

**Town of Gorham
Planning Board Meeting
March 1, 2021**

ITEM 2 - Land Use and Development Code – Public Hearing - proposed amendments to the Land Use and Development Code regarding allowing medical marijuana growing as a home occupation use and to allow medical marijuana commercial cultivation, manufacturing and testing.

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AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council Meeting	The Town Council forwards the item to the Planning Board for a public hearing and recommendations. (7 ayes)	May 5, 2020
Planning Board Meeting	The item was the forward to the PLBD Ordinance Review Committee for review and recommendations.	January 4, 2021
Planning Board Ordinance Committee Meeting	The Planning Board Ordinance Committee recommended adding a new section k. about licensing existing home occupation medical marijuana caregivers.	February 1, 2021
Planning Board Meeting – Public Hearing		March 1, 2021

The Planning Board refers to staff notes during the review process; however, it shall be noted that staff recommendations are noncommittal and all final decisions are those of the Planning Board and not Town Staff.

Memo completed by Thomas Poirier, Director of Community Development.

Land Use and Development Code Amendment: Medical Marijuana Amendments

1. Overview

This item was forwarded to the Planning Board's Ordinance Sub-Committee which reviewed the proposed amendments. As staff was preparing this memo for the Public Hearing, staff noticed that the wrong version of the proposed ordinance was used as part of the earlier review by the Planning Board and the Board's Ordinance Sub-Committee. The items missing or different are shown in red and underlined in the proposed ordinance amendment. Also to ensure that the ordinance is meeting all the requirements of State Law, Community Development Staff forwarded the proposed language to the Town Attorney for review and recommendations. The Town Attorney's recommended changes are shown in blue, underlined, and struck through.

The sub-committee met and had one change based on a recommendation from the Town Attorney regarding licensing provisions for existing medical caregivers in residences. The proposed Committee change is shown as standard **k. in bold and underlined.** The Town Council proposed amendments are shown underlined. Below information in italics that was part of Planning Board's staff notes on January 4, 2021.

This item is on for public hearing which will require the Planning Board to open the item up to public comment. Once the public hearing is completed the Planning Board can act on the item.

The Town Council is looking to provide performance standards for the growing of medical marijuana for both commercial and accessory residential growers (growing needs to occur at their personal residences). As part of the research into the drafting of the ordinance, the Town reached out to the State of Maine and the Town Attorney. As part of the research it was determined that changes were needed to both the Land Use Code and the Town's general ordinance for Marijuana Cultivation or Manufacturing Facility Licensing Ordinance.

The Town Council has already moved forward with amending the Town's Marijuana Cultivation or Manufacturing Facility Licensing Ordinance. At the same meeting the Town Council forwarded the below amendments to the Land Use and Development Code to the Planning Board. The allowed districts for commercial medical marijuana growing would be the same as the standards for adult-use. The home occupation performance standards are to provide some basic standards for medical marijuana caregivers growing in residential areas. Currently there are no standards for medical marijuana growers in residential areas.

The proposed amendment was discussed with the Town Attorney prior to drafting to determine how any potential ordinance or licensing requirement would affect existing medical marijuana caregivers growing. As far as location and setbacks to other uses (i.e. daycare and schools), any existing medical marijuana caregivers would be considered grandfathered as to the location requirements of any new ordinance or license requirements. The Town could require that any existing medical caregiver grower meet performance standards, such as: smell, restricting to inside growing, no retail sales on the premises, square footage limits, as part of any new ordinance or licensing requirement. One caveat would be that the performance standards could not be so onerous as to restrict the ability of the existing medical caregiver grower to be able to reasonably operate in his current location. The proposed ordinance amendments have been reviewed and approved by the Town Attorney.

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The Office of Marijuana Policy, Department of Administrative and Financial Services at the State of Maine provided a list of the number of the State licensed Medical Marijuana Caregiver Growers in Gorham. The State of Maine has reported that currently the Town has 43 State licensed Medical Caregiver Growers. Staff assumes that one-third to as many as one-half of the licensed growers could be located in residential areas as part of their residential dwellings.

This item is on for a general discussion by the Planning Board. The Planning Board can forward the item to one of its sub-committees for review or recommendations back to the full Planning Board, or if the Planning Board finds that the changes are straightforward, then the item could be placed on the next available Planning Board meeting for a public hearing.

Proposed Amendment:

SECTION 1-5 – DEFINITIONS

Adult-Use Marijuana Cultivation Facility – a “cultivation facility,” as that term is defined in 28-B M.R.S.A. § 102(13), as may be amended or recodified.

Adult-Use Marijuana Products Manufacturing Facility - a “products manufacturing facility,” as that term is defined in 28-B M.R.S.A. § 102(43), as may be amended or recodified.

Adult-Use Marijuana Testing Facility – an adult-use “testing facility,” as that term is defined in 28-B M.R.S.A. § 102(54), as may be amended or recodified.

Medical Marijuana Caregiver – a “registered caregiver,” as that term is defined in 22 M.R.S.A. § 2422(11), as may be amended or recodified.

Medical Marijuana Business – a medical marijuana manufacturing facility, a medical marijuana testing facility, and/ or a medical marijuana caregiver that operates in a location that is not that caregiver’s primary residence, or in the case of a caregiver that is a registered entity, the primary residence of any of the entity’s officers or managers. A medical marijuana caregiver business does not include or encompass a medical marijuana caregiver store or a medical marijuana dispensary, neither of which are authorized to operate in the Gorham.

Medical Marijuana Manufacturing Facility – a “manufacturing facility,” as that term is defined in 22 M.R.S. § 2422(4-R), and further specified in 22 M.R.S. § 2423-F, as both may be amended or recodified.

Medical Marijuana Testing Facility – a “marijuana testing facility,” as that term is defined in 22 M.R.S. § 2422(5-C), as may be amended or recodified.

SECTION 1-8 - RURAL DISTRICT

- 25) Medical Marijuana ~~Caregiver Cultivation or Manufacturing Facility Business~~ when inside an existing agricultural building

SECTION 1-12- INDUSTRIAL DISTRICT

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12) Medical Marijuana ~~Caregiver Cultivation or Manufacturing Facility Business~~

SECTION 1-21- OLDE CANAL INDUSTRIAL DISTRICT

14) Medical Marijuana ~~Caregiver Cultivation or Manufacturing Facility Business~~

SECTION 2-15 – HOME OCCUPATION STANDARDS

Home occupations shall conform to the following requirements:

1. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto with the exception of farm/roadside stands which are allowed to be carried on in a separate structure.
2. Not more than two people outside the family shall be employed in the home occupation.
3. There shall be no exterior display, no exterior sign (except as expressly permitted by the district regulations of this chapter), no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
4. No nuisance, offensive noise, vibration, smoke, dust, odors, heat, or glare shall be generated.
5. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the neighborhood.
6. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum of users the home occupation may attract during peak operating hours.
7. The home occupation shall not utilize more than 20% of the total floor area of the dwelling unit with the exception of home day care facilities which may utilize up to 50% of the dwelling unit in addition to the use of the exterior of the property for State required play areas.
8. A home occupation shall be limited to the following:
 - a. art studio
 - b. bed and breakfast
 - c. day care home
 - d. dressmaking shop
 - e. farm/roadside stands
 - f. hairdressing shop
 - g. teaching or tutoring facilities

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- h. office of a physician, dentist, optometrist, lawyer, engineer, architect or accountant
 - i. office of a real estate broker or agent
 - j. office of an insurance agent or broker
 - k. office of construction services
 - l. uses similar and compatible with the above as determined by the Town's Code Enforcement Officer
 - m. medical marijuana caregiver
9. Permit required. A permit must be obtained from the Code Enforcement Department prior to commencement of the Home Occupation. As part of the permit approval, the Town's Code Enforcement Officer is authorized to limit the proposed use or require on-site improvements to minimize potential negative impacts to the neighborhood and/or roadways.
10. A home occupation shall not be interpreted to include the following:
- a. facilities for the repair of motor vehicles
 - b. day care center
11. In addition to the home occupation standards listed above, the home occupation use for office or construction services, plumbers and electricians must also meet the following requirements:
- a. limited to two of the following: pick-up trucks, vans or box trucks and one trailer parked/stored outside
 - b. no outside storage of materials
 - c. material storage buildings/space limited to 20% of the size of the total area of the dwelling unit
12. In addition to the home occupation standards 1 through 10 listed in this section, the home occupation use for medical marijuana caregivers must also meet the following requirements:
- a. Medical marijuana caregivers may only receive or otherwise serve patients, or other vendors, between the hours of 10:00 A.M. and 6:00 P.M., Monday through Friday.
 - b. All growing and related growing supplies are required to be stored inside and within 20% of the total floor area of the dwelling unit occupied by the home occupation
 - c. No outside cultivation or storage of marijuana, marijuana products, or related supplies is permitted. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence or within a building or other accessory structure accessory, including but not limited to, any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.
 - d. The odor generated from marijuana cultivation or harvesting shall not be reasonably detectable from any adjacent lot, public right-of-way, or outside of the growers' leased area. The marijuana cultivation shall provide for adequate ventilation so as

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- to prevent pesticides, insecticides or other chemicals used in the cultivation from being dispersed or released outside the building or lease line.
- e. The medical marijuana caregiver shall obtain and maintain an active and valid medical marijuana caregiver registration with the State of Maine conditional license prior to operating in the Town of Gorham.
 - f. That the grow plant canopy size shall be capped at a maximum of 500 sq. ft.
 - g. All cultivation areas shall meet all applicable local, state, and federal building, electrical, and fire codes.
 - h. That a property owner's written consent to cultivate marijuana is required for growers located on lots/leased areas not owned by them. An owner of a residential structure can prohibit the cultivation of marijuana on his or her property.
 - i. The cultivation areas shall be locked when not being attended to by the grower of the marijuana.
 - j. ~~Prohibited:~~ The following ~~is~~ ~~are~~ prohibited as part of ~~the home occupation a~~ medical marijuana caregiver ~~home occupation growing~~ :
 - 1) The home extractions of marijuana concentrate using hazardous substances.
 - 2) The, manufacturing, testing, or retail sale of marijuana or marijuana products intended for adult (and not medical) use.
 - 3) The establishment or operation of a medical marijuana caregiver retail store, as that term is defined in 22 M.R.S.A. § 2422(1-F).
 - 4) Any other activity that is not authorized for medical marijuana caregivers under applicable State law, in 22 M.R.S.A. § 2423-A(2).
 - k. The purpose of this Subsection 12 is to regulate both new and existing medical marijuana caregivers operating as home occupations within the Town. These regulations are intended to protect the public health, safety and welfare, to ensure compatibility with the surrounding neighborhood, and to minimize any adverse impact of such caregiver operations on adjacent and nearby properties.

1) Application

The operational requirements of Subsection 2-15 shall apply to all existing medical marijuana caregivers operating as home occupations on the effective date of this ordinance as well as new caregiver operations. To qualify as an existing medical marijuana caregiver operating as home occupation, the operation must be a lawful use under the Zoning Ordinance as of _____, 2021, must have been in operation at some time over the five (5) years immediately preceding _____, 2021, and must have been in full compliance with all applicable Town ordinances during all such times of operation.

2) Registration Requirements

Within one hundred eighty (180) days of _____ all medical

marijuana caregivers operating as home occupations and existing as of that date shall be registered with the Code Office and submit the following:

(a) initial registration fee of \$ _____ ;

(b) names and addresses of the current owner of the property and of the medical marijuana caregiver, and a copy of the deed or rental lease if the medical marijuana caregiver is not the property owner;

(c) evidence that the medical marijuana caregiver's operation was in existing operation as defined above, including, without limitation, the State of Maine registered caregiver license and any other State-issued licenses, including any food establishment license; and

(d) evidence of the location of the medical marijuana caregiver's growing operation on the property, which shall include a depiction of the canopy size, setbacks of the growing area from property line boundaries, and actions taken to meet the relevant Home Occupation Standards as identified below.

3) Operational Requirements for New and Existing Medical Marijuana Caregivers

Unless otherwise expressly provided, the foregoing requirements contained in this Subsection 12 apply to all medical marijuana caregivers operating as home occupations; however, any existing medical marijuana caregiver operating as a home occupation and lawfully in operation at the effective date of this ordinance which does not comply with these operational requirements shall be grandfathered with regard to such deficiencies except that there shall be no grandfathered rights as to Chapter 2, Section 2-15 Home Occupation Standards, Subsection 12(a) through 12(d) and 12(f) through 12(i).

SUGGESTED MOTION:

Move to recommend adoption of the proposed zoning amendments to the Planning Board's pertaining the Medical Marijuana Business and Caregivers under Chapter 1, SECTION 1-8 - RURAL DISTRICT, SECTION 1-12- INDUSTRIAL DISTRICT, and SECTION 1-21- OLDE CANAL INDUSTRIAL DISTRICT, and under Chapter 2, SECTION 2-15 – HOME OCCUPATION STANDARDS (as amended by the Planning Board).