

**TOWN OF CAPE ELIZABETH ORDINANCE ENACTING
A MORATORIUM ON RETAIL MARIJUANA BUSINESSES**

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 as Chapter 417 of Title 7 (hereinafter “the Act”) – was the subject of a state-wide referendum election on November 8, 2016;

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 ostensibly became law effective on January 30, 2017;

WHEREAS, effective on January 30, 2017, the Maine Legislature has amended the Act to reflect that its operative provisions – including the provisions pertaining to municipal regulation – do not become effective until February 1, 2018;

WHEREAS, the Act would authorize municipalities to regulate the number, location, and operation of various types of retail marijuana businesses (identified in more detail in the Act and hereinafter referred to as “retail marijuana businesses”) or to prohibit the operation of such businesses within their jurisdictions;

WHEREAS, the Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (codified at 22 M.R.S. §§ 2421 to 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities;

WHEREAS, the possible location of retail marijuana businesses in the Town of Cape Elizabeth raises legitimate and substantial questions and concerns about the impact of such facilities on the Town, including the compatibility of retail marijuana businesses within existing residential neighborhoods and near the Town’s public buildings and other facilities (including schools and playgrounds), the possibility of illicit sales of marijuana, the security of retail marijuana businesses, and associated criminal activity that may target retail marijuana businesses;

WHEREAS, the Town of Cape Elizabeth does not currently have in place any regulations pertaining to retail marijuana businesses and has not had an opportunity to assess whether it intends to allow the operation of such businesses within its jurisdiction and, if so, what regulations would be appropriate;

WHEREAS, the Town of Cape Elizabeth’s existing ordinances do not provide an adequate mechanism to regulate retail marijuana businesses and are inadequate to prevent the potential for serious public harm from the establishment and operation of retail marijuana businesses;

WHEREAS, the Town of Cape Elizabeth needs a reasonable amount of time to study the land use implications of retail marijuana businesses, decide whether it wishes to permit the operation

of such businesses within its jurisdiction, and, if so, to develop reasonable regulations governing their number, location, and operation;

WHEREAS, during the period of this Moratorium, the Town of Cape Elizabeth will work on developing appropriate land use regulations concerning retail marijuana businesses, to the extent the Town intends to permit the operation of such businesses within its jurisdiction;

WHEREAS, based on the considerations outlined above, the lack of any extant Town of Cape Elizabeth regulation of retail marijuana businesses constitutes, in the judgment of the Council, an emergency affecting life, health, property, or the public peace; and,

WHEREAS, the Town of Cape Elizabeth, on December 12, 2016, passed an Emergency Ordinance with regard to the location, establishment, operation, or licensing of retail marijuana businesses that expires by its terms on March 12, 2017;

NOW THEREFORE, pursuant to the authority granted by 30-A M.R.S. § 4356, the Town of Cape Elizabeth, acting through the Town Council, hereby enacts the following Ordinance establishing a moratorium on the location, establishment, operation, or licensing of retail marijuana businesses for a period of one hundred and eighty (180) days from the date the Ordinance is enacted:

Section 1 Definitions

As used in this Ordinance, the following terms have the following meanings:

“Marijuana”: as defined by the Act, codified at 7 M.R.S. § 2442(22) (“Marijuana”), as amended by Public Law 2017, chapter 1.

“Retail Marijuana Businesses”: 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 Act, codified at 7 M.R.S. § 2442(35, 36, 38, 39, 40 and 41), as amended by Public Law 2017, chapter 1.

Section 2 Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, section 1 of the Maine Constitution, the provisions of 30-A M.R.S. § 2101, et seq. (Home Rule), 30-A M.R.S. § 3001, et seq. (Ordinance Power), and 30-A M.R.S. § 4356 (Moratoria) § 1B (Necessity) and § 2 (Definite Term).

Section 3 Applicability

This moratorium shall apply to Retail Marijuana Businesses, as defined above, which are proposed to be located within the Town of Cape Elizabeth on or after the effective date of the Ordinance.

Section 4 Marijuana-related Facilities Prohibited During Moratorium

No person, business, or organization shall locate, establish, or operate a Retail Marijuana Businesses within the Town of Cape Elizabeth during the period this Ordinance is in effect.

Section 5 Applications not to be Accepted or Acted Upon

During the period this Ordinance is in effect, no officer, board, body, agency, agent, official, or employee of the Town of Cape Elizabeth shall accept, process, or act upon any application for any approval related to the location, establishment, or operation of a Retail Marijuana Businesses.

Section 6 Conflicts with Other Ordinances

The provisions of this Ordinance supersede any conflicting provisions of the Town of Cape Elizabeth's Ordinances.

Section 7 Enforcement, Violation and Penalties

This Ordinance shall be enforced by the Town of Cape Elizabeth Code Enforcement Officer. Any person who violates any of the provisions of this Ordinance be subject to civil penalties and other remedies as provided in 30-A M.R.S. § 4452.

Section 8 Severability

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

Section 9 Effective Date

This Ordinance takes effect on March 12, 2017 and shall apply, to the maximum extent permitted by law but subject to the severance clause above, to all proceedings, applications and petitions not pending as of the effective date. This Ordinance shall expire at the end of the 180th day after its effective date, unless earlier extended, repealed or modified by the Town of Cape Elizabeth.