



Presented by **PretiFlaherty**
LEGAL PAPERS
The Maine Cannabis Law
Breakfast Series

2019

SESSION 1

The Crop Report

Licensing and Municipal Regulations Update

September 24, 2019



INTRODUCTION

**WELCOME
MAINE CANNABIS
INDUSTRY**

PreTiFlaherty



AGENDA

PART 1

Maine Regulatory Developments

Dan Walker

PART 2

Municipal Update

Kristin Collins

MAINE REGULATORY DEVELOPMENTS



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TIMELINE – MEDICAL (MMUMP)

- 1999 Initiative
- 2009 Initiative
- Dispensaries
- Caregivers
- Significant rulemaking reform (Eff. 5/10/18)
- 2018 – LD 1539, LD 238

MEDICAL (MMUMP) – 2019 LEGISLATION

- [LD 538](#) – An Act To Ensure Access to Medical Cannabis for Visiting Qualifying Patients (Blume) – **emerg enact**
- [LD 942](#) – An Act To Require Reimbursement for Medical Marijuana (Collings) - **dead**
- [LD 1129](#) – An Act To Clarify Certain Provisions of the Maine Medical Use of Marijuana Act (Jorgensen) - **enacted**
- [LD 1218](#) – An Act To Allow Maine Medical Marijuana Caregivers To Measure Cultivation Limits by Plant Canopy Size (Corey) - **enacted**
- [LD 1374](#) – An Act to Amend the Maine Medical Use of Marijuana Act (Hymanson) – **dead**
- [LD 1505](#) - An Act to Amend the Marijuana Laws to Correct Inconsistencies in Recently Enacted Laws (Hymanson) – **enacted**
- [LD 1735](#) - An Act to Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act to Become a For-profit Entity (Jackson) – **emerg enact**
- [LD 1738](#) - An Act Regarding Medical Marijuana (Perry) - **emerg enact**

MEDICAL (MMUMP)

2019 – Rulemaking

- Marijuana Manufacturing Facilities – adopted, effective August 1, 2019
- Marijuana Inventory Track and Trace System – preliminary draft emergency rule, initial comments due September 27, 2019. For both programs.
- MMUMP rule overhaul by end of year?

TIMELINE – ADULT USE

- 2016 Initiative
- 2017 – MLIC
 - LDs 88, 243, 1641, 1650
- 2018 – MLIC
 - LD 1719 – Overrode veto

FORMATION OF OMP

OMP – Office of Marijuana Policy, Department of Administrative and Financial Services (DAFS). Formed early this year.

- Houses both MMUMP and Adult Use Programs – will create needed consistency between programs.
- Leadership:
 - Director – Erik Gundersen
 - Deputy Director – Scott Lever, Esq.
 - Policy Director – Gabi Pierce, Esq.
 - David Heidrich, Jr. – Director of Engagement/Community Outreach
 - Director of Licensing – Tracy Jacques, Esq.
 - Director of Special Projects – Qilian Luo

ADULT USE – 2019 LEGISLATION

- [LD 719](#) – An Act Regarding Adult Use Marijuana (Pierce) – **emerg enact**

(Rest carried over)

- [LD 720](#) – An Act Regarding Maine's Adult Use Marijuana Law (Pierce)
- [LD 999](#) – An Act To Allow Medical and Adult Use Marijuana Stores To Share a Common Space (Miramant)
- [LD 1081](#) – An Act to Impose Further Restrictions on Where Marijuana May be Smoked (Cyrway)
- [LD 1432](#) – An Act to Improve the Adult Use Marijuana Rules (Pierce)
- [LD 1444](#) – An Act to Make Distance to Schools for Marijuana Establishments Consistent with Liquor Laws (Madigan)
- [LD 1545](#) – An Act Regarding the Testing of Adult Use Marijuana and Marijuana Products (Miramant)
- [LD 1621](#) – An Act to Allow Delivery of Adult Use Marijuana and Adult Use Marijuana Products by an Approved Marijuana Store (Jackson)

ADULT USE – 2019 LEGISLATION

Tax Bills

(All carried over)

- [LD 335](#) – An Act To Require the State To Distribute 25 Percent of Adult Use Marijuana Retail Sales and Excise Tax Revenue to Generating Municipalities (Warren) – carried over
- [LD 1076](#) – An Act To Account for Market Change in the Adult Use Marijuana Excise Tax (Berry) – carried over
- [LD 1322](#) – An Act To Provide Equitable Tax Treatment to State-licensed Marijuana Businesses (Jorgensen) – carried over

ADULT USE – 2019 RULEMAKING

Maine’s Adult Use Marijuana Program Rules – Final Adoption of Chapter 1: Adult Use Marijuana Program, P. L. 2019, c. 491 (LD 719). Effective date was September 19, 2019.

- Several statutory changes:
 - Amendment to Maine food law to no longer consider edibles produced with marijuana (adult use) as adulterated;
 - Allowing entry of certain vendors into limited access areas of licensees; and
 - Authorizing OMP to impose administrative holds
- Rules will be finally be released within next 60 days
- State applications for licensure for Adult Use will begin in Nov or Dec

ADULT USE – 2019 RULEMAKING

Emergency Rules for the Certification of Marijuana Testing Facilities – Adopted, effective date September 2019

- Comment deadline for APA rulemaking, October 10, 2019

TRACK AND TRACE PROGRAM

- Program awarded in May to Bio-Tech Medical Software - BioTrackTHC
- Required under both MMUMP and Adult use program
- Cloud-based software product which will use barcode-based tags and labels to track the growth and distribution of marijuana and marijuana products throughout Maine
- Individual BioTrackTHC tags and labels will cost \$0.25
- BioTrackTHC tags must accompany each immature and mature marijuana plant being cultivated by program registrants and licensees
- When plants are harvested into intermediate bulk lots, each batch or lot of marijuana product must be labeled with a BioTrackTHC label
- **Individual products available for sale to consumers or patients must meet packaging and labeling requirements, in accordance with statute and rule, but will not require individual BioTrackTHC labels and their associated cost**

TRACK AND TRACE PROGRAM

Exceptions to Track and Trace Program

- Registered Caregivers without a retail store; vertically integrated
 - Who directly serve certified patients without transferring marijuana and marijuana to other caregivers, dispensaries, or marijuana manufacturing facilities
 - “Plant-only tracking” – only required to tag and track the plants they own

ADULT USE – LD 1719

- Regulatory Agency – Department of Administrative and Financial Services (DAFS) , Office of Marijuana Policy (OMP)
- 5 Licenses: Cultivation, Retail, Processing, Testing, Nursery
- Tax: 10% sales tax, plus excise tax
- Tracking system
- Municipal opt-in
- Mandatory Testing
- Packaging, Labelling, and Advertising
- Record keeping and inspection of records; audits
- Marijuana Advisory Commission
- Personal Adult Use – 3 plants; 2.5 oz

GENERAL LICENSING CRITERIA

- Non-competitive initial state approval (“conditional license”) – applications should be released in October or November 2019
- Criteria
 - Residency - Maine resident for last 4 years; every officer, director, manager, and general partner must be a resident; a majority of equity ownership interests must be held or owned by residents
 - Incorporated in the State
 - Criminal background check
 - Tax Compliance:
 - “The applicant shall submit information regarding: A) The applicant’s history of paying income and other taxes owed to the State, to another jurisdiction, if applicable, and to the United States Revenue Service over the 2 years immediately preceding the year in which the application is filed, and B) Any outstanding tax liens imposed or levied against the applicant in this State or in another jurisdiction within the 5 years immediately preceding the year in which the application is filed.”

GENERAL LICENSING CRITERIA

- Municipal approval
 - No state level total limits on establishments
 - Total limits dependent on municipality
 - Licensing and competitive selection will be different from town to town
 - “Opt in” – In order to receive an application for a marijuana establishment, the legislative body of the municipality must have “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.” (sec. 402)
- State “Active” license – submit updated plans

CULTIVATION LICENSE

- Tier 1: Not more than 500 sq. ft. of plant canopy (or 30 plants)
- Tier 2: Not more than 2000 sq. ft.
- Tier 3: Not more than 7000 sq. ft.
- Tier 4: Not more than 20,000 sq. ft.
- No more than 3 cultivation licenses and not more than 30,000 sq. ft. in common ownership
- Tier 4 may increase by 7000 sq. ft. every 2 years if sold at least 85%
- Must submit to State operating and cultivation plans
- May co-locate medical cultivation operations
- Nursery separate license, not more than 1000 sq. ft.
- Must track from immature plant until sale

RETAIL LICENSE

- Only 4 per licensee until 2022
- No entrance if under 21
- No vending machines, drive-throughs, Internet-based sales platform, or delivery service
- “Donation” loophole is “closed”
- Separate from medical facility
- Collect 10% sales tax
- Must track from point of delivery to retail to sale
- No use of marijuana on premises, unless patient

PROCESSING/MANUFACTURING LICENSE

- Allows for production of extractions, edibles, etc.
- Extraction may involve a solvent that is or is not an “inherently hazardous” substance
 - If the solvent is not, the applicant must still receive written approval from DAFS
 - If the solvent is “inherently hazardous,” then the applicant must receive certification from an industrial hygienist or professional engineer and receive approval from the department. Licensure rules coming.
- May co-locate with the medical program, as long as separate batches
- Must track

TESTING LICENSE

- Mandatory testing before any marijuana may be distributed or sold
- ISO certified laboratory
- Independent of any cultivation or retail licensees or caregiver or dispensary registrations
- LD 1641 passed in 2017, and rules are being developed in “collaboration” with DHHS, as medical testing rules passed in 2015
- Hopefully, as of the conference, there will be testing rules released

TAX RATES

- 10% sales tax
- Excise tax: paid by cultivation facility licensee
 - Marijuana flower or mature plants - \$335/lb.
 - Marijuana trim - \$94/lb.
 - Immature plants and seedlings - \$1.50/plant
 - Seeds - \$.30/seed
- Both deposited into GF
- MRS will then transfer 12% to Adult Use Marijuana Public Health and Safety Fund – with 50% to public safety and 50% to law enforcement
- Carry over bill seeks to retain portion of sales or excise tax for municipalities

RECORD KEEPING AND INSPECTION OF RECORDS

- Licensee must maintain complete set of all records of business transactions for current tax year and 2 immediate tax years, which must be open to inspection by DAFS without notice during all business hours
- DAFS may require an audit of licensee's business records with all costs borne by licensee
- Licensee's premises may be inspected without notice during all business hours and other times of apparent activity by DAFS, law enforcement, or municipal officials

LABELLING AND PACKAGING; ADVERTISING AND MARKETING; PUBLIC SAFETY

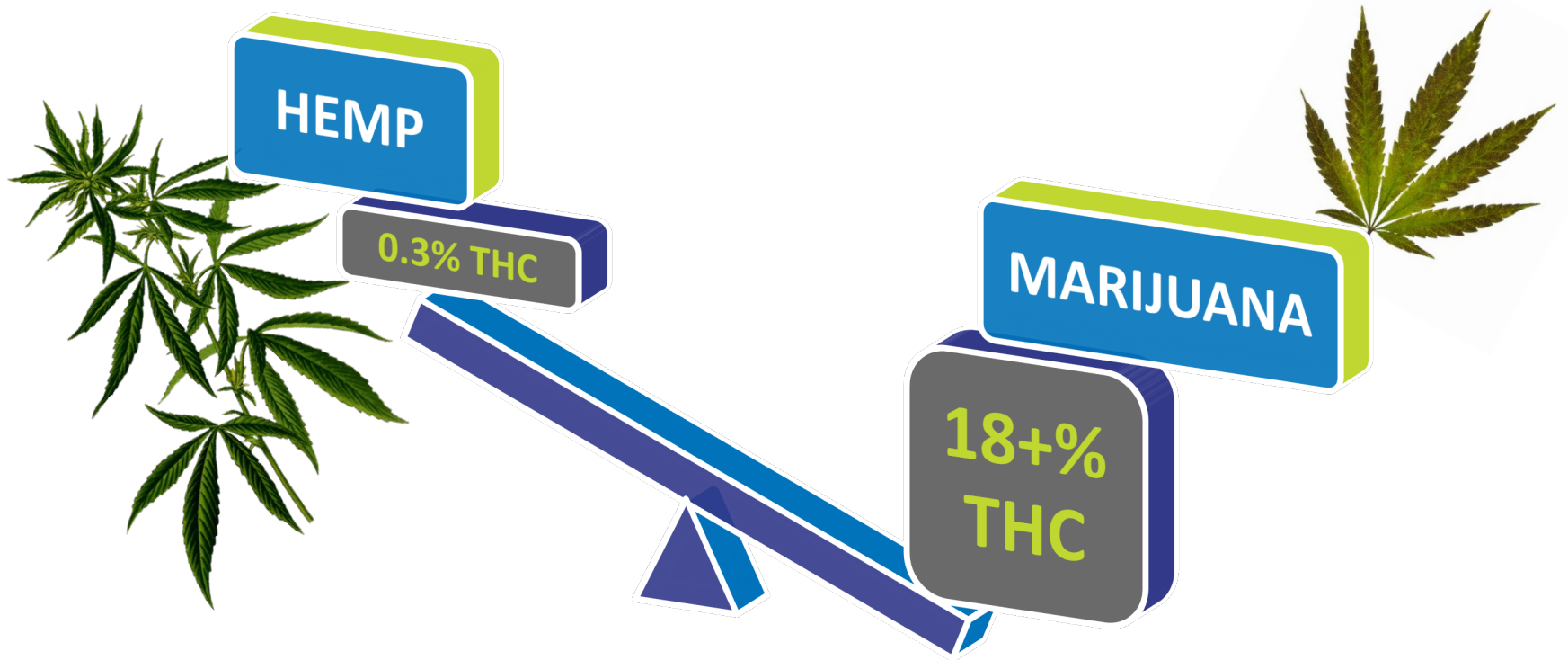
- Rigorous labelling requirements, including licensee numbers, identity statement and universal symbol, health and safety warning labels, THC potency, and cannabinoid profile, etc.
- Packaging requirements include prepackaging, opaque materials, may not contain more than 10 mgs per serving and 100 mgs per package, may not appeal to persons under 21 years of age, may not have packaging that depicts human, animal, or fruit, and must have universal symbol stamped or embossed on each serving of the product
- Advertising may not be 1000 feet from a school, etc.

LEGISLATIVE SESSION

Marijuana Advisory Commission

- Did not meet during First Regular Session
- Waiting for Rulemaking
- First meeting scheduled for the end of October

HEMP vs. MARIJUANA



LEGISLATIVE SESSION – RELEVANT LEGISLATION

Hemp/CBD

- [LD 630](#) – An Act To Clarify That Food, Food Additives and Food Products Containing Hemp-derived Cannabidiol Produced and Sold within the State Are Not Adulterated and To Match the State's Definition of "Hemp" to the Definition in Federal Law (Hickman) - **enacted**
- [LD 269](#) – An Act to Match the State’s Definition of “Hemp” to the Definition in Federal Law (Miramant) - **dead**
- [LD 1749](#) – An Act to Amend the State’s Hemp Laws (Miramant) – **enacted**

THE FEDS' HEMP/CBD ROLLERCOASTER

2014 – Agricultural Pilot Programs

2018 – Hemp Gets the Green Light

But Not So Fast

MAINE: TRYING TO FOLLOW DC'S LEAD

- **Still Searching for Consistency with Federal Law**
- **CBD in Food:**
 - Maine DACF*
 - LD 630 – clarifying CBD is food*
- **Hemp program**
 - LD 1749 – clarifying hemp law*
- **Indoor Growing**

HEMP & CBD - LAY OF THE LAND

- **Enforcement Is Minimal**
- **CBD in Food – DACF/CDC warnings (winter and summer)**
- **No Claims of Therapeutic Benefits**
- **Standards Are Coming**

Q&A

MUNICIPAL UPDATE



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MEDICAL MARIJUANA – SCOPE OF MUNICIPAL AUTHORITY

Municipalities Must Opt in to Allow

- Caregiver Retail Stores
- Registered Dispensaries
- Marijuana Testing Facilities
- Marijuana Manufacturing Facilities

22 MRS §2429-D

New definition for Caregiver Retail Store: Attributes generally associated with retail store (fixed location, sign, regular business hours, accessibility to public, sales of goods or services directly to consumer)

MEDICAL MARIJUANA

Municipalities May Regulate

- Caregivers
- Caregiver Retail Stores
- Manufacturing Facilities
- Testing Facilities
- Dispensaries

22 MRS §2429-D

MEDICAL MARIJUANA

What Does “Regulate” Mean?

- Zoning
- Proximity Restrictions
- Numerical Limits
- Licensing
- Performance Standards

Caregiver can't get registry card if Town doesn't allow the use in that location.

22 MRS §2429-D

MEDICAL MARIJUANA

But, Municipalities CANNOT:

- Prohibit caregivers, or limit their numbers
- Prohibit caregiver retail stores operating with municipal approval as of October 2018

[22 MRS §2429-D](#)

Law now clarified to say that approval means town knew of and approved the marijuana use

MEDICAL MARIJUANA

Caregivers Working out of Their Homes

- Towns may have pre-existing regulations that apply
- May need food preparation license
- Some towns creating special use limitations for caregivers working out of homes
- Locations may be unknown

ADULT USE MARIJUANA

Municipalities Must Opt in to Allow

- Retail Stores
- Manufacturing Facilities
- Testing Facilities
- Cultivation Facilities

(That's all of them!)

28-B M.R.S.A. § 401-B

ADULT USE MARIJUANA

How Municipalities May Regulate:

- Zoning
- Site Plan Review
- Conditional Use Review
- Proximity Limitations
- Licensing
- Performance Standards

ADULT USE MARIJUANA

Cannot Apply for Local Authorization Unless:

- Municipality has “opted in”
- Operator has been issued a conditional license by DAFS

Minimum Authorization Criteria – A municipality MAY NOT authorize the operation of a marijuana establishment if:

- Within 1,000 feet of the property line of a preexisting public or private school (ordinance can reduce this to 500’feet, but no less). (Some towns, including day cares and churches.)
- Applicant doesn’t establish right, title or interest in the marijuana establishment

28-B §402

ADULT USE MARIJUANA

A Person May Not Operate a Marijuana Establishment Within a Municipality Unless:

- Municipality has “opted in”
- The person has obtained all applicable municipal approvals, permits or licenses
- The person has been issued by the Department an active license to operate the marijuana establishment

ADULT USE MARIJUANA – APPLICATION PROCESS

- 1. Obtain Conditional Approval from DAFS**
- 2. Obtain Any Land Use Approvals Needed from Town**
 - Site plan or conditional use review
 - Municipal license
- 3. Transmit Proof of Municipal Approvals to DAFS for Issuance of Final License**
- 4. For Renewals: Must Submit Certification That Use Still Complies with Local Ordinances**

Failure to comply with local ordinance can result in revocation of state license, or other penalties.

THE STATE OF THE CITIES

Portland

- Zoning regulations in place
- Moratorium still in place on Caregiver Retail Stores, Grow Facilities (30+ plants), Manufacturing & Testing
- Licensing proposed in August
 - Limit on 20 retail stores (adult use or medical)
 - 250 feet buffer between stores (except if adjacent and operated by same entity)
 - \$10,000 annual license fee for retail stores
 - All marijuana uses licensed (adult use and medical)
 - Existing licensed medical retail can convert to adult use (buffer won't apply)

THE STATE OF THE CITIES

South Portland

- Zoning and licensing in place for all medical and adult uses
- Licenses required for all uses but testing facilities and non-retail caregivers
- Council reviews all but manufacturing licenses
- Retail stores and dispensaries not allowed within 1,000 feet of schools; 300 feet of childcare facilities, higher education facilities, churches, public outdoor recreational facilities
- Fees: \$1400 for retail/dispensary; \$600 for cultivation; \$300 for manufacturing

THE STATE OF THE CITIES

Lewiston

- Comprehensive licensing for all marijuana businesses
- Ordinance on cultivation (none in multifamily, odor restriction, etc.)
- Most recent draft (September 2019):
 - No cultivation in multifamily (3+) dwellings except personal use
 - No outdoor cultivation
 - Retail allowed in all areas where other retail uses allowed
 - Generally treats retail and medical uses the same
 - No location within 750 feet of schools, childcare facilities and parks

THE STATE OF THE CITIES

Bangor

- Zoning in place for caregiver retail stores, adult use retail (same zones) and cultivation
- No licensing in place except if using flammable liquids

Auburn

- Medical and adult use all zoned
- Licensing ordinance in place; non-retail caregivers not included
- Annual license fee for retail - \$5,000

THE STATE OF THE CITIES

Scarborough

- Committee in place – working on licensing and zoning
- Probably won't opt-in to retail

Saco

- License required for all growing, processing, manufacture or sale except for personal use
- No growing in home except for personal use. No retail uses allowed.

THE STATE OF THE CITIES

Biddeford

- Medical uses all allowed as conditional use; 250 feet setbacks from schools and churches
- No licensing
- Not opted in for retail

Sanford

- All retail expressly banned
- Zoning standards in place for production facilities and caregiver retail stores
- 500 feet setbacks from schools, childcare, parks, churches

THE STATE OF THE CITIES

Brunswick

- Adult use and medical marijuana allowed only in industrial zones
- Licensing for all uses, including non-retail caregivers

Augusta

- Zoning and licensing requirements for adult use and medical marijuana uses (same zones, same licensing requirements)
- Licensing to apply to non-retail caregivers as well
- Caregivers as home occupations must be delivery only

THE STATE OF THE CITIES

Westbrook

- Adult use specifically prohibited
- Only caregiver cultivation facilities (sales allowed) and dispensaries allowed
- Thorough regulations on operation/security

Waterville

- All adult and medical uses allowed and zoned; licenses also required
- 500 feet setback for all uses from schools, churches, rec facilities
- No dispensaries or adult use / caregiver retail in downtown area
- License fees \$1500 – 4500

THE STATE OF THE CITIES

Windham

- Haven't opted in on anything
- Currently 9 medical retail stores – will likely be the cap
- Working on zoning and licensing for all other uses – adult use retail likely prohibited

Q&A

THANK YOU FOR COMING



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