



TOWN OF FALMOUTH

ORDINANCE NO 147-2017

An Ordinance Amending the Code of Ordinances Regarding a Moratorium on Retail Marijuana Establishments and Social Clubs

Be it ordained by the Town Council of the Town of Falmouth, Maine in Town Council assembled, that the Falmouth Code of Ordinances be amended to read as follows:

Article II-8-15 MORATORIUM ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS

WHEREAS, the “Marijuana Legalization Act,” has become law in Maine, codified in the Maine Revised Statutes in Title 7, chapter 417; and

WHEREAS, the Marijuana Legalization Act (hereinafter, “Act”) authorizes municipalities to regulate or prohibit retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities as well as retail marijuana social clubs, as those terms are defined in the Act; and

WHEREAS, the proposed Act 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; and

WHEREAS, the Town’s current ordinances do not include any specific regulations related to retail marijuana establishments or retail marijuana social clubs under the proposed new Act; and

WHEREAS, the unregulated location and operation of retail marijuana establishments retail marijuana social clubs within the Town of Falmouth raises legitimate and substantial questions about the impact of such establishments and social clubs on the Town, including

questions about the compatibility of retail marijuana establishments and retail marijuana social clubs with existing uses and development in residential, mixed-use and commercial zoning districts; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana social clubs 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 Act; potential 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 Town's police and fire departments; and the adequacy of the Town's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana social clubs; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana social clubs within the Town may have potentially serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town needs time to review the Act, any state regulations promulgated to implement the Act, and its own ordinances to determine the implications of future proposed retail marijuana establishments and/or retail marijuana social clubs to develop reasonable ordinances governing the location and operations of such establishments and stores and social clubs to address the concerns cited above; and

WHEREAS, the Town's current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and retail marijuana social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the Town Council, the administration and any other Council designated committee or board shall study the Town's current ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana social clubs and consider what locations, if any, local licensing requirements and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments retail marijuana social clubs and other uses authorized by the Act, being located in the Town; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town enacts this Moratorium Ordinance on retail marijuana establishments and retail marijuana social clubs;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Falmouth, that the following Moratorium Ordinance on retail marijuana establishments and retail marijuana social clubs be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments within the Town.

This Moratorium Ordinance shall take effect immediately upon approval by the Town Council, but shall be applicable as of April, 2017 as expressly provided below. The moratorium 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 Town Council pursuant to 30-A M.R.S. § 4356(3), for the express purpose of drafting an amendment or amendments to the Town's current ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and retail marijuana social clubs with existing and permitted uses in residential, mixed-use and commercial zoning districts; the correlation of retail marijuana establishments and retail marijuana social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the Act; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana social clubs 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 Town in responding to the same; and the adequacy of the Town's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana social clubs in the Town.

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana social clubs and retail marijuana establishments as those terms are defined by the Act, codified at 7 M.R.S.A. §§ 2442 (36), (38), (39), (40) (41), that may be proposed to be located within the Town on or after the April 12, 2017 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any proposed 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 not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other town official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a retail marijuana establishment or retail marijuana social club within the Town on or after the effective date of this Ordinance without complying with whatever ordinance amendment or amendments the Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium 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 or any other type of land use approval or permit and/or any other permits or licenses related to a retail marijuana establishment or retail marijuana social club; and

BE IT FURTHER ORDAINED, that those provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this 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 ORDAINED, that if retail marijuana establishments or retail marijuana social clubs are established 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 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 ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision; and

BE IT FURTHER ORDAINED that this Moratorium Ordinance may be extended by the Town of Falmouth Town Council, after notice and hearing, for additional 180-day periods in accordance with 30-A M.R.S.A. § 4356(3).

Given under our hands this ____ day of _____, 2017.

A majority of the Town Council of the Town of Falmouth, Maine.

Attest: A true copy of an ordinance entitled, "Article II-8-15, Moratorium on Retail Marijuana Establishments and Retail Marijuana Social Clubs," as certified to me by the Town Council of the Town of Falmouth, Maine, on the ___ day of _____, 2017.

Ellen Planer, Town Clerk
Town of Falmouth, Maine