

PLANNING BOARD

PACKET OF MATERIALS

MEETING MAY 16, 2018

Cover page with date

Agenda

Minutes for approval

Applications

Supporting Documents

Memo

Agenda
Bar Harbor Planning Board
Wednesday, May 16, 2018
Council Chambers- Municipal Building
93 Cottage Street
6:00 P.M. – 7:00 P.M.
WORKSHOP

- I. CALL TO ORDER**
- II. ADOPTION OF THE AGENDA**
- III. EXCUSED ABSENCES**
- IV. PUBLIC COMMENT PERIOD** *(The Planning Board allows up to 15 minutes of public comment on any subject not on the agenda and not a pending application before the Board, with a maximum of three minutes per person.)*
- V. APPROVAL OF MINUTES**
 - a. May 2, 2018**
- VI. OTHER BUSINESS**
 - a. Workshop - Discussion of LD 1719 – An Act to Implement a Regulatory Structure for Adult Use Marijuana**
- VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**
- VIII. ADJOURNMENT**

Minutes
Bar Harbor Planning Board
Wednesday, May 2, 2018
Council Chambers- Municipal Building
93 Cottage Street
6:00 P.M.

I. CALL TO ORDER

The Chair called the meeting to order at 6:00 PM. Members present: Tom St. Germain, Chair; John Fitzpatrick, Member; Basil Eleftheriou, Jr., Secretary; Alf Anderson, Member; and Joseph Cough, Vice Chair.

Also present: Janna Richards, Planning Director.

II. ADOPTION OF THE AGENDA

Mr. Cough moved to adopt the agenda as submitted. Mr. Anderson seconded the motion and the Board voted 5-0 to approve the motion.

III. EXCUSED ABSENCES

There were no excused absences.

IV. PUBLIC COMMENT PERIOD

There was none.

V. APPROVAL OF MINUTES

April 18, 2018

Mr. Cough moved to adopt the minutes from April 18, 2018 with one modification to include that Mr. St. Germain returned as Chair after representing himself for his application before the Board. Mr. Fitzpatrick seconded the motion and the Board voted 4-0-1 to approve the motion with Mr. Eleftheriou abstaining.

VI. OTHER BUSINESS

a. Workshop – Discussion of Proposed Dormitory Use Land Use Ordinance Amendment

The Board and the Planning Director reviewed the most recent draft of the proposed amendments to the Land Use Ordinance (dated March 7, 2018) that would define employee dormitory, rooming house, and workforce dormitory; provide a set a standards for these types of uses; and identify the zoning districts where they would be allowed.

There was a discussion on the proposed standards and it was noted that “employee dormitory” could be subject to the setbacks of the zoning district it was located within and that the setback could be vegetated (if the setback was not zero) to create buffering.

The Planning Director noted that there were several definitions, all pertaining to housing, that should be considered to be included in the proposed amendment. The Board recommended that the Planning Director draft the definitions and include them in the next version of the proposed amendment.

There was a discussion on the level of enforceability of some of the standards given that there is currently only one Code Enforcement Officer. A discussion was had between the Board, the Planning Director, and Donna Karlson, a member of the public who was present at the meeting, about developing a more comprehensive rental registration program with adjustments to the fee schedule to help increase Code Enforcement staff.

The Board reviewed the proposed changes to Appendix C that would allow employee dormitories, workforce dormitories, and rooming houses in certain zoning districts. The results of the Polco survey on dormitory uses in Bar Harbor was referred to. The Board agreed on nine zoning districts where one or more of the proposed uses could be allowed.

The Planning Director noted that she would include the proposed changes in an updated draft amendment for the Board's review.

VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

The Board discussed holding another workshop at the next scheduled meeting on May 16, 2018 as there were no applications submitted for review at that meeting. The workshop would focus on providing an update on the state's recently approved adult use marijuana legislation (LD 1719) and the regulatory options that municipalities may have in order to control adult use marijuana establishments within their jurisdiction.

VIII. ADJOURNMENT

Mr. Fitzpatrick moved to adjourn at 8:26 PM. Mr. Anderson seconded the motion and the Board voted 5-0 to approve the motion.

Signed as approved:

Basil Eleftheriou, Jr., Secretary
Planning Board, Town of Bar Harbor

Date

MEMORANDUM

DATE: MAY 11, 2018
TO: BAR HARBOR PLANNING BOARD
BAR HARBOR TOWN COUNCIL
CORNELL KNIGHT, TOWN MANAGER
FROM: JANNA RICHARDS, PLANNING DIRECTOR
RE: LD 1719 – AN ACT TO IMPLEMENT A REGULATORY STRUCTURE FOR ADULT USE MARIJUANA

The purpose of this memorandum is to: (1) provide an update on LD 1719, including a brief explanation of the primary contents of the bill and a timeline for implementation, and (2) identify local regulatory options municipalities may consider and implement in order to control marijuana establishments within their jurisdiction.

BACKGROUND: During the November 2016 election, Maine voters approved ballot Question 1 to legalize the recreational use, retail sale, and taxation of marijuana, also referred to as adult use marijuana. The law was enacted as IB 2015, c. 5, “An Act to Legalize Marijuana.” On January 27, 2017, the legislature approved a moratorium on implementing parts of the law that pertain to retail sales and taxation until at least February 2018, giving time to resolve issues and write rules. The portion of the law that allows persons over 21 years old to grow six mature plants, possess 2.5 ounces, and for personal use became effective on January 30, 2017. A legislative committee, the Joint Select Committee on Marijuana Legalization Implementation, was formed to address the complex issues surrounding full implementation of the law.

The Committee brought forth LD 1650 (“An Act to Amend the Marijuana Legalization Act”) in October 2017 that provided rules to regulate sales of and tax adult use marijuana; however, the Governor vetoed the law in November 2017 and the House vote fell short of the two-thirds of members present threshold necessary to override the veto.

The Committee brought forth LD 1719 (“An Act to Implement a Regulatory Structure for Adult Use Marijuana”) in April 2018. While the Governor vetoed the law in late April 2018, the House and the Senate had the votes necessary to override the veto. LD 1719 took effect immediately as “emergency” legislation and completely replaces existing recreational marijuana statutes. More information regarding the contents of LD 1719 and a timeline for implementation are included in the sections below.

CONTENTS:

- (1) **Marijuana Establishments.** LD 1719 allows for four types of marijuana establishments to operate in Maine: 1) marijuana cultivation facility, 2) marijuana testing facility, 3) marijuana products manufacturing facility, and 4) marijuana store. Online and drive-through sales, which were included in previous legislation, are prohibited in LD 1719. LD 1719 also removes authorization for social clubs, which were authorized in previous legislation.

- (2) Personal Cultivation. LD 1719 limits personal cultivation to three mature plants, 12 immature plants, and unlimited seedlings, with the requirements that these plants only be grown on land where the person lives, or on land owned by the person, or on land owned by another person pursuant to a written agreement. In previous legislation, the limit for personal cultivation was six mature plants, 12 immature plants, and unlimited seedlings.
- (3) Taxation. LD 1719 asserts that all sales and excise tax revenues are reserved for the State. The overall tax rate is 20 percent, with ten percent sales tax on retail and ten percent consisting of excise taxes on wholesale. The excise taxes are \$335/pound of mature plants (flower), \$94/pound of trim, \$1.50/immature plant or seedling, and \$0.30/seed.
- (4) State Agency Authority. The Department of Administrative and Financial Services (DAFS) is the main oversight agency. DAFS has rulemaking authority with the requirement that the agency consult with the Department of Agriculture, Conservation and Forestry; the Department of Labor; and the Department of Public Safety. LD 1719 requires DAFS to administer the Marijuana Legalization Act through a bureau or division separate from the bureau responsible for the administration and enforcement governing liquor (the Bureau of Alcoholic Beverage and Lottery Operations).
- (5) State Licensing Authority. LD 1719 establishes several initial, renewal, transfer of ownership, and relocation of premises state licensing criteria. If an application is approved, the state is required to issue a conditional license. An active license to operate a marijuana establishment is issued only if and when the applicant obtains municipal approval or a municipal license to operate within the municipality's boundaries. A conditional license expires in one year. LD 1719 also provides a process for state license violations.
- (6) Regulation in the Workplace. LD 1719 allows employers to: (1) prohibit the use, consumption, possession, trade, display, transport, sale or cultivation of marijuana in the workplace; (2) adopt policies restricting the use of marijuana by employees in the workplace or while engaged in any activity within the course and scope of employment; and (3) discipline employees who are under the influence of marijuana in the workplace or while engaged in any activity within the course and scope of employment according to the employer's policies.
- (7) Marijuana Advisory Commission. LD 1719 requires the creation of a 15 member Marijuana Advisory Commission appointed by the Speaker of the House. The commission is tasked with reviewing the laws and rules pertaining to the adult use and medical marijuana industries and recommending changes to the laws and rules that are necessary to preserve public health and safety. Beginning January 15, 2019, and annually thereafter, the commission is required to submit a report containing findings and recommendations to the joint standing committee or committees of the Legislature having jurisdiction over medical marijuana and adult use marijuana matters.
- (8) Operating, Testing, Labeling and Packaging Requirements. LD 1719 sets into place the many operating, testing, labeling and packaging requirements for the cultivation, manufacturing and testing facilities, as well as for retail stores.
- (9) Local Control. LD 1719 prevents adult use marijuana establishments from operating until municipalities "opt-in" to the operation of these establishments within their jurisdiction. A

municipality can “opt-in” through passing of a new ordinance, amending of an existing ordinance, or approval of a warrant article designating certain or all types of marijuana establishments to be a permissible use in that municipality’s jurisdiction. Under the “opt-in” process of the new law, municipalities are no longer required to take any additional action to prevent commercial adult use marijuana activity from occurring in the municipality. Therefore, while the Town of Bar Harbor currently has a moratorium on adult use marijuana establishments in place, given the “opt-in” option, the Town does not need to consider extending that moratorium in the future. If the municipality is interested in authorizing commercial adult use marijuana activity, there are regulatory options available.

Three local regulatory options are described in more detail below. The regulatory option the Town of Bar Harbor chooses, whether it be prohibition or authorization, will be a Council decision. If the Council makes a policy decision to authorize adult use marijuana establishments to operate within the Town, the Planning Board could then be tasked with the formulation and implementation of the regulatory process and standards required by the Town for these types of establishments.

- a. **Prohibition** – A municipality cannot prohibit personal use or personal cultivation of adult use marijuana; however, if a municipality chooses not to “opt-in” and does “nothing”, by default the municipality has prohibited all marijuana establishments and is essentially a “dry town.”
- b. **Authorize with No Additional Local Regulation** – A municipality may choose to authorize adult use marijuana establishments by integrating the uses into the existing Land Use Ordinance structure. In this scenario, marijuana retail stores may be classified with other retail/commercial uses allowed in the municipality and be subject to the same regulatory process (approval through Code Enforcement Officer or Planning Board) and standards (Permit Review or Site Plan Review) that those uses are subjected to. Similarly, marijuana testing facilities and marijuana products manufacturing facilities may be classified with other light industrial/manufacturing uses allowed in the municipality and marijuana cultivation facilities may be classified with other agricultural business type uses allowed in the municipality and be subject to the same regulatory process and standards that those uses are subjected to. The uses would also need to meet the requirements of the state law (and potentially demonstrate through a conditional state license that they have met the requirements of the state law) to be considered for local approval. After going through the review and approval process, either through Code Enforcement or Planning Board, the approved use may also be required to obtain a local license, similar to the process and standards necessary to obtain a liquor or business license in that municipality.
- c. **Authorize with Additional Local Regulation** – A municipality may choose to authorize adult use marijuana establishments through the Site Plan Review or Code Enforcement regulatory process and, in addition to the Site Plan Review or Permit Review criteria in the existing Land Use Ordinance, subject those uses to additional standards that are intended to protect the health, safety and welfare of the community, while also meeting the minimum state law requirements. Examples of additional regulatory standards include:
 - i. **Land Use**

1. Prohibit the operation of some or all types of marijuana establishments in the municipality;
2. Limit the location of allowed marijuana establishments within the community (zoning and/or buffers from schools or other sensitive uses such as daycares, playgrounds, libraries, etc.);
3. Limit the number of allowed establishments that may be approved or licensed to operate in the community;
4. Limit the size, content and locations of signs and advertisements used by marijuana establishments.

ii. Licensing or Permitting

1. Impose licensing or permitting requirements addressing matters not regulated by the state (i.e. odor mitigation/ventilation, security measures, solid waste disposal, wastewater disposal, compliance with fire and safety codes, hours of operation, visibility from the street, etc.). These could also be part of the initial Site Plan/Permit Review approval process, but then inspected on a regular basis when the applicant is seeking to renew their license/permit;
2. Impose local licensing/permitting fee schedules for the allowed adult use marijuana establishment uses;
3. Require (by state law) an applicant to demonstrate that they own or lease the property from which the proposed establishment will operate

TIMELINE: While LD 1719 took effect immediately as “emergency” legislation, state licenses for adult use marijuana establishments cannot be issued until the state agencies develop the necessary application forms and rules, which must also be reviewed by the Legislature before they are adopted. There is no hard set date that this must be completed by and the Maine Municipal Association (MMA) has advised it may take at least several months.

ADDITIONAL INFORMATION: MMA has continued to provide updates on the state’s adult use marijuana legislation and options for local regulation. Now that LD 1719 has become law, MMA’s Legal Services are in the process of developing an information packet with more specific details pertaining to the law and municipal control. Town Staff will review this information packet as it becomes available and provide the Council and Planning Board with an update.

Town staff has also formulated and disseminated questions pertaining to adult use marijuana establishments using the Polco platform and plan on polling residents in person at the elections in June. The poll results will be summarized and provided to the Council and Planning Board with the intent of having the Council review and discuss the results at their meeting on June 19th.