municipal Options for Regulating Caregivers

- Prohibit caregiver retail stores
 - Defined (as of August 8, 2024) as “a store authorized [by the Medical Marijuana Act] and used by a registered caregiver to sell cannabis paraphernalia, cannabis plants, harvested cannabis, related supplies or educational materials to qualifying patients and other items to the general public at a fixed location.”
- Treat large-scale caregiver activities as commercial or industrial uses
- Treat small-scale caregiver activities as a home occupation
- Require business licenses for caregiver activities
 - Provides the option for license revocations and suspensions

Municipal Options Continued

- Require site plan review or home occupation permits
 - If allowed under your ordinances
- Impose performance standards, such as:
 - Limiting the number of patients a caregiver is allowed to treat per day or per year
 - Restricting number of vehicles allowed in driveways
 - Prohibiting inherently hazardous substance manufacturing
 - Limiting size of grow operations
 - Requiring grow operations to occur indoors or with security
 - Odor control
 - Traffic control
 - Security, fire protection

If No Marijuana Regulations Adopted

- All non-personal uses would continue to be prohibited everywhere in municipality
- Adult use home cultivation would be allowed everywhere and without any local restrictions
- Caregiver operations would need to be reviewed case-by-case and could qualify as permitted home occupations, manufacturing uses, and/or agricultural uses
 - Will depend on existing ordinances
- No marijuana businesses would be subject to any business licensing requirements

Legislative Update

May 2024 (Second Regular Session)

- LD 40 – An Act to Amend the Cannabis Laws (became law without Governor’s signature)
 - Medical Marijuana –
 - Updates Definitions
 - Limits Enforcement Powers of Department of Administrative and Financial Services (DAFS)
 - Provides strict timelines for notification of violations (for DAFS)
 - Loosens advertising restrictions
 - Adult Use Marijuana –
 - Authorizes adoption of new rules regarding Adult Use and Adult Use establishments
 - Creates new Office of Cannabis Policy within DAFS
 - Lowers maximum fines imposed for violations by 75% to 80%
 - Provides strict timelines for notification of violations (for DAFS)

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THANK YOU



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