



GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET



Meeting Date	04/10/2019	Department	City Council
Agenda Item	4.2 Consideration for a continuation of The City of Gardiner's Second Moratorium Ordinance on Adult Use Marijuana Establishments		
Est. Cost	n/a		
Background Information	<p>On December 21, 2016, the City of Gardiner originally adopted a Moratorium Ordinance on Retail Marijuana Establishments and Social Clubs. This moratorium had been extended on multiple occasions. The circumstances surrounding marijuana regulations gave rise to the need for the 'adult use' moratorium to still exist. (Social Clubs have now been excluded from the state law, so this category is not applicable.)</p>		
	<p>On November 28, 2018, the City Council adopted a moratorium on the location, establishment, operation, or licensing of any adult use marijuana establishments, including cultivation facilities, product manufacturing facilities, testing facilities, or marijuana stores within the city.</p>		
	<p>This ordinance was applicable as of October 29, 2018 and remains in effect for one hundred and eighty (180) days (expiring April 27, 2019). As the State of Maine is still in the development phase of adult use establishments, it is recommended that the City Council consider extending this moratorium for another 180 days. This will allow the Land Use Code and other applicable ordinances to be reviewed.</p>		
Requested Action	'I move to extend The City of Gardiner's Second Moratorium Ordinance on Adult Use Marijuana Establishments for another 180 days: expiring on October 24, 2019.'		
City Manager and/or Finance Review	The City Manager recommends the above action.		
Council Vote/ Action Taken			
Departmental Follow-Up			

City Clerk Use Only	1 st Reading _____	Advertised 03/19/2019 _____	EFFECTIVE DATE 04/27/2019
	2 nd Reading _____	Advertised 04/25/2019 _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____ Online _____	

**CITY OF GARDINER SECOND MORATORIUM
ORDINANCE ON ADULT USE MARIJUANA ESTABLISHMENTS**

WHEREAS, a ballot initiative to legalize, regulate and tax marijuana for non-medicinal purposes known as the “Marijuana Legalization Act” proposed to be codified in the Maine Revised Statutes in Title 7, chapter 417, was approved by voters at a Statewide referendum election on November 8, 2016; and

WHEREAS, the above Act authorized 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 proposed 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, on December 21, 2016, the City of Gardiner adopted a Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs, applicable to any pending proceedings as of December 7, 2016; and

WHEREAS, the City of Gardiner has on multiple occasions extended the above moratorium because the circumstances giving rise to the need for the moratorium still exists and the City has made reasonable progress to alleviate the problems giving rise to the need for the moratorium; and

WHEREAS, since adoption of the above moratorium, the Maine Legislature has adopted legislation addressing retail marijuana as set forth in P.L. 2018 ch. 409 “An Act to Implement a Regulatory Structure for Adult Use Marijuana” that, among other things, prohibits marijuana social clubs; and

WHEREAS, P.L. 2018 ch. 409 further expressly states, among other things, that municipalities may regulate adult use marijuana establishments including, but not limited to, land use regulations, general authorization or limitation of marijuana establishments, and licensing requirements; and

WHEREAS, notwithstanding adoption of P.L. 2018 ch. 409, the circumstances still exist in the City of Gardiner that warrant a moratorium on retail (now “adult use”) marijuana establishments, as described in the original moratorium which are incorporated herein; and

WHEREAS, due to P.L. 2018 ch. 409, the City of Gardiner wishes to enact a moratorium on adult use marijuana establishments entitled “Second Moratorium Ordinance on Adult Use Marijuana Establishments”.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Gardiner that a new Chapter entitled, “Second Moratorium Ordinance on Adult Use Marijuana Establishments” (“Second Moratorium Ordinance”) be, and hereby is, enacted, and, in furtherance thereof, the City Council does hereby declare a moratorium on the location, establishment, operation, or licensing of any adult use marijuana establishments, as marijuana

establishments are defined under P.L. 2018 ch. 409, including cultivation facilities, products manufacturing facilities, testing facilities, or marijuana stores, within the City.

This Second Moratorium Ordinance shall take effect, once enacted by the City Council, in accordance with the provisions of the City Charter, but shall be applicable as of October 29, 2018, as expressly provided below. This Second Moratorium Ordinance 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 City Council, for the express purpose of drafting an amendment or amendments to the City's current Land Use Code and other applicable Code and Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of adult use marijuana establishments with existing and permitted uses in residential, commercial, industrial zoning districts and other zoning districts; the correlation of adult use marijuana establishments with medical marijuana cultivation facilities and dispensaries; the potential adverse health and safety effects of adult use marijuana establishments 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 City in responding to the same; and the adequacy of the City's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of adult use marijuana establishments; and

BE IT FURTHER ENACTED, that this Second Moratorium Ordinance shall apply to all adult use marijuana establishments, including marijuana stores, marijuana cultivation facilities, marijuana products manufacturing facilities and marijuana testing facilities, as those terms are defined in P.L. 2018 ch. 409, that may be proposed to be located within the City on or after the October 29, 2018 applicability date of this Second Moratorium Ordinance; and

BE IT FURTHER ENACTED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Second Moratorium Ordinance, when enacted, shall retroactively apply to October 29, 2018 and also retroactively apply to any and all actions and proceedings pending as of October 29, 2018 regarding adult use marijuana establishments, including marijuana stores, marijuana cultivation facilities, marijuana products manufacturing facilities and marijuana testing facilities as defined above for which an application for a building permit, Certificate of Occupancy, site plan or any other approval is required by the Code Enforcement Officer, Planning Board or other City officials or boards; and

BE IT FURTHER ENACTED, that no person or organization shall develop, establish, operate, or otherwise conduct land use activities concerning an adult use marijuana establishment, including marijuana stores, marijuana cultivation facilities, marijuana products manufacturing facilities and marijuana testing facilities as defined above, within the City on or after the October 29, 2018 applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the City Council may enact as a result of this Second Moratorium Ordinance; and

BE IT FURTHER ENACTED, that during the time this Second Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency

{EP - 02921248 - v1 }

of the City 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 an adult use marijuana establishment as defined herein; and

BE IT FURTHER ENACTED, that those provisions of the City's current Land Use Code and other applicable Codes and Ordinances that are inconsistent or conflicting with the provisions of this Second Moratorium 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 ENACTED, that it shall be a violation of this Second Moratorium Ordinance for any person to develop, establish, operate, or otherwise conduct land use activities concerning adult use marijuana establishments and/or any other facilities or activities covered by this Second Moratorium Ordinance, that each day of any continuing violation shall constitute a separate violation of this Second Moratorium Ordinance, and that the City 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 ENACTED that this Second Moratorium Ordinance shall not apply to existing medical marijuana dispensaries or medical marijuana cultivation facilities as defined under the Maine Medical Use of Marijuana Act (22 M.R.S.A. 2421-2430-B) in the City of Gardiner or the expansion thereof; and

BE IT FURTHER ENACTED, that should any section or provision of this Second Moratorium 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: October 29, 2018



New Maine Marijuana Statutes Cheat Sheet

Adult Use Marijuana Act – P.L. 2017 c. 409 (LD 1719)

- Legalizes the use and commercial sale of marijuana for recreational purposes
- Enacted May 2, 2018 as **emergency legislation**
- Completely replaces the citizen-initiated Marijuana Legalization Act
- Establishes state licensing process for adult use marijuana establishments (no social clubs)
- **Default is prohibition** – municipalities must vote to “opt in” to operation of adult use marijuana establishments within the municipality
- State licensing conditioned on municipal approval
- State licensing of adult use marijuana establishments will not begin until at least summer 2019
- Municipalities may regulate adult use marijuana establishments locally
- Municipalities may regulate home cultivation, but may not generally prohibit, zone or license the activity

Medical Marijuana Law Amendments – P.L. 2017 c. 447 (LD 238)

- Amendment to the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)
- Enacted July 9, 2018, as **emergency legislation**
- Carve-out of some provisions of LD 1539
- Establishes state registration requirements for medical marijuana products manufacturing
- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers

Medical Marijuana Law Amendments – P.L. 2017 c. 452 (LD 1539)

- Complete overhaul of the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421-2430-B)
- Enacted July 9, 2018, **but not yet in effect** - effective date is December 13, 2018
- Authorizes registered caregivers to operate medical marijuana retail stores
- Allows six additional registered dispensaries, eliminates cap on dispensaries after 2021
- Establishes state registration requirements for medical marijuana products manufacturing
- Local code enforcement officers can obtain caregiver registration information from State
- Expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, testing facilities and manufacturing facilities, except municipalities cannot prohibit or limit number of caregivers
- **Default will be prohibition** – After December 13, 2018, municipalities must vote to “opt-in” to operation of registered caregiver retail stores, registered dispensaries, testing facilities, and manufacturing facilities
- Medical marijuana establishments already in operation with municipal approval as of December 13, 2018, will be grandfathered