

**BOARD OF SELECTMEN
PUBLIC HEARING AGENDA MINUTES
COMMUNITY ROOM
Beginning @ 6:00 PM
Wednesday, February 6, 2019**

Item 1. Open Meeting: (Pledge). Chairman Mike Wark called hearing to order at 6:00 PM, followed by the Pledge of Allegiance.

- a. **Selectmen Present:** Mike Wark, Jody Cabot, Dale Gray
- b. **Employees Present:** Lois Jones
- c. **Residents Present:** Terri Wark, George Nuite, Richard Dobson, Pam Dobson, Chris Rowell, Matt Bell

Item 2. Presentation of Ordinance. Town Manager referred to the Attorney's opinion, reading paragraph 5, which states that if it's approved at Town Meeting, the Town will put into place rules and regulations. There was no other discussion or questions, either in support or opposed.

Item 3. Open Session:

- A. **Public - Supporters of the Adult Use Marijuana Business Ordinance.**
- B. **Public – Opposers of the Adult Use Marijuana Business Ordinance.**

Item 4: Adjourn. Chairman Wark made a motion and Selectman Cabot 2nd to adjourn. All in favor.


Respectfully submitted,



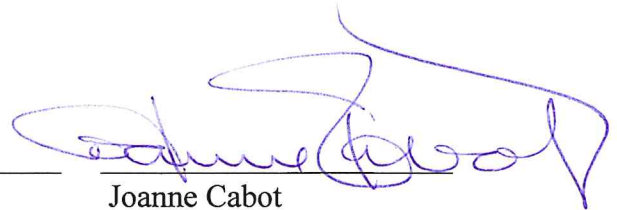
Lois A. Jones



Michael Wark



Dale Gray



Joanne Cabot

ADULT USE MARIJUANA BUSINESS ORDINANCE

AN ORDINANCE IN WHICH THE TOWN OF SANGERVILLE, MAINE OPTS-IN TO LICENSING AND PERMITTING ADULT-USE MARIJUANA BUSINESSES

Whereas, the "Marijuana Legalization Initiative" was passed by the Maine voters in November, 2016, and establishes a system of licensing the cultivation, manufacture, testing and retail sale of adult use marijuana and adult use marijuana products in the State; and

Whereas, the Maine Legislature passed LD 1719 in the 128th Maine Legislative Session, which implements the Marijuana Legalization Initiative; and

Whereas, LD 1719, enacted as Public Law 2017, Chapter 409, includes a clause stating that a Maine municipality may not permit an Adult Use Marijuana Business unless and until the municipality votes 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; and

Whereas, the Town of Sangerville has no ordinances regarding Adult Use Marijuana Businesses.

Therefore, we the people of Sangerville, do hereby adopt this ordinance whereby the Town of Sangerville does allow marijuana establishments within the Town, intends to regulate and permit such businesses, and orders Town government to initiate the process of drafting rules to regulate such businesses.

Section One: Definitions

Adult use marijuana: "Adult use marijuana" means marijuana cultivated, manufactured, distributed or sold by a marijuana establishment.

Adult use marijuana product: "Adult use marijuana product" means a marijuana product that is manufactured, distributed or sold by a marijuana establishment.

Marijuana Cultivation Facility: "Marijuana cultivation facility" means a facility licensed by the State of Maine to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

Marijuana Establishment: For the purposes of this Ordinance, a marijuana establishment is a business that has received a license from the State of Maine for conducting one or more of the Adult Use Marijuana businesses allowed under Public Law 2017, Chapter 409.

Marijuana Manufacturing: "Manufacturing" or "manufacture" means the production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not include cultivation or testing.

Marijuana Store: "Marijuana store" means a facility licensed by the State of Maine to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, adult use marijuana

and adult use marijuana products from a products manufacturing facility, and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Testing Facility: "Testing facility" means a facility licensed by the State of Maine to develop, research and test marijuana, marijuana products and other substances.

Section Two: Statements of Law

In accordance with the applicable provisions of this subchapter and pursuant to the home rule authority granted under the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, 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, and municipal licensing requirements. Public Law 2017, Chapter 409 Subchapter 4 § 401.

In order to apply for a municipal license or permit to operate a marijuana establishment within a municipality, the applicant must have been issued by the appropriate state agency an active license to operate the marijuana establishment pursuant to Public Law 2017, Chapter 409 Subchapter 4 § 402 section 205, subsection 4.

A municipality may not authorize the operation of a marijuana establishment within the municipality if the location violates Public Law 2017, Chapter 409 Subchapter 4 § 402 (2) A, B.

Section Three: Enforcement

The Town of Sangerville may enforce this Ordinance by bringing an action in any court of competent jurisdiction. In such an action, the Town of Sangerville shall be entitled to recover all costs of litigation, including, without limitation, the experts and attorneys fees

Section Four: Effective Date

This Ordinance shall be effective on the date of its enactment.

Section Five: Severability

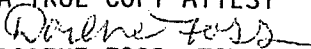
The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Town of Sangerville hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section Six: Repealer

All inconsistent provisions of prior Ordinances adopted by the Town of Sangerville are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2019, by the Town of Sangerville, Maine.

A TRUE COPY ATTEST


DORENE FOSS, TOWN CLERK

TO: 58958/074533
FROM: SWW
DATE: 12/17/18
RE: Adult-Use Marijuana Petition

ISSUE

An article to pass the “Adult Use Marijuana Business Ordinance” (the “Ordinance”) will be on the next warrant, by virtue of a verified and certified petition. The Ordinance seeks to allow adult-use marijuana establishments in Sangerville and instructs the “Town government” to draft rules to regulate such businesses. The Town also plans to place a zoning/regulatory ordinance to accompany this ordinance on the warrant. This memo summarizes our opinion on the legality and accuracy of the Ordinance and offers advice to the Town on how to proceed.

SUMMARY

The Adult Use Marijuana Act (the “Act”) creates an opt-in scheme of regulation, whereby adult-use marijuana establishments are prohibited unless the legislative body of a municipality chooses to opt in and allow such establishments within its jurisdiction. The ultimate intent of the Ordinance appears to be to cause the Town to opt in and to delegate to the municipal officers or officials the task of drafting regulations concerning adult-use marijuana establishments.

However, the Ordinance is poorly drafted and does not strictly comply with the Adult Use Marijuana Act (the “Act”), amongst other flaws. This presents a number of problems. Namely, should the Ordinance pass, it may be argued that the Town has both opted in and adopted a “general authorization” approach to regulation, which means any proposed establishment may claim it has municipal authorization by virtue of the Ordinance having passed, even if no regulations are promulgated. Alternatively, it may be argued the Ordinance is invalid because it does not comply with the Act and, therefore, any licenses issued are invalid. Finally, because Sangerville still lacks a zoning ordinance and comprehensive plan, it may be difficult, if not unlawful, to specify districts where the establishments are or are not permitted to operate.

Despite these problems, because the petition complies with 30-A M.R.S. § 2522 and has been verified and certified, the Town must place the article (or at least a near-identical version of it) on the next warrant issued or on the warrant for a special town meeting if the Board calls for such a meeting within 60 days from receiving the petition (it was marked received on November 6, 2018).

To address the Ordinance’s flaws, we recommend including the following version of the article, accompanied by the text in italics:

ARTICLE 2 Shall the Town of Sangerville vote to enact an ordinance entitled “Adult Use Marijuana Business Ordinance”?

A “Yes” vote will authorize the Town of Sangerville to “Opt in” and allow adult-use marijuana establishments to operate in the Sangerville, subject to the condition that the voters of Sangerville subsequently vote to enact an ordinance

providing for the rules to regulate and permit such businesses. A “No” vote will mean adult-use marijuana facilities are not permitted in Sangerville.

Should this article pass, the Board of Selectmen can then draft a comprehensive ordinance governing adult-use marijuana and place it on a subsequent warrant. Unless and until this subsequent comprehensive ordinance passes, the Town can take the position that no adult-use marijuana establishment have municipal authorization because the Ordinance requires additional regulations be passed. Should the Ordinance fail, Sangerville will have not opted in to adult-use marijuana and such establishments will remain prohibited in Sangerville until the voters pass an ordinance allowing such establishments.

Although it is not strictly necessary, we do advise the Town first adopt a comprehensive plan and zoning ordinance before passing any regulations concerning where such establishments may be located.

ANALYSIS

This analysis first summarizes the Adult Use Marijuana Act. Second, it analyses whether the Ordinance complies with the Act and identifies other flaws. Third, it recommends a course of action for the Town to pursue in light of these flaws.

The Adult Use Marijuana Act

L.D. 1719, “An Act to Implement a Regulatory Structure for Adult Use Marijuana,” is the Adult Use Marijuana Act, also commonly referred to as the Marijuana Legalization Act. The Act is now in effect and codified as follows: 22 M.R.S. § 3763; 26 M.R.S. § 772; 28-B M.R.S. §§ 101 *et seq.*). It completely replaces the citizen-initiated Marijuana Legalization Act.

In short, the Act legalizes the use and commercial sale of marijuana for recreational purposes, called “adult use.” *See generally* P.L. 2017, Ch. 409. To operate an adult-use marijuana establishment, you need a state license (or licenses) and municipal approval to operate one or more of the following: cultivation facility, testing facility, products manufacturing facility, and marijuana store. 28-B M.R.S. §§ 201–215, 301–304. The state licensing is conditional on municipal approval: a successful applicant will receive a non-renewable “conditional license” and has one year to obtain an “active license” by submitting certification of local authorization and payment of the applicable license fee, amongst other minor additional documentation requirements. *Id.* § 205(3)–(4).

Like the recently passed medical marijuana acts, this Act prevents adult-use marijuana establishments from operating in a given municipality unless and until the municipality opts in and chooses to allow adult-use marijuana establishments within its jurisdiction through a vote of its legislative body. *Id.* § 402. Under this opt-in scheme, a municipality is not required to take any action to prohibit the commercial adult-use marijuana activity (storefronts, manufacturing, etc); by default, those activities are prohibited. *See id.* For a municipality interested in authorizing adult-use marijuana establishments, the Act permits a municipality to regulate the establishments under its broad home-rule authority. *Id.* § 401.

Section 402, “local authorization of marijuana establishments within municipalities,” provides that no municipality may allow a municipal establishment to operate unless “[t]he 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.”

Section 401 provides for a non-exhaustive list of three ways to regulate marijuana establishments: land use regulations; general authorization or limitation of marijuana establishments; and municipal licensing requirements. *Id.* § 401. Using the “land use regulations” method, a municipality may “adopt an ordinance providing land use regulations applicable to marijuana establishments within the municipality.” *Id.* § 401(1). Using the “general authorization or limitation of marijuana establishments” method, a municipality may “adopt an ordinance generally authorizing the operation of some or all types of marijuana establishments within the municipality . . . [or a] municipality may adopt an ordinance limiting the number of any type of marijuana establishment that may be authorized to operate within the municipality.” *Id.* § 401(2). Finally, under the “municipal licensing requirements” method, the municipality may “may adopt an ordinance providing licensing requirements applicable to marijuana establishments within the municipality, which may include, but are not limited to, provisions establishing a municipal licensing fee schedule pursuant to Title 30-A, section 3702.” *Id.* § 401(3). Because this is a non-exhaustive list of methods to regulate adult-use marijuana establishments, a municipality does not have to strictly follow any one of these approaches.

The Act is not clear as to whether the legislative body of a municipality may opt in by one vote and then regulate by another and, if so, whether an establishment may obtain a certificate of municipal authorization in between such votes. It is also unclear whether the legislative body of a municipality may approve an article on a warrant that directs the municipal officers to craft regulations governing adult-use marijuana establishments, which it appears this Ordinance purports to do. Even if it did, it is doubtful such a broad delegation of power would be constitutional.

Lastly, please note that an adult-use marijuana establishment cannot obtain the required state license until the state develops and promulgates the rules to implement the Act, draw up the application forms, etc. We do not expect these final regulations until late 2019, at the earliest.

The Ordinance

This past November, the Town Clerk received, validated, and certified a petition to put the “Adult Use Marijuana Business Ordinance” on the warrant for approval. It was received on November 6, 2018, and certified on November 19, 2018.

The Ordinance is poorly drafted and does not strictly comply with the Act, which as noted above, is itself somewhat unclear as to the procedure for voting to allow adult-use marijuana establishments and for regulating them.

Specifically, the Ordinance mostly consists of selected excerpts of the Act, presumably the ones the drafter felt were relevant. It also has only one operative clause, not including the standard

ordinance provisions regarding effective dates, severability, etc. The whereas clauses appear to be standard purpose statements, which under Maine law generally do not have any operative effect. *See Mundy v. Simmons*, 424 A.2d 135, 137 (Me. 1980). None of the six “Sections” contain operative clauses. Section one does not include all of the definitions of the Act, but does include definitions for words that are not even used in the Ordinance. Section two, entitled “Statements of Law,” appears to be a collection of excerpts from the statute, which act as little more than additional purpose statements or no operative effect. The third through sixth sections are standard ordinance provisions, which have little relevant operative effect.

This leaves the fifth paragraph of the Ordinance as the only conceivable operative clause. It reads:

Therefore, we the people of Sangerville, do hereby adopt this ordinance whereby the Town of Sangerville does allow marijuana establishments within the Town, intends to regulate and permit such businesses, and orders the Town government to initiate the process of drafting rules to regulate such businesses.

Although it appears that the intent of this Ordinance is to cause Sangerville to opt in and then direct the Town to draft regulations and a permit scheme, the clause (and Ordinance as a whole) is ambiguous and other competing interpretations may also be gleaned from this cause. It states that the Town “does allow . . . establishments” but only “intends to regulate and permit.” It only “orders the Town Government to . . . [draft] rules to *regulate* such businesses,” it does not order the Town to create a permitting scheme.

Further, it is not clear if the Ordinance authorizes the municipal officers or officials to promulgate these regulations without having to seek further voter approval, or if the Act even permits such a delegation.¹ Should the Ordinance pass but the Town fail to (for whatever reason) enact further regulations and/or a permitting scheme, one could argue that this Ordinance is a general authorization, without limitation, for establishments to operate in Sangerville. Because the methods the Act permits a municipality to regulate include the “general authorization” method, it is permissible for a Town to simply opt in and then take a *laissez-faire* approach to adult-use marijuana.

Another problem with the Ordinance is that while the Act allows a municipality to opt in to adult-use marijuana by approving an ordinance in a warrant article, it states that the opt-in article should specify whether it proposes to allow “some or all types of marijuana establishments.” 28-B M.R.S. § 402(1). The Ordinance does not do that; it simply purports to “allow marijuana establishments.” It defines “marijuana establishment” as a business that receives a license pursuant to the Act. It also includes definitions for all four types of licenses listed in 28-B M.R.S. § 201.

¹ Even if the Act did authorize the legislative body of a town to vote to opt in and delegate the creation of regulations to some municipal body or entity other than the legislative body, such a broad delegation is probably unconstitutional under the non-delegation principle. *See, e.g., Wakelin v. Town of Yarmouth*, 523 A.2d 575, 577 (Me. 1987) (discussing non-delegation doctrine).

This may leave the Ordinance vulnerable to legal challenges. From the Town's perspective, this uncertainty may complicate its ability to regulate these businesses and plan accordingly. It also exposes the Town to potential litigation. From a potential marijuana business owner's perspective, the risk here is uncertainty and the possibility that one's license may be challenged by a disgruntled neighbor or anti-marijuana citizen as invalid.

Recommendations

Despite these problems, because this article is on the warrant by virtue of a duly certified and verified petition that complies with 30-A M.R.S. § 2522, the Board of Selectmen must put the article on the next warrant issued or on the warrant for a special town meeting if the Board calls for such a meeting within 60 days from receiving the petition.

But the Board of Selectmen has some limited authority to vary from the exact language of the article. *See Crosby v. Inhabitants of Town of Ogunquit*, 468 A.2d 996, 998 (Me. 1983) ("The statute, however, does not explicitly condition the validity of an ordinance on precise compliance with the statutory enactment procedure. In the absence of such an explicit provision, substantial compliance is sufficient."). It cannot, however, change the language of the Ordinance.

To address the problems with the Ordinance, we recommend including the following article and explanation:

ARTICLE 2 Shall the Town of Sangerville vote to enact an ordinance entitled "Adult Use Marijuana Business Ordinance"?

A "Yes" vote will authorize the Town of Sangerville to "Opt in" and allow adult-use marijuana establishments to operate in the Sangerville, subject to the condition that the voters of Sangerville subsequently vote to enact an ordinance providing for the rules to regulate and permit such businesses. A "No" vote will mean adult-use marijuana facilities are not permitted in Sangerville.

Should this Ordinance pass, Town officials can draft a comprehensive ordinance governing adult-use marijuana and place it on a subsequent warrant. Unless and until this subsequent comprehensive ordinance passes, the Town can take the position that no adult-use marijuana establishments have municipal authorization because the Ordinance requires the town pass additional regulations. Should the Ordinance fail, such establishments will remain prohibited in Sangerville until the voters pass an ordinance to opt in to allowing and regulating such adult-use marijuana establishments.

Finally, although it is not strictly necessary, we do advise the Town first adopt a comprehensive plan and zoning ordinance before passing any regulations concerning where adult-use marijuana establishments may be located. Generally, a municipality cannot pass a zoning regulation without first creating a comprehensive plan and also complying with the various statutory requirements for a zoning ordinance. *See* 30-A M.R.S. § 4352. However, the Act provides very broad and explicit authority for a municipality to regulate adult-use marijuana establishments,

arguably demonstrating an intent to allow municipalities without zoning ordinances to prohibit marijuana facilities in certain areas. *See* 28-B M.R.S. § 401. As such, the Town should exercise some caution and seek further legal advice should it wish to enact an ordinance creating zones where adult-use marijuana establishments are or are not permitted without first enacting a comprehensive plan and zoning ordinance.

