

DRAFT MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: June 13, 2017
SUBJECT: Marijuana regulations

Introduction

The Town Council referred to the Ordinance Committee a review of the recently adopted recreational marijuana referendum. The Town Council has adopted a moratorium on recreational marijuana uses which expires in September, 2017. The Ordinance Committee met 6 times to review research and discuss possible marijuana uses in Cape Elizabeth. Below is a summary of the information reviewed and a recommendation for adoption of local regulations.

Information Review

The State of Maine has two main marijuana use laws, the medical marijuana law and the recreational marijuana use law. The recreational marijuana referendum includes substantial opportunity for local regulation of recreational marijuana cultivation, testing, manufacturing, retail sales and social clubs. There is almost no opportunity for local regulation of medical marijuana uses.

The Ordinance Committee has reviewed informational summaries of the recreational marijuana referendum prepared by the Maine Municipal Association (MMA), and the committee attended a training session sponsored by MMA in Freeport on February 28, 2017. Presentation materials from that session have been posted to the marijuana regulations section of the town website.

The committee found the session valuable, especially the pictures of marijuana facilities in Colorado, where a legal marijuana industry is operating. One takeaway from the session is that non-personal marijuana cultivation and manufacturing essentially operates as an industrial use. It is crucial for marijuana growers to preserve the purity of species strain of marijuana plants (to generate a predictable TCH level), and consequently growing is done indoors in large buildings under laboratory-like conditions. Manufacturing, which involves extraction of TCH to produce tinctures and edibles, can often use explosive materials such as butane. Another takeaway is that marijuana infused products, such as edibles, is a growing market. Finally, today's commercial marijuana growing produces much more potent products than many have experienced in their college days.

Police Chief Neil Williams attended several of the committee meetings and provided information about an odor complaint received from growing medical marijuana. He also expressed concern that retail marijuana sales might increase the incidence of "drugged driving." Special training is now needed to become a Drug Recognition Expert (DRE).

The committee investigated odor impacts and reviewed literature, including a nose guard device in use in Denver to measure odor impacts in neighborhoods. The committee concluded that marijuana has a potent odor that many find offensive.

Evaluation of marijuana uses

The committee focused some time on identifying impacts from marijuana facilities. The attached chart was prepared to structure the analysis of impacts for each marijuana use.

Social Clubs and Retail Sales

Social clubs and retail sales stores uses would most likely be located in a commercial district. The town's principal commercial district, the Town Center District (TC), also includes the school campus, a church and compact abutting residential neighborhoods. The Business A districts (BA), which are integrated with adjacent residential neighborhoods, would be even less compatible with marijuana uses. Locating retail sales or social clubs in more rural areas of town would require making those uses permitted in the Residence A District(RA), which is the district for 50% of the town. The Ordinance Committee concluded that there are no locations where marijuana retail sales or social clubs would be appropriate in Cape Elizabeth.

Manufacturing and Testing

Marijuana manufacturing and testing were considered industrial uses. There are no industrial zones in Cape Elizabeth. The committee also had concerns about odors, and reviewed literature about the pervasiveness of odor in other manufacturing areas. The committee concluded that manufacturing and testing was not appropriate in Cape Elizabeth.

Cultivation

Marijuana cultivation was a focus of the committee. Because Cape Elizabeth is already experiencing the impacts of growing marijuana for medical use, the committee compared the medical marijuana provisions to the recreational marijuana referendum. The attached chart compares regulation of medical and recreational marijuana. The committee considered the potential revenue opportunities for residents who want to

grow marijuana commercially, the potential for illegal sales from personal marijuana plants, and neighborhood impacts like odor and security.

The committee also considered establishing a minimum lot size for marijuana cultivation. A larger minimum lot size could have the effect of not allowing growing near most residential neighborhoods. A map analyzing lot sizes of 2, 3, 4, 5, 10, and 15+ acres was prepared and is attached. Marijuana cultivation for commercial use will most likely occur inside buildings to minimize species contamination. The committee concluded that marijuana cultivation in Cape Elizabeth should be prohibited for now, but could be revisited after state regulations are completed and impacts in other communities could be assessed.

Medical Marijuana dispensaries

During its review of the medical marijuana laws, the committee learned that local regulation of medical marijuana dispensaries is allowed. One dispensary per Public Health District is provided, and Cape Elizabeth is part of the Public Health District that includes Cumberland County. A dispensary is located in Portland and there is little likelihood a dispensary would relocate to Cape Elizabeth. The committee is recommending that medical marijuana dispensaries be prohibited in Cape Elizabeth.

The committee also reviewed the state restrictions placed on medical marijuana primary caregivers. The town's experience is that primary caregivers are not limiting themselves to no more than 6 qualified patients due to a failure in maintaining state record-keeping. The committee makes no recommendation regarding primary caregivers.

Recommendation

The Ordinance Committee is recommending that a stand alone Marijuana Ordinance be adopted that prohibits recreational marijuana cultivation, manufacture, testing, retail sales and social clubs. The ordinance should also prohibit medical marijuana dispensaries. This ordinance has been drafted by Town Attorney John Wall and is attached.

The committee is recommending a stand alone ordinance because it is a more streamlined adoption process which can be completed prior to the September moratorium expiration. A separate ordinance will also be easier to amend, if needed, after the state recreational marijuana provisions are completed.

Attachments:

Uses Chart

Comparison Chart

Lot size map

Marijuana Ordinance