



Maine Municipal Association

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Testimony of the Maine Municipal Association

In Support of LR 2395 *An Act To Amend The Marijuana Legalization Act*

September 26, 2017

Senator Katz, Representative Pierce and members of the Marijuana Legalization Implementation (MLI) Committee, my name is Garrett Corbin and I am providing testimony on behalf of the Maine Municipal Association at the direction of MMA's 70-member Legislative Policy Committee (LPC).

The Association's Legislative Policy Committee generally views this legislation as a step in the right direction and voted to support LR 2395. That said, this support is expressed with two serious concerns.

The first concern regards the need for clear regulatory guidance at the state and local levels. While the Association appreciates the respect for Home Rule authority established in section 401 of this legislation, much of the rest of subchapter 4 calls into question the extent of that municipal regulatory authority.

The second concern regards how state sales tax revenue will be shared with municipalities as contemplated in Part E of the bill. Many of the Association's members question whether the amounts specified will adequately meet the variety of costs that will be incurred by those communities which authorize adult use marijuana establishments.

Further detail regarding these two chief concerns is provided in the testimony below. Also attached to this testimony are two appendices. Appendix A contains the Association's recommended amendment to address its local level regulatory concerns. Appendix B provides detailed explanations for the amendments being proposed.

1) **Regulatory Ambiguities**

Ordinarily, the Legislature either affords municipalities wide-ranging Home Rule authority to regulate matters as their residents see fit, or the Legislature establishes limitations on the jurisdiction of municipalities by enumerating specific authorities in statute. LR 2395 contains an unusual and contradictory combination of provisions which attempt to confer broad municipal regulatory authority while simultaneously establishing substantial limitations on that authority.

For example, Section 401 provides blanket Home Rule authority “to regulate marijuana establishments within the municipality.” The following section 402, however, appears to limit municipal regulations solely to “**the location** of marijuana establishments...” Section 403 includes this “location” limitation as well.

Another example is found in subsections 403(1)(A) and 405, which imply that municipalities do not have authority to regulate issues other than those listed. Yet municipalities would already have Home Rule authority under section 401 to establish reasonable fee schedules and regulate signage and odor.

This combination creates ambiguities that may necessitate additional legislation or litigation. Testimony from many parties to the MLI Committee to date has stressed the need to create as much clarity as possible for both the regulating and regulated communities.

For this reason, the Association is respectfully recommending a fairly substantial amendment to streamline subchapter 4 and better clarify municipal Home Rule authority to regulate adult use marijuana establishments. The Association looks forward to the opportunity to work with the Committee to ensure this outcome.

2) **Revenue to Municipalities**

In its support for LR 2395, the Association’s Policy Committee expressed strong reservations regarding the level of locally-generated revenue to be returned to municipalities. Beyond the advice of our LPC, the Association has received feedback from municipal officials throughout the state. Many of them do not believe the amount of state sales tax revenue to be returned, as specified in Part E of the legislation, will be sufficient to encourage municipal authorization of adult use marijuana establishments in light of the anticipated and unanticipated impacts of legalization.

Municipalities will almost certainly prohibit adult use marijuana establishments if they cannot regulate the adult use marijuana industry without increasing the burden on municipal property taxpayers. The licensing fees provided for in the legislation are limited by a statutory reasonableness standard, and cannot be relied upon as the means of counterbalancing impacts that will otherwise rely on scarce property tax resources to address.

Finally, the Association encourages the MLI Committee to give careful consideration to the testimony submitted by municipal officials, especially with respect to this particular concern.

Appendix A to MMA Testimony
Proposed Amendment to LR 2395

(New language is underlined, and §401 below is intended to replace §§401 – 403 in the bill)

§102. Definitions

27. Marijuana. ... product, nor is it to be considered “food” or a “food product” as those terms are defined by Public Law 2017, c. 215.

28. Marijuana concentrate... “Marijuana concentrate” is not to be considered “food” or a “food product” as those terms are defined by Public Law 2017, c. 215.

31. Marijuana plant... Products of a “Marijuana plant” are not to be considered “food” or a “food product” as those terms are defined by Public Law 2017, c. 215.

32. Marijuana product... A “Marijuana product” is not to be considered “food” or a “food product” as those terms are defined by Public Law 2017, c. 215.

§205. Application process; issuance of license

4. Issuance of conditional license.

B. If a licensee issued a conditional license by the department fails to obtain an active license from the department pursuant to subsection 5 within one year from the date of issuance of the conditional license, the conditional license expires, unless an ongoing appeals process is the sole reason an active license has not been issued by the department within one year, in which case the conditional license expires one year subsequent to the termination of all appeals. A conditional license may not be renewed.

5. Issuance of active license upon municipal approval or municipal license and payment of license fee. The department shall issue an active license to a licensee that has been issued a conditional license pursuant to subsection 4, has obtained ~~municipal approval or a municipal license as required by section 403, subsection 3~~ all applicable land use and licensing approvals, if any, and has paid the applicable license fee pursuant to section 207.

A. The municipal officers shall certify compliance with applicable municipal ordinances, if any, on a form created by the department and supplied by the department to applicants. Within 10 days of receiving written notification on this form of applicable municipal approvals or notification of the issuance of a municipal license and a copy of the submitted site plan as required by section 403, the department shall notify the licensee that municipal approval or the issuance of a municipal license has been confirmed and that the licensee must pay the applicable license fee in order for the department to issue an active license.

Appendix A to MMA Testimony
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§206. Denial of license

3. Additional causes of denial. The department must deny any application for an initial license, a license renewal, a transfer of ownership interests or a relocation of a license premises, if:

- A. The marijuana establishment is proposed to be located within 1,000 feet of the property line of a preexisting public or private school.

§ 401. Local control; home rule authority-regulation of marijuana establishments

In accordance with this subchapter and pursuant to the home rule authority granted under the Maine Constitution, Article VIII, Part Second and Title 30-A, section 3001, a municipality may regulate marijuana establishments within the municipality as provided below. Plantations shall, pursuant to this section, have the same power to regulate as towns and cities.

§ 402. Land use regulations

1. Land Use Regulation. A municipality may adopt, by ordinance, reasonable-land use regulations applicable to the location of marijuana establishments and home cultivation of adult use marijuana within the municipality. Notwithstanding any other provision of law to the contrary, a municipal land use ordinance regulating marijuana establishments or home cultivation of adult use marijuana within the municipality is not subject to the review or approval of any state agency or department-, nor is it subject to the general requirements or limitations of Title 7, chapter 6 and Title 30-A, section 4352.

§ 403. Municipal licensing or approval of marijuana establishments

1. Licensing requirements, standards and restrictions. ~~A municipality may adopt reasonable municipal licensing requirements and standards applicable to the approval, location and operation of marijuana establishments within the municipality provided that such requirements and standards are not more restrictive than and do not otherwise conflict with the requirements and standards specifically established in this chapter or in the rules adopted pursuant to this chapter. A municipality may impose additional reasonable licensing requirements and standards applicable to matters not addressed in this chapter on in the rules adopted pursuant to this chapter.~~

~~A. A municipality may also adopt:~~

- ~~(1) Reasonable municipal restrictions on the size, content and location of signage and advertising used by or erected on behalf of a marijuana establishment within the municipality, except that such restrictions must prohibit the use or placement of signage or advertising by or on behalf of a marijuana establishment within 1,000 feet of the property line of a preexisting public or private school. A~~



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~~municipality may choose to prohibit the use or placement of signage or advertising by or on behalf of a marijuana establishment at distances greater than 1,000 feet from the property line of a preexisting public or private school;~~

~~(2) A municipal licensing fee schedule for marijuana establishments in accordance with Title 30-A, section 3702; and~~

~~(3) Reasonable municipal requirements concerning odor control measures applicable to the operation of marijuana establishments within the municipality.~~

~~B. A municipality is not required to adopt municipal licensing requirements and standards applicable to the approval of, location or operation of marijuana establishments within the municipality prior to denying a request for approval or a license to operate a marijuana establishment within the municipality as required under subsection 3.~~

~~**2. Site plan required.** In determining whether to approve or grant a municipal license for the operation of a marijuana establishment, a municipality must require that the applicant submit to the municipality a site plan that designates the location within the municipality that the marijuana establishment is proposed to be located and that demonstrates the size and layout of the proposed marijuana establishment. If the municipality approves or grants a municipal license for the operation of the marijuana establishment, it shall provide the department with a copy of the submitted site plan.~~

~~**3. Municipal approval or municipal license required.** A marijuana establishment may not operate within a municipality without the approval of the municipality or a municipal license issued by the municipality and an active license issued by the department pursuant to section 205, subsection 5.~~

~~A. A municipality may not approve or issue a municipal license to a marijuana establishment:~~

~~(1) If the marijuana establishment is proposed to be located within 1,000 feet of the property line of a preexisting public or private school. A municipality may choose to prohibit the location of a marijuana establishment at distances greater than 1,000 feet from the property line of a preexisting public or private school; or~~

~~(2) If the applicant has not demonstrated possession or entitlement to possession of the proposed licensed premises of the marijuana establishment pursuant to a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.~~



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~~B. The failure of a municipality to act on a request for approval or a license to operate a marijuana establishment within the municipality may not be construed to satisfy the municipal approval or municipal licensure requirement of this subsection.~~

~~C. If a municipality at any time withdraws its approval for a marijuana establishment or revokes a municipal license issued to a marijuana establishment, the marijuana establishment must immediately cease operation and may apply to the department for relocation of the licensed premises pursuant to section 211.-(relocated below to §401(3))~~

2. Licensing. A municipality may adopt a separate local business licensing ordinance applicable to marijuana establishments, provided that such requirements do not otherwise conflict with the licensing requirements and standards specifically established in this chapter or in the regulations adopted pursuant to this chapter. A municipality may impose additional licensing requirements applicable to matters not addressed in this chapter or in licensing regulations adopted pursuant to this chapter. A municipal licensing ordinance may establish a licensing fee schedule pursuant to Title 30-A, section 3702.

3. Prohibition; limits. A municipality may, by ordinance, prohibit the operation of some or all types of marijuana establishments within the municipality and may limit the number of any type of establishment that may be approved or licensed to operate within the municipality. A municipality may enact an ordinance prohibiting marijuana establishments within the municipality at any time. If a municipality at any time withdraws its approval for a marijuana establishment or revokes a municipal license issued to a marijuana establishment, the marijuana establishment must immediately cease operation and may apply to the department for relocation of the licensed premises pursuant to section 211.

§4042. Existing Prohibitions.

Prohibitions and moratorium ordinances established under the former Title 7, chapter 417, continue to be valid until they expire by their terms or are superseded by municipal charter or ordinance.

§405. Municipal regulation of home cultivation of marijuana

~~A municipality may, by ordinance, adopt reasonable odor control measures applicable to home cultivation operations conducted in accordance with chapter 2 that are located within the municipality and may adopt reasonable requirements applicable to the disposal or destruction of marijuana, including but not limited to regulation of odor, screening, disposal or destruction of marijuana produced by such home cultivation operations.~~



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§4063. Information requests

A municipality may request that the department... Municipalities are subject to the same requirements provided in this section with respect to information requested of the municipality by the state.

§407. Notification to department

~~A municipality shall notify the department within 14 days of the date it approves or denies the location of a marijuana establishment within the municipality; issues or renews a license for the operation of a marijuana establishment within the municipality; withdraws such approval or suspends or revokes such license; approves relocation of a licensed premises to the municipality; or approves a transfer of ownership interests in a licensee located within the municipality.~~

Appendix B to MMA Testimony
Section-by-Section Amendment Explanation

§ 102

- The proposed additions to section 102 are intended to clarify that the recently enacted “food sovereignty law” may not be construed to apply to the products of marijuana plants.

§ 205

- The limitation of conditional license to the duration of one year could become problematic for applicants, the state, and the municipalities in the event of appeals at the local and/or state levels. For this reason, the Association is recommending tolling the conditional license in the event an ongoing appeals process is the sole reason an active license has not been issued. Proposed amendments to section 205 also clarify that an active license from the state is issued upon certification from the municipality that the applicant has complied with all applicable permitting or local approvals required in that municipality. MMA proposes the mechanism for this certification be a form developed by the department and issued to the applicant upon receiving the conditional state license.

§ 206

- Because it appears to be the intention of the MLI Committee that section 403(3)(A)(1) apply statewide, the Association recommends relocating it to section 206(3) and amending the numbering so that the existing section 206(3) becomes section 206(4).

§ 401

- While the statutory definition of “municipality” does include plantations, plantations do not have the Home Rule authority referenced in the bill, and the intent of the MLI Committee was, we believe, to offer plantations the same authorities as towns and cities. Therefore, a sentence is added in the recommended amendment to eliminate this potential ambiguity.

§ 402

- As noted in MMA’s testimony, this provision only allows regulation of “the location of” marijuana establishments. This seems to limit the power of municipalities to regulate other land use impacts of these businesses, such as noise, odor, parking, security, signage, etc. Because this limitation would actually be inconsistent with and could potentially curtail the authority given in section 401, the recommended amendment removes this term.
- Although the second sentence of this section was intended to clarify that marijuana land use ordinances are not subject to the Right to Farm law, that law does also impose substantive limitations on the applicable scope of ordinances (in addition to the requirement that the state review and approve adopted ordinances). For this reason, we also recommend adding some

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language to further clarify the lack of substantive limitations on ordinances that already exist in other areas of state law.

§ 403

- Subsection 1 contains several provisions which deal with land use rather than licensing issues. The provisions regulating signs and odor in subsections 403(1)(A)(1) and 403(1)(A)(3) should, at a minimum, be relocated because these are land use issues. It is the Association’s perspective, however, that these provisions ought to be removed entirely.
 - The sign provisions in 403(1)(A)(1) are likely unconstitutional under the U.S. Supreme Court’s *Reed v. Town of Gilbert* decision. Moreover, municipalities would already have home rule authority under section 401 to regulate signage in a land use ordinance.
 - Subsection 403(1)(A)(3) singles out odor, implying that this limits the ability of municipalities to regulate other issues. Again, municipalities would already have home rule authority under section 401 to regulate odor in a land use ordinance.
- Section 403(1)(B), which clarifies that municipalities are not required to adopt licensing requirements prior to denying approval requests, becomes confusing when considered together with subsections 403(2) and (3), which are predicated on the municipality providing explicit approval. Language is recommended in the proposed amendment to address this.
 - Furthermore, by establishing two criteria for denial in § 403(3)(A), a question is raised as to whether other criteria for denial are acceptable, as is a question about the potential need for municipalities to adopt an ordinance to create criteria. Without such an ordinance, any approval or denial could be challenged as arbitrary and create opportunities for litigation. The proposed amendment addresses this issue.
- Section 403(3) requires approval or denial by the “municipality”, which in statute is taken to mean the municipal legislative body (i.e., the town meeting or council). Because it could be unworkable to take each application to a town meeting vote, we recommend removing this language, which leaves the authority for local approval procedures to be adopted by the municipality as intended under section 401.
- As noted in section 206 above, because it appears to be the intention of the MLI Committee that section 403(3)(A)(1) apply statewide, the Association recommends relocating it to section 206(3) and amending the numbering so that the existing section 206(3) becomes section 206(4).

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- For the same statewide policy rationale, and because the requirement found in section 403(3)(A)(2) is also required in section 205(7), the Association recommends removing the requirement from subchapter 4 and retaining its place in subchapter 2.
- The Association recommends removing the requirement to notify the state found in section 407 given the proposed separation of state and municipal licensing. The Association does, however, recommend adding a provision to the existing section 406 (renumbered as section 405) to clarify that municipalities as well as the state are allowed to request information from one another with respect to licensing administration and enforcement.

§ 404

- Many municipalities have adopted moratoriums and prohibition ordinances referencing the existing chapter, sections and terminology of the Marijuana Legalization Act. The Association has amended existing section 406 (re-numbered as section 403 in the recommended amendment) to ensure these ordinances are still valid under the Act as amended by LR 2395.

§ 405

- This section appears to limit the municipal authority to regulate home cultivation only to odor issues. There may be many other land use impacts that municipalities may want to regulate. This also creates a question as to whether generally applicable land use regulations not relating to marijuana can be applied to home cultivation. The proposed amendment therefore deletes section 405 entirely, given the given the blanket regulatory authority proposed in section 401.

§1502

- There is no definition of “parcel or tract of land.” If the MLI Committee’s objective is to avoid large fields of multi-owner personal use crops the existing language in LR 2395 might not accomplish that objective. Landowners can deed parcels out and under the current lack of definition, perhaps lease lots. If a deeded lot is required, there may be local minimum lot size requirements, and subdivision review, but it might be more effective to further refine the term “parcel or tract of land”.