



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
JUDY C. EAST
EXECUTIVE DIRECTOR

Memorandum

To: LUPC Rulemaking Hearing Record
CC: Petition Representative
From: Judith C East, Executive Director
Date: June 7, 2021
Re: Staff context and questions for public and Commission consideration: Citizen's Petition on marijuana related uses in the D-GN2 subdistrict

Upon review and consideration of the citizens' petition (including both language options posted), the Maine Land Use Planning Commission (the Commission) staff offer the following information and questions. The information will provide context and the questions are intended to facilitate comments / perspectives which we anticipate will be particularly valuable to the Commission in considering the rulemaking petition and the intended outcomes.

BACKGROUND INFORMATION

Rangeley Plan

The [Prospective Zoning Plan for the Rangeley Lakes Region](#) (Rangeley Plan) was adopted in 2000 after a robust community planning process. The Commission held more than thirty meetings with landowners and stakeholders and conducted public meetings for residents of the five plantations and five townships included in the Rangeley Plan area. To achieve the community's vision for the area, the Rangeley Plan:

- created six new subdistricts unique to the plan area, and designated approximately 9,000 acres of land to the subdistricts as the primary means of guiding the types, intensities, and locations of development.
- reduced the ability to rezone so that development would "stick to the plan", and spelled out the unique and limited circumstances under which changes to zoning in the region could be

considered. However, the Rangeley Plan did not contemplate future changes to the Rangeley Plan's six unique land use subdistricts.

- added standards to reduce or avoid impacts created by development. The standards address screening, non-residential parking, lighting, height/dimensional requirements, and generalized design review.

Over the past twenty years, the Commission has consistently refrained from modifying the Rangeley Plan. For example, in 2016, when the Commission changed road setback distances in residential and general development subdistricts, they chose not to change setbacks in the residential and development subdistricts unique to the Rangeley Plan.

Medical marijuana became legal in Maine through a citizen referendum in 1999, the same year that the Commission held many of the community regional planning meetings in the Rangeley region. Land use and zoning for marijuana businesses was not a common topic of discussion and debate during that time. Therefore, regional landowners and stakeholders did not get a chance to explicitly consider the impacts of marijuana land uses during the regional planning process. This rulemaking petition contemplates eliminating allowed land uses in one of the unique Rangeley Plan subdistricts outside of a community planning process.

Statute

Current statute¹ affords less local control of medical marijuana land uses in the unorganized and deorganized areas of the State than in municipalities. It is possible that this is one of the contributing factors that led to this citizen-initiated rulemaking petition.

The adult use marijuana statute² requires the legislative bodies of towns and plantations, or the County Commissioners in the case of townships, to opt-in to allow adult use marijuana establishments. In comparison, current medical marijuana statute requires municipalities to opt-in for new caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities. There is no analogous medical marijuana opt-in authority granted by statute in the unorganized and deorganized areas of the State.

Commission's Current Rules

Since legalization, the Commission has been regulating marijuana development (medical and adult use) as any other commercial development, although additional standards regarding odor and lighting now apply. Attachment A to these materials provides a timeline of the meetings when the Commission discussed and reviewed marijuana proposals, marijuana policy and statute, and engaged in rulemaking on marijuana related standards. In July 2021, the Commission adopted land use standards to address specific impacts from odor and greenhouse lighting³. Before initiating that rulemaking, the Commission considered a broad range of potential land use impacts of marijuana

¹ [22 M.R.S. §§ 2421 et seq.](#)

² [28-B M.R.S. §§ 101 et seq.](#)

³ www.maine.gov/dacf/lupc/laws_rules/rule_chapters/Ch10_ver2020-10-01.pdf (see Section 10.27(S)(4))

uses (including security, visual impact, etc.) and decided the other potential impacts were adequately addressed either by other agencies or through existing standards.

Marijuana growing, processing, manufacturing, or sale most commonly constitute “commercial development.” However, there are other land uses, such as “marinas,” “recreational lodging facilities,” and “recreation supply facilities” that may include retail sales of one or more products; and “home-based businesses” that may include drawing clients to the home for retail sales or services. In each of these three examples, provided the operation has necessary approvals required by either medical marijuana or adult use marijuana statutes, the development must be located in subdistricts that allow these uses, and LUPC standards have to be met.

Existing Operations and Pending Applications

All development proposals are subject to the rules in effect at the time of their application. Likewise, legally existing development or land uses are generally not affected by changes in law or rule, except that the use or development may then become a legally existing nonconforming use. Neither option laid out in the proposed revisions would change the fact that any legally existing facility could continue.

QUESTIONS

Any person choosing to comment on either draft rule option described in the petition is not required to address the following questions. As noted in the introduction above, the Commission’s staff pose the following questions with the sole purpose of highlighting perspectives or information we anticipate will be particularly valuable to the Commission as it considers the rulemaking petition and related public comments.

- ?

The Commission has determined that marijuana land uses are similar to commercial and certain industrial land uses and generally compatible with residential uses. If you disagree, what makes marijuana land uses different from other similar commercial and industrial land uses? Are there specific land use impacts from marijuana uses that are a concern in the D-GN2? What makes marijuana uses less compatible with residential uses?

By way of example, consider the following:

<p>Uses traditionally viewed as ‘commercial’ and commonly viewed as compatible with residential uses</p>	<p>Seemingly similar marijuana counterpart (if not viewed as similar or compatible with residential uses, how or why not?)</p>
<p>A facility or business at which customers may purchase a variety of beverages/products/services (e.g., convenience store, hardware store), some portion of which may be restricted to only serve people of legal age (e.g., a bar/pub, gun shop)</p>	<p>Marijuana boutique /store</p>

<p>Uses traditionally viewed as ‘commercial’ and commonly viewed as compatible with residential uses</p>	<p>Seemingly similar marijuana counterpart (if not viewed as similar or compatible with residential uses, how or why not?)</p>
<p>A facility or business from which plants, seedlings⁴, or fruits are grown and may be offered for sale (<i>e.g.</i>, a (wholesale or retail) plant nursery, fruit orchard, Christmas tree farm, etc.).</p>	<p>Marijuana cultivation</p>
<p>The processing or packaging of raw materials, conducted within one’s home for sale at another location (<i>e.g.</i>, home-based jam or salsa business).</p>	<p>Small-scale marijuana manufacturing facility that does not use gases, solvents, or chemicals</p>
<p>Gas stations and convenience stores are all allowed in the D-GN2 subdistrict and each could include use or store flammable or hazardous chemicals or solvents.</p>	<p>Processing of marijuana including chemicals or solvents</p>

- ❓ The prospective zoning plan, including the formulation and designation of the D-GN2 subdistrict, was created through a comprehensive community process. While the rulemaking petition included 191 signatures and a public hearing will be held, is it appropriate to revise the purpose of, or uses allowed within, one of the custom subdistricts created by the Rangeley Plan through this single issue rulemaking process? Or, should changes be considered through a comparable comprehensive community process?
- ❓ The Commission’s standards for home-based businesses apply to its entire service area, not just the Rangeley Plan Area. Would creating separate categories of, or creating separate individual standards for, home-based businesses only for certain geographic areas cause permitting and compliance challenges?
- ❓ Is the request for prohibition one perspective on a moral issue, rather than a land use issue? What is the appropriate scope to address the concern? For instance, would the concerns posed by the rulemaking petition be best addressed by extending local opt-in for medical marijuana to the unorganized and deorganized areas of the state (*i.e.*, towns or plantations, or the County Commissioners in the case of townships)? Thus, is this an issue more appropriate to a legislative response?
- ❓ How should the Commission deal with potential future conflicts with respect to local opt-in and specific zoning restrictions in the rest of its service area?

⁴ BP 5143 involves a greenhouse business as a home-based business in the D-RS2 subdistrict; though other examples may exist.

LUPC & Marijuana Timeline

The following summarizes a variety of situations about the Commission and Marijuana (medical or adult use). Generally, these include instances of information, discussion, rulemaking, zoning or permitting matters, etc.. (CM = Commission Meeting) Archived materials for Commission meetings are available at www.maine.gov/dacf/lupc/about/calendar/calendar_archive.shtml. Note that information packets are linked through the agenda, and audio files are linked through the meeting record.

2017

December CM: Commission direction to staff to review and assess legislation for relevance to the LUPC and whether action is appropriate

2018

January CM: Staff summary of assessment and Commission discussion

August CM: Staff summary of impacts on LUPC service area and municipalities

2019

July CM: law changes. (part of director's report)

October CM: Staff research into potential land use impacts relating to legalized marijuana establishments. Decision to move forward with standards to address potential odor and lighting impacts.

November CM: zone change for commercial medical marijuana facility including cultivation, staff housing, and retail sales. (ZP 777)

2020

January CM: Office of Marijuana Policy guest presentation

February CM: Rulemaking – preliminary Ch. 10 standards

May CM: Rulemaking – post Ch. 10 revisions to rulemaking process

July CM: Rulemaking – adoption of Chapter 10 standards

October Rules: [Chapter 10 standards effective October 1, 2020](#)

November CM: Permitting – DP 4341 (Rodway medical marijuana cultivation operation⁵) hearing request

2021

January CM: Permitting – DP 4131 (Rodway) appeal of staff decision

February Rulemaking - Citizens' Rulemaking Petition filed (Re: certain marijuana uses in the D-GN2)

April CM: Permitting decision– DP 4131 (Rodway) appeal of staff decision

April CM: Rulemaking – Initiate rulemaking (Re: Citizens' Petition)

May Opt-in: Franklin County Commissioners opt-in (all townships in Franklin County) for all four tiers of adult-use marijuana cultivation program.

June 16 CM: Rulemaking – Public Hearing on Citizens' Petition Rulemaking

⁵ located in D-GN2 subdistrict