

Marijuana Legal Update

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Maine Marijuana Statutes

Marijuana Legalization Act (Adult Use Marijuana Law)

28-B M.R.S §§ 101-1504

Maine Medical Use of Marijuana Act (Medical Marijuana Law)

22 M.R.S. §§ 2421-2430-H

Maine Marijuana Statutes

- ▶ Legalize personal cultivation, use, possession, and distribution
- ▶ Establish state licensing/registration for adult use and medical establishments
- ▶ Provide municipal authority to opt-in and regulate

Municipal Opt-In

Adult Use Marijuana Law

- ▶ 28-B M.R.S. § 402 - “. . . a municipality may not accept as complete the person’s request for local authorization unless . . . The legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including the type of marijuana establishment the person seeks to operate.”

Medical Marijuana Law

- ▶ 22 M.R.S. § 2429-D - “A municipality may not . . . authorize caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities unless the municipal legislative body . . . has voted to adopt or amend an ordinance or approve a warrant article allowing caregiver retail stores, registered dispensaries, marijuana testing facilities, or manufacturing facilities, as applicable, to operate within the municipality.”

Municipal Opt-In

Default is prohibition

Adult Use Establishments

- ▶ Adult use retail stores
- ▶ Cultivation facilities
- ▶ Manufacturing facilities
- ▶ Testing facilities

Medical Establishments

- ▶ Caregiver retail stores (vs. caregivers generally)
- ▶ Registered dispensaries
- ▶ Manufacturing facilities
- ▶ Testing facilities

Municipalities cannot prohibit or limit the number of caregivers

Definition: “A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.” 22 M.R.S. § 2422(1-F)

Municipal Opt-In

Default is prohibition

Unless a municipality's legislative body has voted to allow a particular type of marijuana establishment identified by either statute, that type of establishment is prohibited in that municipality.

Municipal Opt-In

Default is prohibition

Adult Use Establishments

- ▶ Adult use retail stores
- ▶ Cultivation facilities
- ▶ Manufacturing facilities
- ▶ Testing facilities

Medical Establishments

- ▶ Caregiver retail stores (vs. caregivers generally)
- ▶ Registered dispensaries
- ▶ Manufacturing facilities
- ▶ Testing facilities

But what about medical cultivation facilities??

Medical Marijuana Establishment Issues

No “Opting-in” to Medical Marijuana Cultivation

- ▶ No “Medical Cultivation Facilities”
- ▶ Medical marijuana cultivation part of caregiver’s state registration
- ▶ Municipalities can regulate medical marijuana cultivation

Medical Marijuana Establishment Issues

Medical Manufacturing Without Opt-in

- ▶ Vertically integrated caregivers and dispensaries can manufacture products from their own marijuana without state manufacturer registration
- ▶ State registration for manufacturing products from other caregiver/dispensary/patient's marijuana
- ▶ State registration for inherently hazardous substances (IHS)

Medical Marijuana Establishment Issues

Grandfathered Medical Marijuana Establishments

- ▶ Municipalities cannot prohibit establishments in operation with municipal approval before December 13, 2018
- ▶ “Municipal approval” = examination or approval of establishment for medical marijuana use (NOT a general building or electrical permit)
- ▶ No state license for caregiver stores

Municipal Regulation

Adult Use Marijuana Law

28-B M.R.S. § 401 - “. . . a municipality may regulate marijuana establishments within the municipality, including, but not limited to, adoption of the following types of regulations and restrictions. . . . Land use regulations. . . . General authorization or limitation of marijuana establishments. . . . Municipal licensing requirements. . . . Notwithstanding any other provision of law to the contrary, a municipal ordinance regulating marijuana establishments . . . is not subject to the requirements or limitations of Title 7, chapter 6 or 8-F.”

Medical Marijuana Law

22 M.R.S. § 2429-D - “. . . a municipality may regulate registered caregivers, caregiver retail stores operating pursuant to section 2423-A, subsection 2, paragraph P, registered dispensaries, marijuana testing facilities and manufacturing facilities. . . . A municipality may not . . . Prohibit or limit the number of registered caregivers.”

Municipal Regulation

Adult Use Marijuana Law

- ▶ Can regulate stores, cultivation facilities, manufacturing facilities, testing facilities
- ▶ Can limit number of plants on one parcel/tract for home cultivation
- ▶ Cannot prohibit, license or zone home cultivation
- ▶ Cannot regulate personal use or possession

Municipal Regulation

Medical Marijuana Law

- ▶ Can regulate registered caregivers, caregivers stores, registered dispensaries, manufacturing facilities, testing facilities
- ▶ Can regulate medical marijuana cultivation
- ▶ Cannot prohibit or limit number of caregivers
- ▶ Cannot regulate patient/unregistered caregiver personal use or possession

Opt-In Municipalities

- ▶ 52 municipalities (11%) as of August 2020
- ▶ Most opt-in votes also enacted local regulation
 - ▶ Zoning/site plan review
 - ▶ Business licensing
- ▶ Most municipal opt-in/regulation is for both adult use and medical establishments

Opt-In Municipalities

Considerations

- ▶ Seek legal advice
- ▶ No “one size fits all” option
- ▶ Which establishments? How many?
- ▶ Resources - no local option to tax
- ▶ Voter petitions and moratorium ordinances
- ▶ Stand-alone ordinance or ordinance amendment

Opt-In Municipalities

Considerations

- ▶ Distinct regulations for medical and adult use marijuana
- ▶ Licensing - reasonable fees
- ▶ Residency requirements??
- ▶ Zoning
- ▶ Site plan review - setbacks, odor control, home cultivation, etc.

MMA Marijuana Resources

Maine Municipal Association - www.memun.org



MMA Legal Services Department - 1-800-452-8786
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