



# MMA Marijuana Update

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# Citizen-Initiated Marijuana Legalization Act

- 7 M.R.S.A. §§ 2442 - 2454
- Approved by voters November 2016
- Amendments by legislature in 2017
  - LD 88, LD 243, LD 1641
- Personal use/possession currently legal
- Effective date for retail February 1, 2018
- Municipalities must “opt-out” to prohibit
- confusing and will need amendment if it remains law

# Citizen-Initiated Marijuana Legalization Act: Personal Recreational Use

- Legal now for persons 21 years or older
- Up to 2.5 oz marijuana, 5 g concentrate, 6 flowering/12 immature plants
- Transfer or furnish without remunerations
- Use in private residence or private property with express permission
- Use in a vehicle prohibited
- Possession of retail edibles starting Feb. 1, 2018

# Citizen-Initiated Marijuana Legalization Act: State Licensing Process

- Department of Administrative Financial Services
- Five License types
  - Retail marijuana establishments
    - Retail store
    - Cultivation facility
    - Products manufacturing facility
    - Testing facility
  - Retail marijuana social clubs

# Citizen-Initiated Marijuana Legalization Act: State Licensing Process, cont'd

- State license “conditioned on municipal approval”
- Priority to caregivers and dispensaries
- 50% state license fee to municipality
- Sales tax – 10% at point of final sale – retail marijuana stores and retail marijuana social clubs
  - Lowest compared to other states
  - No revenue sharing with municipalities

# Citizen-Initiated Marijuana Legalization Act: Municipal Authority

- “Opt out” system—with a state license, retail establishments can locate/operate unless prohibited by municipality
- Be proactive if you want to regulate or prohibit

# Citizen-Initiated Marijuana Legalization Act: Municipal Authority

- Limit location and operation of some or all types of establishments or social clubs
- Limit number of retail marijuana \*stores\*
- Prohibit retail marijuana establishments or social clubs entirely
- Local regulation through zoning/land use ordinance and/or local licensing requirements “at least as restrictive as” state restrictions
- Regulation through generally applicable land use restrictions and licensing

## Concerns

- State license process only allows 14 days for municipality to notify DAFS of approval or denial
  - No time to complete local permitting or licensing, if any
  - No time for public hearing (requires 10 day notice)
  - License expires and cannot be renewed if no local approval within 1 year
  - State deadline to issue license is 90 days



## Concerns

- Retail “gifting”
- Confusion between licensing and land use
- Reference to 30-A M.R.S.A. Ch.187 – does regulation require zoning?
- Exemption for retail stores operating within a cultivation facility (§ 2448(4)(A)(2))
- What about plantations?
- Annual license renewal requires approval by legislative body

## Recommended Options

- Adopt a moratorium ordinance
  - Include retail recreational marijuana activity
- Adopt a prohibition ordinance
- Review local land use/zoning to become familiar with generally applicable regulations
- Begin working with local attorney on zoning or land use ordinance amendments

# Moratorium Ordinance

- Title 30-A M.R.S.A. § 4356
- Definite term of no more than 180 days – may be extended for additional 180 day periods
- Initially adopted by vote of legislative body
- If open town meeting, no public hearing required for enactment
- Where legislative body is town meeting, may be extended by vote of Select Board after notice and hearing
- Does not apply to medical marijuana

# Moratorium Ordinance

7/25/17

**[NOTE: This ordinance is provided as a basic sample only. Municipalities should NOT use this or any sample unless it has been reviewed by local legal counsel to ensure that all provisions are consistent with local circumstances and any applicable charter, ordinance or regulations.]**

MUNICIPALITY OF \_\_\_\_\_

## MORATORIUM ORDINANCE REGARDING RETAIL RECREATIONAL MARIJUANA

WHEREAS, the legislative body of the Municipality of \_\_\_\_\_ (the "Municipality") makes the following findings:

- (1) The Marijuana Legalization Act (the "Act") was approved by Maine voters in November 2016 and has been codified in the Maine Revised Statutes in Title 7, chapter 417; and
- (2) The unregulated location and operation of "Retail Marijuana Establishments" and "Retail Marijuana Social Clubs," as defined in 7 M.R.S.A. chapter 417, as well as other types of retail recreational marijuana activity within the Municipality raises legitimate and substantial questions about the impact of such activity, establishments and social clubs on the Municipality, including questions as to compatibility with existing land uses and developments in the municipality; potential adverse health and safety effects on the community; the possibility of illicit sale and use of marijuana and marijuana products to and by minors; and the possibility of unlawful use of marijuana and marijuana products; and
- (3) As a result of the foregoing issues, retail recreational marijuana activity, and the location and operation of Retail Marijuana Establishments and Retail Marijuana Social Clubs within the Municipality, have potentially serious implications for the health, safety and welfare of the Municipality and its residents; and
- (4) The Municipality currently has no regulations governing retail recreational marijuana activities, Retail Marijuana Establishments and Retail Marijuana Social Clubs, and existing ordinances are insufficient to prevent serious public harm that could result from the unregulated development of Retail Marijuana Establishments and Retail Marijuana Social Clubs and from other types of retail recreational marijuana activity; and
- (5) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of Retail Marijuana Establishments and Retail Marijuana Social Clubs locating in the Municipality and/or other types of retail recreational marijuana activity in the Municipality; and
- (6) The state's regulatory structure is unknown at this time as the Maine Legislature and state agencies have not developed final legislation or regulations governing Retail Marijuana Establishments and Retail Marijuana Social Clubs, and legislation amending the Act is pending; and
- (7) In the judgment of the legislative body of the Municipality, the foregoing findings and conclusions constitute an emergency within the meaning of 30-A M.R.S.A. § 4356 requiring immediate legislative action.

NOW THEREFORE, pursuant to 30-A MRSA § 4356, be it ordained by the Municipality as follows:

**Section 1. Moratorium.** The Municipality does hereby declare a moratorium on all retail recreational marijuana activity, and the location, operation or licensing of any and all "Retail Marijuana Social Clubs" and "Retail Marijuana Establishments," as defined in 7 M.R.S.A. chapter 417, including but not limited to, retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities within the municipality.

No person or organization shall engage in any retail recreational marijuana activity or develop or operate a Retail Marijuana Establishment or Retail Marijuana Social Club within the Municipality on or after the effective date of this Ordinance. During the time this moratorium ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Municipality 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 Retail Marijuana Establishment, Retail Marijuana Social Club or retail recreational marijuana activities.

**Section 2. Pending Proceedings.** Notwithstanding 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance shall govern any proposed retail recreational marijuana activity and Retail Marijuana Establishments or Retail Marijuana Social Clubs for which an application for a building permit, certificate of occupancy, site plan or any other required approval has been submitted to the Municipality, whether or not a pending proceeding, prior to the enactment of this Ordinance.

**Section 3. Medical Marijuana Act.** This Ordinance will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. §§ 2421 – 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications.

**Section 4. Conflicts/Savings Clause.** Any provisions of the Municipality'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 retail recreational marijuana activity is conducted, or Retail Marijuana Establishment or Retail Marijuana Social Club is established, in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the Municipality shall be entitled to all rights available to it pursuant to 30-A M.R.S.A. § 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.** This Ordinance shall become effective immediately upon its adoption and 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 Municipality, whichever shall first occur.

# Prohibition Ordinance

- Prohibits all marijuana establishments and social clubs
- Adopted by vote of legislative body
- Effective until repealed
- No need for further regulation
- Cannot prohibit possession or cultivation for personal use
- Does not apply to medical marijuana

# Prohibition Ordinance

Rev. 12/1/16

*[Note: This sample ordinance prohibits all types of retail marijuana establishments as well as retail marijuana social clubs. However, the scope of the ordinance may be limited to only one or some but not all of these uses. This is a sample ordinance only. In order to thoroughly address concerns within a given municipality, MMA Legal Services advises that local counsel be consulted before enacting any ordinance.]*

**Ordinance Prohibiting Retail Marijuana Establishments and Retail Marijuana Social Clubs  
in the Municipality of \_\_\_\_\_**

**Section 1. Authority.**

This ordinance is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. c. 417; and Municipal Home Rule Authority, Me. Const., art. VIII, pt. 2; and 30-A M.R.S.A. § 3001.

**Section 2. Definitions.**

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

**Section 3. Prohibition on Retail Marijuana Establishments and Retail Marijuana Social Clubs.**

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in this municipality.

No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442.

Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

**Section 4. Effective date; duration.**

This ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

**Section 5. Penalties.**

This ordinance shall be enforced by the municipal officers or their designee. Violations of this ordinance shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.