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## **M E M O R A N D U M**

**TO:** Windham Town Council

**FROM:** Kristin M. Collins

**DATE:** September 26, 2021

**RE:** **Regulation of Dispensaries**

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Under Windham's current ordinances, dispensaries are not permitted anywhere in the town, nor are they eligible to be licensed. When the Council adopted these ordinances there was no reason to provide for dispensaries because only eight dispensaries were allowed statewide at the time, and none were in Windham. Windham did however have several operating caregiver retail stores, and so the adopted regulations focused on the grandfathering and eventual reduction of caregiver retail stores.

Two important changes have taken place since Windham's ordinances were adopted. First, the statute was changed to (1) remove the cap on the number of dispensaries, and (2) allow a caregiver to have only one retail store. Second, the Office of Marijuana Policy is finalizing a new medical marijuana program rule that distinguishes between how caregiver retail stores and dispensaries may be owned and operated. Under these rules, a caregiver retail store must be operated by a registered caregiver who is a Maine resident. By contrast, dispensaries may be jointly owned and operated by people who are not registered caregivers and who do not need to be Maine residents. The dispensary itself is reviewed and licensed by the Office of Marijuana Policy, but the individual members of the corporation need not be licensed caregivers.

Based on my recollection of the license application files for the existing caregiver retail stores, several of these stores are owned by multiple individuals, and some are owned in part by nonresidents. As such, once the new rule is finally adopted, there will be significant reason for these existing stores to want to be licensed as dispensaries with the state, since they will no longer qualify for licensure as caregiver retail stores. Practically speaking, the effect of the new regulations will probably be that some of the town's licensed caregiver retail stores would have to shut down if they are not able to convert to a dispensary status.

In most ways, dispensaries and caregiver retail stores operate in the same way. They each sell by retail to medical card holders. They have regular open hours, signage, and can sell seeds, plants, seedlings and processed marijuana, as well as conduct manufacturing of marijuana products. The two definitions per state law are as follows:

**“Caregiver retail store”** means a store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

**“Registered dispensary”** means an entity registered under 22 M.R.S. § 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.

22 M.R.S. § 2422. One principal difference between the two categories is that a dispensary may sell to caregivers on a wholesale basis, whereas caregivers cannot sell between each other. The other principal difference is that a caregiver may only cultivate up to 30 mature plants or 500 square feet of plant canopy, 60 immature plants and unlimited seedlings, whereas a dispensary is not subject to these caps.

If the Council wants to provide flexibility in the ordinance to allow existing caregiver retail stores affected by the proposed change to remain in business by converting to dispensaries, my suggestion would be to adopt amendments to the Land Use Ordinance that would define “dispensary” and allow them in the same zones as caregiver retail stores, and allow an existing nonconforming caregiver retail store to convert to a dispensary without losing its nonconforming status. The Council would also want to adopt amendments to the Licensing Ordinance to provide for conversion to and licensing of dispensaries. That Ordinance would make clear that the existing cap on four licenses for caregiver retail stores will now apply to the total number of retail stores *and* dispensaries. All other provisions regarding transfer and reduction of the number of licenses over time would similarly need to apply to both types of stores.

I would be happy to work with staff to bring draft amendments to the next Council meeting, should that be of interest.

KMC: