

Statewide Marijuana Moratorium Expires

The statewide moratorium on retail recreational marijuana establishments enacted by the Legislature a year ago (see PL 2017, c. 1, eff. Jan. 27, 2017) expired on Feb. 1, 2018. For various political reasons, the Legislature failed to extend it.

This does not mean, however, that the required state licenses for these establishments will be available anytime soon – state application forms and state agency rules will not be ready for at least several months or more.

Nor does it mean that would-be operators can now get their required local approval for the state license. (The law establishes a two-step state licensing process, with state and then local approval required.) Applicants are required to obtain their state license *first*, before obtaining local approval (see 7 M.R.S.A. § 2447).

In the meantime, though, municipalities may begin getting applications for related local land use approvals. This is because the law, while explicitly requiring a state license and local approval of that license in order to operate, does not clearly bar operators from trying to get a head start on related local land use approvals. This uncertainty makes municipalities susceptible to legal challenges – by applicants if these approvals are denied and by those who oppose retail recreational marijuana if they are granted.

This legal exposure – and the expiration of the statewide moratorium – are why we urge municipalities that may be concerned about retail recreational marijuana to enact a moratorium or a prohibition on these establishments until the air clears (so to speak) with respect to state law. A moratorium or prohibition will provide a sound legal basis for refusing a land use application or approval relating to retail recreational marijuana.

For a sample moratorium ordinance and a sample ordinance prohibiting retail marijuana establishments, see our “Information Packet” on recreational marijuana resources, available free to members at www.memun.org. The packet also has information on how to enact and extend a moratorium. (By *R.P.F.*)