

MORATORIUM ORDINANCE REGARDING RETAIL MEDICAL MARIJUANA CAREGIVER STOREFRONTS

TOWN OF KENNEBUNKPORT, MAINE

The Town of Kennebunkport, Maine, hereby adopts a Moratorium Ordinance as follows:

WHEREAS, the legislative body of the Town of Kennebunkport, Maine (the “Town”) makes the following findings:

- (1) The Maine Medical Use of Marijuana Act, codified at 22 M.R.S. §§ 2421 to 2430-B, (the “Medical Act”) authorizes the possession, cultivation, and furnishing of medical marijuana to qualifying patients by caregivers, as those terms are defined in 22 M.R.S. § 2422; and
- (2) Section 2423-A(14) of the Medical Act authorizes municipalities pursuant to home rule authority to regulate, among other uses, registered primary caregivers; and
- (3) Section 401 of the Marijuana Legalization Act, codified at 28-B M.R.S. ch. 1 (the “Adult Use Act”) authorizes municipalities pursuant to home rule authority to regulate adult use marijuana establishments, including cultivation facilities, products manufacturing facilities, testing facilities, and marijuana stores, as those terms are defined in 28-B M.R.S. § 102; and
- (4) Neither the Medical Act nor the Adult Use Act nor any state agency rules promulgated thereunder expressly authorize the operation of retail stores by registered caregivers for the purpose of selling medical marijuana to qualifying patients; and
- (5) In July of 2018, the Maine Legislature enacted LD 1539, “An Act to Amend Maine’s Medical Marijuana Law,” which, upon its effective date, will amend the Medical Act to expressly authorize the operation of such retail stores so long as the legislative body of the municipality votes to adopt a new ordinance, amend an existing ordinance, or approve a warrant article allowing this type of marijuana establishment; and
- (6) No specific regulations governing such retail stores currently exist under the Town’s Ordinances; and
- (7) The Town’s Ordinances are insufficient to prevent serious public harm that could result from the unregulated siting and operation of such retail stores within the Town; and

- (8) The unregulated siting and operation of such retail stores within the Town raises legitimate and substantial questions about the impact of such retail stores and related uses and activities on the Town, including questions as to compatibility of such retail stores with existing and permitted land uses in the Town; potential adverse health and safety effects on the community; the adequacy of the Town's infrastructure to accommodate such retail stores; and the possibility of unlawful sale of medical marijuana and medical marijuana products; and
- (9) As a result of the foregoing issues, the siting and operation of such retail stores and related uses and activities within the Town has potentially serious implications for the health, safety, and welfare of the Town and its residents and visitors; and
- (10) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of such retail stores and related uses and activities located and operated in the Town; and
- (11) The Town needs time to understand the disposition of LD 1539 and any State department rules promulgated pursuant to the Medical Act or the Adult Use Act in relation to its own Ordinances and to evaluate the effects of such retail stores and related uses and activities in order to prepare reasonable ordinance provisions governing the siting and operation of such retail stores and related uses and activities; and
- (12) The Town, with professional assistance from the Planning Board, Code Enforcement Officer, and other departments, intends to study the Town's Ordinances to determine the land use and other regulatory implications of such retail stores and related uses and activities, and to consider what locations, approvals, and performance standards, if any, might be appropriate to avoid or minimize impacts on the health, safety, and welfare of the Town and its residents and visitors; and
- (13) It is anticipated that such a study, review, and development of recommended ordinance amendments will take at least 180 days from the date the Town enacts this Moratorium Ordinance; and
- (14) In the judgment of the legislative body of the Town, the foregoing findings constitute a necessity within the meaning of 30-A M.R.S. § 4356.

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

1. Moratorium. The Town does hereby declare a moratorium on the siting, operation, or licensing of any Retail Medical Marijuana Caregiver Storefront within the Town.

For purposes of this Ordinance, "Retail Medical Marijuana Caregiver Storefront" is defined as a retail store, a retail business, or an establishment that resembles a retail storefront in terms of signage, hours of operation, and accessibility to patrons (including without limitation a commercial use or retail business, as those terms

are defined in the Town's Land Use Ordinance) that furnishes or sells marijuana or marijuana products by licensed caregivers to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.

No person or organization shall locate or operate a Retail Medical Marijuana Caregiver Storefront within the Town on or after the Date of Applicability of this Ordinance. During the time this 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, conditional use permit, any other type of land use approval or permit, or any other permit or license related to a Retail Medical Marijuana Caregiver Storefront.

2. Date of Applicability. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, and regardless of the Effective Date, this Ordinance shall govern and apply to all proceedings and applications for a Retail Medical Marijuana Caregiver Storefront that were or are pending before the Code Enforcement Officer or the Planning Board on or any time after September 7, 2018 and, to the extent allowed by 30-A M.R.S. § 3007(6), shall nullify the issuance of any final approval of the Code Enforcement Officer or the Planning Board made on or at any time after September 7, 2018 that authorizes the operation of a Retail Medical Marijuana Caregiver Storefront (the "Date of Applicability").
3. Effective Date. This Ordinance shall become effective immediately upon its adoption (the "Effective Date") and shall remain in full force and effect for a period of 180 days, unless extended, repealed, or modified in accordance with applicable law.
4. Conflicts; Savings Clause. Any provisions of the Town's ordinances that are inconsistent with or conflict 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 a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.
5. Violations. If any Retail Medical Marijuana Caregiver Storefront is located or operated in the Town, 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 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.

Dated September 13, 2018.