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MEMORANDUM

To: Warrant Committee, General Government Sub-committee

From: Kevin L. Sutherland, Town Manager

Date: August 29, 2022

Re: Questions received and Responses to the two Citizen's Petitions on marijuana

This memo was put together in response to questions received from members of the Warrant Committee for their upcoming General Government Sub-committee meeting. While I requested assistance from staff in drafting some answers, the language developed for this memo is from the Town Manager's point of view.

1. Where will the product come from? (Ezra Sassman)

The petitioner's attorney provided this information.

2. Are there concerns with interstate commerce and the product being illegal federally? I would want to assume because the retail store in Southwest Harbor seems to be doing fine within the legal limits that should be our expectations also. Because they are probably retail competitors I am guessing they could not invite the Southwest Harbor store owner to provide expert and up-to-the-minute testimony, but it would have been helpful to hear from someone who had jumped through all the state and town hoops and had some current and same-island experience to relate.

The petitioner's attorney provided this information.

3. Can we get a copy of the state requirements? (Ezra Sassman)

The petitioner's attorney provided this information.

4. How long does the licensing process take, both state and town? (Ezra Sassman)

This is a three-part question: 1) There is the one-time town licensing of the store per the petition; 2) there is an annual sign off from the town so that the store owner can annually renew their license with the state (unclear of the time involved but the town would not be compensated for this); and 3) the state licensing which the petitioner's attorney provided plenty of information on.

5. How does the policy for renewal work for the town compared to the state? (Ezra Sassman)

The way this ordinance has been written, it is a one-time licensing fee for the town. There is no local renewal process for the town to hold the business owners accountable or collect fees to compensation for staff time.

6. Residents are concerned about the relaxing of the buffer zones that were in the Spring 22 Marijuana initiative. What can the Town Council do to change items in the ordinance they are uncomfortable with? (Ezra Sassman)

Nothing at this time, as it is a citizen petition. If the petition were to pass, the Council could look to put a moratorium in place to address these concerns, shifting staff time from higher priority efforts.

7. The positive aspects of tax revenue from marijuana stores have been mentioned in public meetings. What will be the tax benefits to Bar Harbor? (Ezra Sassman)

There would be no direct tax benefit to the Town of Bar Harbor. The Town of Bar Harbor would only see the one-time process fee of \$250 and the one-time licensing fee of \$1,250.

8. What might be the cost to Bar Harbor for ongoing code enforcement and policing related to this ordinance? (Ezra Sassman)

The language in the ordinance calls out for additional responsibilities of the Code Enforcement Officer. Assessing the workload of the department for this and other demands will likely result in a future budget request by the Town Manager for additional staffing resources.

9. Are the marijuana stores subject to the same zoning requirements as liquor stores? (Louise Lopez)

No and yes? Marijuana and agency liquor stores are regulated by the state but under a broad range of different requirements (for example – under the state’s laws on agency liquor stores, there are limitations on the number of them allowed in a community based on population, for recreational marijuana that can be a decision by the municipality). The State of Maine’s role in these instances represent the ‘who’ and the ‘what’. As for ‘where’ they can be located, the local government can have some more control over this by defining uses, requirements of approval (within state set requirements), and choosing/creating zones in which they can be allowed.

10. What does the BHPD think of the proposed two retail stores opening in our downtown area? (Louise Lopez)

PD works hard to not take a stance in political matters. We believe the townspeople, through their elected officials and processes, choose what programs and services they want, and we do our best to support and deliver what they choose. BHPD has 2 trained drug recognition experts on staff to help support our impaired driving detection and enforcement efforts.

One consideration discussed when the moratorium was processed related to Drug Free Safe Zones. Bar Harbor has several established Drug Free Safe Zones that essentially make the entire downtown a drug free safe zone. We may be able to get a map done to illustrate where the safe zones are. I’m not clear if the current statutes and rules allow a municipality to disallow retail marijuana stores in an established Drug Free Safe Zone or not, if its determined that its allowable the community could consider a condition like that.

11. Marijuana is legal in our state but not the nation. Are we correct to think the state of Maine will act on the towns behalf if there are any legal issues? (Louise Lopez)

Maine has state statutes for marijuana sale and use as well as on office for compliance (<https://www.maine.gov/dafs/ocp/>). I believe there are plans in place to develop enhanced training for Law Enforcement Officers relating to drug detection and criminal justice processes utilizing funds generated by marijuana sales. Any state criminal statutes are prosecuted by our District Attorney, like with other state level criminal offenses.

12. The memo addressed to the Town Council dated 11 August 2022 that the Warrant Committee was provided with mentioned a document that had been underlined and struck through, etc. so much that changes were highlighted in yellow to help with understanding the document. Should the Warrant Committee have been provided the document as part of our review of the recommended changes. Not sure I should ask this as the fifth paragraph in the memo was pretty dense and the memo was probably considered an appropriately superficial explanation! While that is true I would not like for someone to think that because the Warrant Committee was provided the memo we were also provided the document the accompanying document when we were not. (Louise Lopez)

I believe this is in reference to LUO Appendix A amendments which is not part of the Marijuana discussion. Even so, the memo from the Planning Department to the Town Council dated August 11, 2022 can be found on page 41 of the [August 16, 2022](#) Council meeting.

The following pages (42-46) contain the highlighted changes.

Yes, as part of the agenda, we should have included all the documentation related to the agenda items or at least links to the documents. We will be cognizant of this going forward.

Paragraph five just explains that this does not require a public hearing by the Council.

13. What will/could happen if the Licensing Ordinance passes and the LUO amendment doesn't? (Carol Chappell)

It's unclear if the LUO amendment doesn't pass, and the licensing does that the business would just be considered a part of retail (similar situation to the June attempt to pass this?) Or, would there be a licensing ordinance but with nothing to license? Either way, we would ask the Town Council to put a Mortarium in place for any licenses until the LUO could be amended as a way to signal we're working on it and reduce confusion for the public. The Charter and Code process, a Council sponsored LUO amendment will take a year to amend properly.

14. What will/could happen if the LUO amendment passes and the Licensing Ordinance doesn't?
(Carol Chappell)

Staff would ask the Council to put a Mortarium in place for any licenses until a Council supported licensing process/ordinance was approved. Since this would now be a staff directed process for Council to review and consider, we assume it would be a 3-6 month process.

15. Is it 'safe' to vote for a LUO document that is written in such a way that it does not reflect the actual districts in our LUO, nor does it consistently add site plan review to the document? (Carol Chappell)

The fictitious district is inconsequential and should not raise concerns of safety. It is not an issue because one cannot apply for approval or obtain a permit for a use in a district that not exist. If the LUO passed, staff will work to remove the language as it is a clerical error (This can be achieved without going back to the voters, but it will require staff resources).

As for the Site Plan Review process, I had advised the petitioners to require all districts to be part of site plan review process and they agreed for all but one of the districts. At this point, that is a judgement call for members of the Warrant Committee, Planning Board, and ultimately the general public.