

ITEM

17-073

To hold a Public Hearing to consider and act on adopting a moratorium ordinance regarding retail marijuana establishments and retail marijuana social clubs, effective April 24, 2017 for a period not to exceed 180 days

**TOWN OF CUMBERLAND MORATORIUM
ORDINANCE ON RETAIL MARIJUANA ESTABLISHMENTS
AND RETAIL MARIJUANA SOCIAL CLUBS**

WHEREAS, a ballot initiative to legalize, regulate and tax marijuana for non-medicinal purposes known as the “Marijuana Legalization Act” and codified in the Maine Revised Statutes in Chapter 417 of Title 7 (the “Act”), was the subject of a State-wide referendum election on November 8, 2016; and

WHEREAS, a Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs was enacted by the Town Council on November 14, 2016, effective October 24, 2016 for a period of one hundred and eighty (180) days from the date of applicability of the moratorium; and

WHEREAS, the results of the ballot initiative were certified by the Secretary of State and subsequently proclaimed by the Governor on December 31, 2016, and the Act became law effective on January 30, 2017; and

WHEREAS, applicable as of January 30, 2017, the Maine Legislature amended the Act to reflect that its operative provisions do not become effective until February 1, 2018; and

WHEREAS, pursuant to the Act, the State of Maine licensing authority must adopt rules for the regulation and control of the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products and for the enforcement of the Act on or before October 30, 2017; and

WHEREAS, the State of Maine licensing authority that is to draft the rules and regulations around the retail marijuana industry has not done so yet; and

WHEREAS, the Act authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act, as well as the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities within its jurisdiction; and

WHEREAS, the Town, under its home rule authority, its police power generally, and under 30-A M.R.S.A., chapter 187, subchapter 3 (“land use regulation”), as provided by the Act, or as otherwise provided by current law, has the authority to impose reasonable restrictions, conditions, and limitations on such retail marijuana establishments and social clubs; and

WHEREAS, the unregulated location and operation of retail marijuana establishments and retail marijuana social clubs within the Town of Cumberland raises legitimate and substantial questions about the impact of such establishments and social clubs on the Town, including questions of the compatibility of retail marijuana establishments and social clubs with existing uses and development in residential, commercial and industrial zoning districts; the possible connection of retail marijuana establishments and social clubs with medical marijuana cultivation facilities and dispensaries; the potential adverse health and safety effects of retail marijuana establishments and social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town’s streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs; and

WHEREAS, the Town Council, with the professional advice and assistance of the Town of Cumberland Police Department, the Planning Board and the Planning Department, are currently studying the Town’s current Code of Ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana social clubs; and

WHEREAS, the Town’s current Code of Ordinances provides for regulations of medical marijuana cultivation facilities and dispensaries pursuant to the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§ 2421 – 2430-B), but does not include any regulations related to retail marijuana establishments or retail marijuana social clubs under the Act; and

WHEREAS, the Town Council has expressed a desire to prohibit the operation of retail marijuana establishments and retail marijuana social clubs within the Town of Cumberland pursuant to the Act; and

WHEREAS, to the extent the Town determines that retail marijuana establishments and/or retail marijuana social clubs may be permitted in the Town, the

State of Maine's regulatory framework for the recreational marijuana industry is still unknown; and

WHEREAS, the Town's current Code of Ordinances and other applicable local laws are not adequate to prevent serious public harm that could be caused by the development of retail marijuana establishments and social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the Town needs time to review the Act and to review its own Code of Ordinances to determine the implications of future proposed retail marijuana establishments and/or social clubs to develop reasonable ordinances governing the location and operations of such establishments and social clubs to address the concerns cited above; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana social clubs within the Town has serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and social clubs and other uses authorized by the Act, being located in the Town; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs;

WHEREAS, the Moratorium Ordinance on Retail Marijuana Establishments expired on April 22, 2017 and the problems giving rise to the need for the moratorium still exist and reasonable progress is being made to alleviate the problems;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Cumberland, that the following Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the Town.

In addition, the Town Council does hereby declare a moratorium on the location, operation or licensing of any new medical marijuana cultivation facilities or dispensaries

and the expansion of any existing medical marijuana cultivation facilities or dispensaries, as permitted under Section 315-59.1 of the Town's Zoning Ordinance, within the Town.

This Moratorium Ordinance shall take effect, once enacted by the Town Council, in accordance with the provisions of the Town Charter, but shall be applicable as of April 24, 2017, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the Town Council, for the express purpose of drafting an amendment or amendments to the Town's current Code of Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and social clubs with existing and permitted uses in residential, commercial and industrial zoning districts; the correlation of retail marijuana establishments and social clubs with medical marijuana cultivation facilities and dispensaries; the potential adverse health and safety effects of retail marijuana establishments and social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined by the "Marijuana Legalization Act" codified at 7 M.R.S.A. §§ 2442 (36), (39), (40), that may be proposed to be located within the Town on or after the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any proposed retail marijuana establishments or social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Town official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a retail marijuana establishment or social club within the Town on or after the applicability date of this Ordinance without complying with whatever ordinance

amendment or amendments the Town Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a new medical marijuana cultivation facility or dispensary or expand any existing medical marijuana cultivation facility or dispensary that may be currently permitted under Section 315-59.1 of the Town's Zoning Ordinance, within the Town on or after the applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a business that engages in retail or wholesale sales of products or merchandise for which the primary purpose is to prepare, cultivate, distribute or ingest marijuana or is of the kind that would be offered for sale or used at a retail marijuana social club or retail marijuana establishment, including, but not limited to, pipes, pipe screens, bongs, vaporizers, scales, rolling papers, hydroponic equipment and lights; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other permits or licenses related to a retail marijuana establishment, retail marijuana social club, a new medical marijuana cultivation facility or dispensary, or the expansion of an existing medical marijuana cultivation facility or dispensary; and

BE IT FURTHER ORDAINED, that those provisions of the Town's current Code of Ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if retail marijuana establishments, retail marijuana social clubs, new medical marijuana cultivation facilities or dispensaries, or expansions of existing medical marijuana cultivation facilities or dispensaries are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Applicability Date: April 24, 2017