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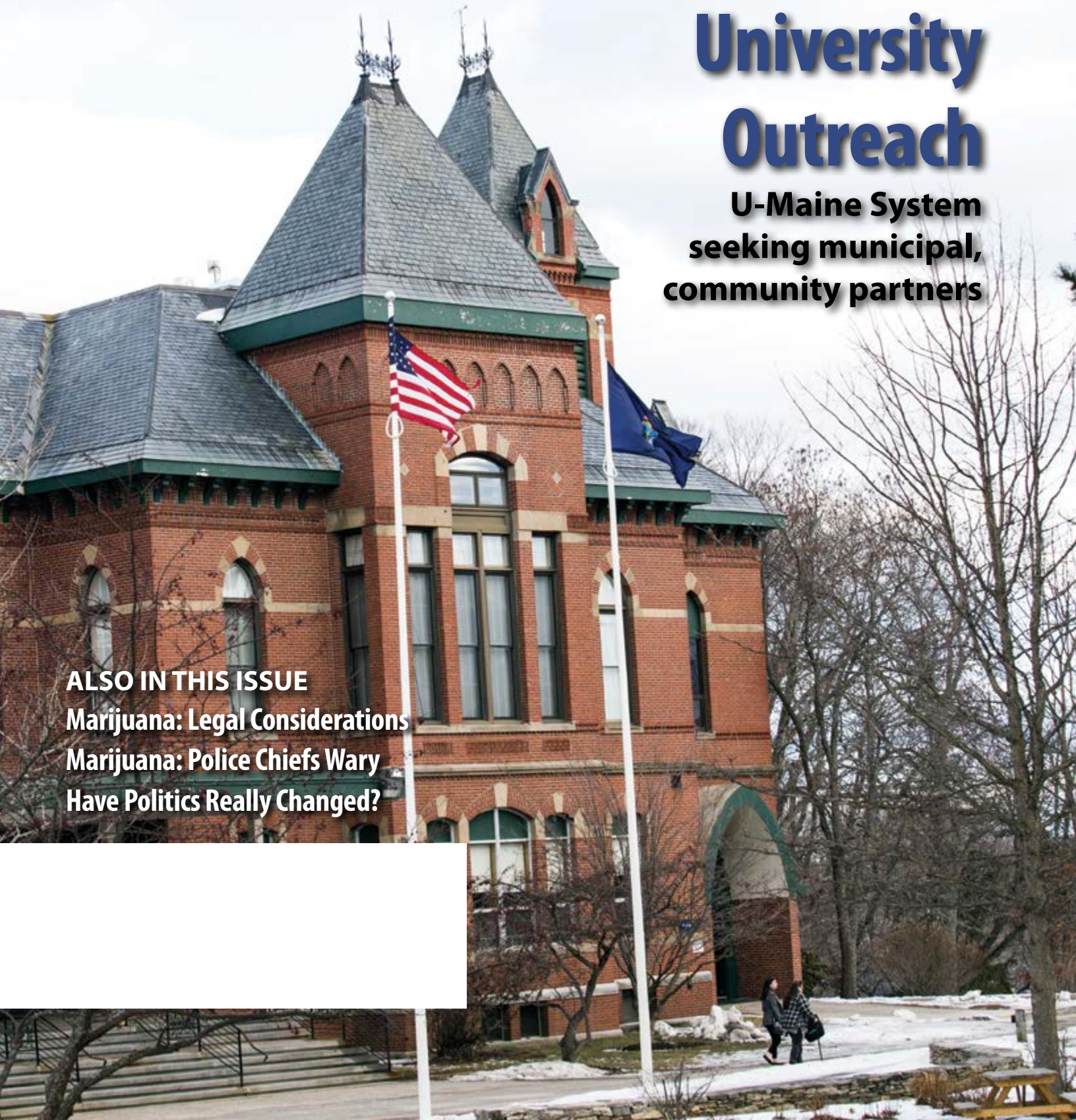
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# Marijuana legalization in Maine: Key issues for municipalities

*Towns and cities are urged to confront myriad issues surrounding legalized marijuana now, even as the Legislature modifies our new law.*

**By Ted Kelleher, Attorney, Drummond Woodsum**

**O**n Nov. 8, 2016, Maine voters passed, by the narrowest of margins, Maine Question 1, which enacted the Maine Marijuana Legalization Act (the “Legalization Act”). Broadly speaking, the Legalization Act legalizes the possession and use of marijuana in a non-public place by persons over 21 years of age, and creates a framework for a regulated commercial marijuana industry in Maine, within which marijuana would be cultivated, processed and sold at retail stores to consumers. Additionally, the Legalization Act provides municipalities with a strong element of local control over the commercial aspects of this industry, which will lead to a host of decision points municipalities will face in the coming months and years.

This article will summarize key aspects of the Legalization Act, and discuss the kinds of issues that Maine municipalities will confront in connection with marijuana legalization. One word of caution: There are a variety of efforts to amend the Legalization Act pending in the Maine Legislature, as interest groups and legislators attempt to deal with ambiguities and perceived deficiencies in the Legalization Act as passed by the voters.

For example, as the sponsors of Question 1 now concede, there were technical drafting errors in the act that arguably would have allowed minors to possess and use marijuana without legal sanction. The Legislature is likely to fix these drafting issues early in the



current legislative session. This article will discuss the Legalization Act as passed by the voters, but it's important to recognize that efforts to amend the act are ongoing at the time this article went to press, and such amendments might lead to different conclusions than the ones drawn here.

## The Legalization Act

The Legalization Act legalizes the possession and use of marijuana in a non-public place by persons over 21 years of age. It will also allow people over 21 to grow up to six marijuana plants for personal use. While someone growing marijuana may give it away to other people over 21, they may not sell it. These provisions of the Legalization Act became effective on Jan. 30, 2017.

The Legalization Act sets out a framework for the creation of a commercial marijuana marketplace in Maine. The act designates the Department of Agriculture, Conservation and Forestry as the regulatory body overseeing the industry in Maine. According to industry lobbyists and policymakers, it appears likely that the act will be amended to make the primary regulator of the retail mari-

juana industry the Bureau of Alcoholic Beverages and Lottery Operations (“BABLO”). BABLO has extensive experience regulating an industry with many of the same features of the marijuana industry.

Whoever the regulator is, that agency will be required to promulgate an extensive set of regulations that governs essentially all aspects of the marijuana industry: licensure standards and procedures, packaging, labeling, grow standards, security, testing procedures and requirements and many others. Most of these are major, substantive regulations that will require legislative approval before becoming effective.

The Legalization Act creates five categories of licensure for the Maine marijuana marketplace: cultivators, processor/manufacturers, retail sales, testing labs and social clubs.

Cultivation licenses allow license holders to grow marijuana for sale at wholesale to manufacturers and retailers. Licenses will be granted in “blocks” of 100 square feet of cultivation “canopy.” Canopy is the marijuana industry’s term for the amount of square footage dedicated to growing marijuana plants. Cultivation licenses are the only class of license with any kind of limit on a statewide basis. This is done through a cap on statewide canopy size; the act imposes an 800,000 square foot cap on marijuana canopy statewide. Cultivation licenses will be given out in two “tiers”: a tier of smaller licenses for cultivation sites of less than 3,000 square feet; and, a tier of licenses for larger grows between 3,000 square feet and up to a maximum of 30,000 square feet. A minimum of 40 percent of licenses must be smaller tier licenses.

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Manufacture licenses allow licensees to purchase marijuana at wholesale and process it into other products, such as edible products infused with marijuana and marijuana oils and extracts. Manufacturers themselves can sell at wholesale to retailers. Retailers may buy products from licensed cultivators and manufacturers and sell them at retail to consumers over 21 years of age.

Testing lab licenses allow license holders to test marijuana for purity and potency, and the act and related regulations will mandate some level of testing of marijuana and marijuana products in Maine.

One of the most controversial aspects of the Legalization Act is the “social club” category of license. These are facilities that would allow on-premises sale and consumption of marijuana products. Only Alaska has authorized the creation of social clubs, and at the time this article went to press, no licenses had been granted in Alaska for those kinds of facilities. It is hard to analyze the problems created by social clubs at this time.

There are a few other provisions of the act that merit short discussion. The

act imposes a tax rate on marijuana sales of 10 percent. This is significantly lower than the tax rate on marijuana sales imposed by other states. There appears to be consensus in the Legislature to raise this tax rate. Additionally, while the act imposes application and license fees for state license applicants, those fees are quite low compared to other states.

Finally, as discussed in the next section, the Legalization Act provides for extensive local control of the marijuana

industry. Unfortunately, it provides little structure or guidance for how municipalities should exercise that control, and contains some confusing and inconsistent time frames.

### Local control of the industry

The Legalization Act contains provisions that create a strong element of municipal control in the commercial marijuana system contemplated by the act. In broad terms, these local powers are grouped in three categories.



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ries. First, the act conveys the power to prohibit commercial marijuana activities entirely, or in the alternative to prohibit certain classes of licensees or to limit the number of licensees that can operate in a municipality. Second, it acknowledges municipalities' power to zone with respect to commercial marijuana activities. Finally, it provides the power to impose regulations on marijuana licensees over and above those imposed by the state.

*Prohibition or limitation of licensees:* Under the Legalization Act, municipalities may choose to be "dry" with respect to commercial marijuana activities. 7 MRSA §2447(4). This power can be applied to all five license classes, or to any number of them. For instance, a town may choose to permit testing and processing facilities, but prohibit cultivation, retail stores and social clubs.

Towns may also limit the number of licensees in any class that may operate within a town. 7 MRSA §2447(4). For example, a town may allow two

cultivators, one retail store, no social clubs and an unlimited number of testing labs and manufacturers. Municipalities which choose to allow but limit the number of licensees will have two questions to resolve: First, how to set the limits on the number licensees in each category; second, how to choose between competing parties seeking licenses in the event that there are more applicants for a license in a town than the town is willing to allow. This is quite likely to happen in many instances, especially with respect to cultivation licenses and retail sales licenses

Unfortunately, the Legalization Act does not provide any guidance or standards to guide towns when making these decisions. As towns and their advisers contemplate these issues over the coming months, some consensus positions on best practices are likely to emerge, but at the moment there is an absence of a clear set of standards

that towns can use when confronting these issues.

*Zoning:* The Legalization Act affords municipalities broad power to "regulate the location" of licensees by establishing zoning standards relating to marijuana commercial operations. 7 MRSA §2449(1). This provision of the Legalization Act specifically references 30-A M.R.S.A. §§ 4351-4361, which set out the requirements that a municipality must follow when engaging in zoning, such as the requirement of a public hearing and consistency with a municipality's comprehensive plan. That is, a town's adoption of an ordinance regulating the location of retail marijuana establishments must be treated like any other zoning ordinance process.

Considerations at work here will be things like the potential odors produced by cultivation sites and manufacturing businesses, security consid-

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erations (since marijuana businesses are cash intensive), aesthetics considerations, effects on surrounding businesses and so on.

**Local Regulation:** The Legalization Act allows municipalities to impose regulations on marijuana establishments over and above those imposed by the state. 7 MRSA §2449(4). Whether towns will feel a need to do this will depend to some extent on the rigor and robustness of the regulations issued by the state. Since those regulations are many months in the future, it's difficult to say how extensively towns may want to regulate licensees. However, there are some areas to which towns will want to pay attention.

Marijuana cultivation operations use high-intensity lighting, which often requires an electricity service upgrade. Consequently, towns may want to consider employing specialized fire code and life safety code provisions for cultivation sites. Similarly, marijuana manufacturing companies that employ extraction technologies may utilize solvents, such as butane, that are combustible. Again, specialized life and safety code issues may be relevant for these businesses.

The marijuana industry operates on a largely cash basis, so towns may want to consider security requirements, such as requiring exterior lighting, surveillance cameras and alarm systems for licensees, particularly retail stores.

Finally, municipalities will want to ensure that code enforcement officers, fire officials and law enforcement have access to the premises and an appropriate range of business records, to ensure compliance with local regulations.

## Conclusion

Maine's Marijuana Legalization Act incorporates extensive elements of local control. Towns will face several critical decision points as they contend with the emergence of the recreational marijuana industry. Unfortunately, the Legalization Act itself provides little in the way of guidance to towns about how to make these decisions. As municipal officials and their advisers ponder these questions, standard practices will begin to emerge, but it's important for towns to begin engaging in the process of confronting these issues now. ■

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