**MEMORANDUM**

TO: Cape Elizabeth Town Council

FROM: Ordinance Committee

DATE: June 24, 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 takeway 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 predicable 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 that 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. **Personal use of marijuana is allowed under state law and was not reviewed by the committee or included in the recommendations.**

*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 are 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.

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. This ordinance has been drafted by Town Attorney John Wall and is attached. A stand alone ordinance can be adopted using a streamlined 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

**Marijuana Activities Evaluation Chart**

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| Marijuana Uses | Pro | Con | Recommen-dation |
| **Growing** | •Support Local agriculture •private income generator •locally sourced product | •Smell •potential industrially sized buildings •field space competition for other crops | Prohibit |
| **Manufacturing** | •property tax payments •private income generator | •Use of hazardous materials like butane •industrial use/location •smell •security needed | Prohibit |
| **Testing** | •property tax payments •private income generator •skilled labor jobs | •Use of hazardous materials like butane •industrial use/location •smell | Prohibit |
| **Retail Sales** | •Occupy underutilized retail space in business district •resident convenience •Increase in business property value=tax revenue | •Security •Location in business zone •Location in residential zone •Access for minors •impaired drivers | Prohibit |
| **Social Clubs** | •resident/visitor convenience •increase in business property value •community gathering opportunity | •smell •security •location in business/ residential zone •impaired drivers | Prohibit |

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| **Comparison and summary of Marijuana regulations** | | |
|  | **Medical Marijuana** | **Recreational Marijuana** |
| **State Maximums** | •No statewide growing maximum •Dispensaries limited to 8 (1 per public health district) | •800,000 sq. ft. of plant canopy statewide •40% of licenses to 3,000 or less plant canopy growers |
| **Local regulation allowed** | May only limit, regulate dispensaries | Yes, may prohibit or regulate all except personal use |
| **Cultivation: Personal** | •Need Qualified Patient (QPat) card (may be minor) •Possess 2.5 oz prepared mj •Cultivate 6 mature plants •QPat may designate only 1 PC or grow own | •Must be 21 or older •2.5 oz mj •6 flowering plants, 12 immature plants, unlimited # seedlings •must not be visible from public way •legible tag w number per plant |
| **Cultivation: Non personal** | Primary Caregiver(PC): •Need registration card unless household/family member •6 plants per designated QPat •2.5 oz per QPat •Max 5 Qpat, plus owner •Can prepare food •Excess mj can transfer to another PC without payment •Excess mj can sell to dispensary, limit 2 lbs/cal year | Grower: •Need state license •Either up to 3,000 sq. ft. plant canopy or more than 3,000 sq. ft. plant canopy license •License by 10' x 10' unit blocks •Max license block is 300 (30,000 sq. ft. plant canopy) •No more than 6 licenses or more than 300 unit blocks per parcel •License may be reduced if less than 50% is cultivated |
| Dispensary: Need registration card •6 plants, 2.5 oz per QPAT •Can grow at dispensary and 1 other location •Must be nonprofit •Only for QPat, PC •Hospice or nursing facility may not cultivate |
| **Cultivation: Related requirements** | •not locate within 500' of school property line •PC must have numbered tag with Qpat •Dispensary must be state res •Collectives prohibited | •retail mj store may be operated with cultivation facility •May only sell to licensed retail, manufacturing, other cultivation, and social clubs |
| **Security** | •QPat: enclosed, locked facility •PC: enclosed, locked facility •Dispensary: enclosed, locked facility | •Enclosed, locked facility |
| **Testing** | •May not have interest in PC or dispensary • Not required | •May not have interest in cultivating, manufacturing, retail, social club, or any medical mj production •Required for contaminants, TCH potency |
| **Labeling** | •Optional •Must test to add labeling about contaminants, potency | •Sales require cultivation facility license #, batch, weight, THC potency, solvents used, serving, exp date |
| **Fees** | •QPat: no fee to register •PC: Annual registration fee $50-$300 •Dispensary: Annual registration fee$5,000-$15,000 | •State Sales tax 10% •State Cultivation license $10-$100 per unit block •State Application fee $10-$250 |
| **Sales** | Only to registered QPat, PC, dispensaries | Anyone over 21 yrs old |
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| Abbreviations: | QPat: Qualifying Patient | mj: marijuana |
|  | PC: Primary Caregiver |  |

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