



GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET



Meeting Date	01/23/2019	Department	Code Enforcement
Agenda Item	3.e Public Hearing and Second Read of a Continuation of a Medical Marijuana Retail Storefront Moratorium (retroactive to 1/5/2019)		
Est. Cost	n/a		
Background Information	<p>This will be the Public Hearing and Second Read of a Continuation of Medical Marijuana Retail Storefront Moratorium (retroactive to 1/5/2019).</p>		
	<p>This moratorium was effective immediately (emergency) retroactive to July 9, 2018 on September 5, 2018. As the State of Maine is still finalizing details, and new proposed rules for the City of Gardiner will be forthcoming, the City Council is being asked to extend this moratorium for another 180 days.</p>		
	<p>The original moratorium is attached with noted dates for the proposed extension.</p>		
Requested Action	n/a		
City Manager and/or Finance Review	n/a		
Council Vote/ Action Taken			
Departmental Follow-Up	City must update ordinance and website on effective date (30 days after approval). City Clerk must publish ad per Charter Article II Section 9.		

City Clerk Use Only	1 st Reading	01/09/2019	Advertised	12/24/2018	EFFECTIVE DATE 01/05/2019	
	2 nd Reading	01/23/2019	Advertised	02/07/2019		
			w/in 15 Days			
	Final to Dept		Updated Book		Online	

**CITY OF GARDINER
MORATORIUM ORDINANCE REGARDING
MEDICAL MARIJUANA RETAIL STORES**

WHEREAS, the City Council of the City of Gardiner, Maine (the “City”) makes the following findings:

- (1) The Maine Medical Use of Marijuana Act (the “Act”), codified in the Maine Revised Statutes in Title 22, Chapter 558-C, authorizes registered caregivers to possess, cultivate, and transfer medical marijuana to qualifying patients, as those terms are defined by 22 M.R.S. § 2422; and
- (2) On July 9, 2018, the Maine Legislature enacted P.L. 2017, c. 452 (LD 1539), *An Act to Amend Maine’s Medical Marijuana Law*, which includes authorization for registered caregivers to operate retail stores for the sale of harvested medical marijuana to qualifying patients subject to this Act’s provisions, which expressly recognize and contemplate municipal authorization and regulation of medical marijuana retail stores; and
- (3) P.L. 2017, c. 452 (LD 1539) will not be effective until 90 days after the adjournment of the Second Special Session of the 128th Maine Legislature, which has not yet adjourned but is anticipated; and
- (4) On July 9, 2018 the Maine Legislature enacted as emergency legislation P.L. 2017, c. 447 (LD 238), *An Act to Amend the Maine Use of Medical Marijuana Act*, which also expressly recognizes and contemplates municipal home rule authority to regulate registered caregiver operations; and
- (5) The unregulated location and operation of medical marijuana retail stores within the City raises legitimate and substantial questions about the impact of such activity on the City, including questions as to compatibility with existing land uses and developments in the City; the sufficiency of municipal infrastructure to accommodate such activity; and the possibility of unlawful sale of medical marijuana and medical marijuana products; and
- (6) As a result of the foregoing issues, the location and operation of medical marijuana retail stores within the City have potentially serious implications for the health, safety, and welfare of the City and its residents; and
- (7) The City currently has no regulations governing medical marijuana retail stores, and the current Land Use Ordinance and other applicable Codes and Ordinances are insufficient to prevent serious public harm that could result from the unregulated development of medical marijuana retail stores; and
- (8) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of the unregulated location and operation of medical marijuana retail stores in the City; and

- (9) The City Council, with the advice and assistance of the Gardiner Police Department, Planning Board, Code Enforcement Officer, Ordinance Review Committee, Planner, and any other City Staff as appropriate and necessary shall study P.L. 2017, c. 452 and P.L. 2017, c. 447, the City's current Land Use Ordinance and other applicable Code and Ordinances to determine the implications of the medical marijuana retail stores to address the concerns cited above; and
- (10) Ordinances do not generally become effective until thirty (30) days after approval, unless at least five (5) members of the City Council pass emergency orders; and
- (11) In the judgment of the City Council, the foregoing constitutes an emergency within the meaning of 30-A M.R.S. § 4356 and Article II(7) of the City Charter requiring immediate legislative action.

NOW THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the City as follows:

Section 1. Moratorium. The City does hereby enact and declare a moratorium on the location, operation, permitting, approval, or licensing of any and all medical marijuana retail stores within the City. No person or organization shall develop or operate a medical marijuana retail store within the City on or after the effective date of this Ordinance. During the time this Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the City shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, any other type of land use approval or permit and/or any other permits or licenses related to a medical marijuana retail store.

Section 2. Definitions. For purposes of this ordinance, the term "medical marijuana retail store" means an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, and sales directly to the consumer of the product, including any activities connected with the sale of goods to the ultimate consumer for direct use and consumption and not for trade, that is used by a registered caregiver to offer harvested medical marijuana for sale to qualifying patients.

Section 3. Pending Proceedings. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, this Ordinance shall govern any proposed medical marijuana retail store for which an application for a building permit, certificate of occupancy, site plan, or any other required approval has been submitted to the City, whether or not a pending proceeding, prior to the enactment of this Ordinance.

Section 4. Conflicts/Savings Clause. Any provisions of the City's ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 5. Violations. If any medical marijuana retail store is established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the City shall be entitled to all rights and remedies available to it pursuant to 30-A

M.R.S. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Section 6. Effective Date and Applicability Date. This Ordinance shall become effective immediately upon its adoption and apply retroactively to any and all medical marijuana retail stores that may be proposed to be located within the City on or after the July 9, 2018, the applicability date of this Ordinance. This Ordinance shall remain in full force and effect for a period of 180 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the City, whichever shall first occur.

Adopted 05SEP2018, Effective 09JUL2018, Expires 05JAN2019
Adopted 26JAN2019, Effective 05JAN2019, Expires 04JUL2019