

TOWN OF POWNAL MARIJUANA ORDINANCE FYI

Brief overview of the current law:

The new law explicitly recognizes municipalities' constitutional home rule authority to separately regulate each type of adult use marijuana establishment (i.e., cultivation facility, products manufacturing facility, testing facility and marijuana store). In order for any type of adult use marijuana establishment to be licensed to operate in a municipality, the legislative body of a municipality must opt-in by specifically authorizing one or more type of adult use marijuana establishments before an applicant may request municipal approval. This authorization is achieved when the legislative body adopts an ordinance, amends an existing ordinance or approves a warrant article allowing for some or all types of adult use marijuana establishments.

A municipality opting to allow some or all types of adult use establishments may also limit the number of any type of marijuana establishment that may operate within the municipality. The new law requires all necessary municipal approvals to be in place before a state -issued license becomes effective. Even if a municipality specifically authorizes some or all types of adult use marijuana establishments, there is a statewide setback on marijuana establishments that prohibits them from locating within 1,000 feet of schools, unless the municipality wishes to lower that setback to a minimum of 500 feet.

If the legislative body of a municipality does nothing with regard to adult use marijuana or votes down an ordinance regarding marijuana establishments, such establishments will be prohibited from operating in the municipality.

Attorney Burns Input:

1. While I don't think you need to include a prohibition on social clubs is really necessary since they are no longer allowed by State law, I left the language in, just in case the statute gets amended again to add it back. I revised the prohibition language in Section 1 to clarify that the actual uses are not allowed, not just the licensing.
2. In Section 2, I added a reference to the definitions in the Medical Marijuana statute since some of the definitions refer to the statute. Also, I reviewed the cultivation language to exclude testing and marijuana extraction as well since that language is included in the statute.
3. If the intent is to prohibit registered caregiver stores, I have put in that language to replace the term storefronts.
4. The proposed addition to the definition of "marijuana cultivation facility" that definition refers to the adult- use provisions of the statute. I don't understand why there would be language in that provision about a dispensary, which is a medical marijuana use regulated under Title 22 rather than Title 28-B.
 - a. Dispensaries for cultivation facilities are two separate uses under two separate State Laws. Allowing ones does not allow the other. For that reason, my recommendation is to remove the language concerning dispensaries from the Ordinance.
5. Appeals from decision of the ZBA should be required in 45 days, not 60. This is the time period establishment by State law.
6. I would recommend picking one or the other when it comes to canopy size and square footage. In other words, if you are limiting square footage, you don't also need to limit canopy and if you are limiting canopy, you don't also need to limit square footage.
7. As for security simply stating that all cultivation facilities are required to meet the applicable provisions of State law and regulations concerning security requirements. You can then state that cultivation facilities must meet the following additional requirements and put in the language in Section A and B as I don't believe a

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lot of those security requirements are in current State law or regulation and the Town has the authority to require them.

8. Differentiating between an applicant and corporation is not needed since you define person. Include owner which is also defined and that will cover all entities.
9. Limiting licenses to one applicant and limiting number of licenses in Town – The adult use law does have a provision about applications for multiple license, which is allowed. However, the statute limits an applicant or person with direct or indirect financial interest from being involved in more than three cultivation facilities or multiple cultivation facilities exceeding a certain total plant canopy area. Further, there are prohibitions on testing facilities being able to be caregivers or have an interest in a cultivation facility or manufacturing facilities. I don't know that you can restrict beyond that, especially as to different types of facilities, except that you can restrict person as to the number of each type of license that they can get or have a financial interest in.
10. Odor mitigation requirements for outdoor facilities- The legal answer is yes you can require it, but I don't know what you could develop that would be effective without prohibiting the use. You could require all growing to take place indoors. I don't know whether the State will adopt any kind of odor controls for outdoor cultivation in the regulations that is developing.
11. Barking dogs/ dogs used for security – You already regulate barking dogs under the Animal Control Welfare Ordinance, which is the appropriate location for a regulation of this type. State law prohibits applying barking dog ordinances to certain dogs who are utilized for guarding livestock. As to other regulations, they will generally apply, except to the extent that this Ordinance creates a different regulation.
12. Pollution and protecting the Aquifer – If there is a concern about protection of the aquifer, that should be addressed in an ordinance that applies to all uses with a potential negative impact on the aquifer and not just marijuana uses. This Ordinance would not be the right place to do that.
13. Impact fees – You can't do an impact fee to cover the cost of services, only for capital improvements that are necessary as a result of increased development. You can charge a higher licensing fee, at least for adult-use marijuana establishments.
14. Revision to Section 10 “shall be charged on a per day basis” under the statute, they may be charged on a per day basis, but the final determination on the amount of any fine is made by the court.
15. Bi- product Waste – I am not entirely sure whether the question about bi-product waste is limited to the marijuana itself. If so, disposal of marijuana is regulated by the Medical Use of Marijuana law. The Marijuana Legalization Act states that rules will be developed about disposal by the various types of licenses allowed under that statute. If the reference to bi-products means the products used to process marijuana, personal cultivation for adult use is not allowed to use inherently hazardous substances unless the Department approves if after a review of a certification by an industrial hygienist or professional engineer who has reviewed the facility's storage, preparation, electrical, gas monitoring, fire suppression and exhaust systems. Medical marijuana manufacturing facilities are subject to similar requirements. If the reference to bi-products means agricultural products associated with growing, such as fertilizer and pesticides, I think that the extent there are not specific regulations related to marijuana, other provisions of State law and regulations concerning pesticides and agricultural operations would apply. There may be some State preemption in some areas pertaining to agriculture. Some municipalities have passed ordinances that prohibit the use of certain pesticides and herbicides. However, this type of regulation would have to apply to agriculture uses generally, not just marijuana growers. The same would be true for an aquifer protection regulation. This is a policy question that goes far beyond marijuana uses.

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16. Property Values decreasing – I don't know the answer to the question about property values being reduced, which would need to be asked of an appraiser. Under Maine law, anyone can now grow marijuana on their own property, so growing in and of itself seems unlikely to reduce property values and adult-use establishments are not yet in existence, so there is no way to tell that at this time.
17. Update from the State regarding State Licensing – It is expected that the state will begin licensing "adult-use" sometime between the fall of 2019 and the spring of 2020. All such businesses licensed by the state will need local approval in order to operate lawfully.
18. Requiring Applicants to be land owners – I have concerns about limiting these uses to residents/ property owners. Some of the uses will be run by limited liability companies, partnerships or corporations. As long as they comply with the Ordinance, it does not seem to be something that the Town can regulate as it typically cannot control/ regulate the ownership of property. However, I think that you can restrict the uses to lots in existence as of a certain date (either at or prior to the date of adoption of the Ordinance). This would get at the concern about splitting lots to create more uses.
19. Effects Tier 2 licensing has on other operations – It is correct that Tier 2 only relates to cultivation, but remember that the other types of facilities can't grow unless they also have a cultivation license. It is a good idea to move to the Tier 2 regulations so that the Town isn't imposing a different requirement from the State, which the Town then has to enforce. If there is a violation of the Tier 2 requirements, the State will enforce it.
20. Defining "Industrial Agriculture" – The term "industrial agriculture" does not appear in State law. There is a definition of "commercial farming" in the Registration of Farmland Law, which is "the production of any farm product with the intent that the farm product be sold or otherwise disposed of to generate income." I think we've discussed this before, but the production of marijuana is subject to either the medical or the adult-use statute and as such is not the same as an agricultural use.
21. Requiring EPA or DEP regulations- I'm not sure that these types of facilities are subject to any EPA regulations. They may be subject to some DEP regulations. However, if they are subject to such regulations, it's redundant to put it in your ordinance that the producers have to comply because they already have to. Conversely, if they don't have to comply with any requirements, a reference in the ordinance won't make them subject to it. Finally, I would advise that the Town not adopt provisions that may be beyond its existing expertise to enforce. Highly technical regulations will require someone with training, which in turn may mean having to hire costly consultants. If the Town wants to regulate water resources in a manner similar to the Waterboro ordinance, you certainly can do so, understanding that those regulations apply
 - a. To a lot more uses than are under discussion and
 - b. Have to be related to an identified water source area and not be made applicable in other areas.
22. Manufacturing in just the Village District – You can allow product manufacturing to occur in districts where other types of manufacturing may not be currently allowed, as long as the use is not inconsistent with the Town's Comprehensive Plan. If the Plan says manufacturing is not allowed in a district, you would not be able to allow it there, unless you amend the Plan.
23. Requiring Insurance – It doesn't seem like you can require insurance, but I don't understand the purpose of requiring insurance.
24. Grandfathering language- Before I answer the question about grandfathering, I would like to know if there actually are any grandfathered marijuana businesses, grow facilities (other than caregiver, patient or personal use growing) or processing facilities in Town. These regulations do not apply to caregivers, patients or personal use, all of whom are currently allowed and who can continue.

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- a. Caregivers weren't regulated under municipal ordinance (unless the CEO required some sort of occupancy permit or home occupation approval as he would for other businesses) and prior to the recent changes in the law, most municipalities thought they couldn't regulate them at all. Your draft ordinance also does not propose to regulate caregivers any differently. If there's no change in the regulations, then there doesn't need to be a grandfathering provision, which in effect says that businesses/operations in place prior to a change in the ordinance are not subject to the changes. If someone wants to expand a caregiver operation in some way, such as establishing a caregiver retail sale, the expansion is subject to the new ordinance. If a caregiver remains a caregiver, there's nothing in the ordinance to grandfather from.

So, no change to ordinance=no need for a grandfathering provision. Even if the Town proceeds with one, you need to be very careful about not creating loopholes.

25. Eliminating "chemical synthesis" growing – I don't know what "growing by chemical synthesis" is. As we've discussed, there are some State regulations for medical marijuana growing and some will be developed for adult-use growing, but I'm not aware of anything that limits the use of pesticides or other chemicals, if that is what's meant by this.

26. Permitting Process:

- a. See Ryan for Business Registration
- b. Go to Planning Board for approvals of their business
- c. Go to State for licenses
- d. Back to Pownal for local license.

Section 7.5 state that they need to have a State approval prior to issuance of the license. Maybe you want to change this to "final" issuance of the license, as they have to submit their application to the Town and get land use approvals in order to get a response from the State.