



**TOWN OF FALMOUTH
ORDINANCE NO 43-2019**

**ORDINANCE ADOPTING A MORATORIUM REGARDING
MEDICAL MARIJUANA CAREGIVER RETAIL STORES**

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:

**ART.II-8-17 MORATORIUM REGARDING MEDICAL MARIJUANA CAREGIVER
RETAIL STORES**

Sec. 8-410. Findings

WHEREAS, the Town Council of the Town of Falmouth, 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 “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. On July 9, 2018, the Maine Legislature enacted PL 2017, c. 452 (LD 1539), *An Act to Amend Maine’s Medical Marijuana Law*, which includes express authorization for registered caregivers to operate retail stores for the sale of harvested medical marijuana to qualifying patients; and
3. On July 9, 2018 the Maine Legislature enacted as emergency legislation PL 2017, c. 447 (LD 239), *An Act to Amend the Maine Medical Marijuana Law*, which expressly recognizes municipal home rule authority to regulate registered caregiver operations; and
4. No specific regulations governing such retail stores exist under the Town’s ordinances; and
5. 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
6. 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

7. As a result of the foregoing issues, the siting and operation of such retail stores and related uses and activities within the Town have potentially serious implications for the health, safety, and welfare of the Town and its residents and visitors; and
8. 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
9. The Town needs a reasonable period of time to review the potential adverse impacts that may be caused by the unregulated siting and operation of medical marijuana caregiver retail stores and related uses and activities and to consider amendments to its ordinances to mitigate any such impacts on the Town; and
10. In the judgment of the Town, the foregoing findings constitute an emergency within the meaning of 30-A M.R.S. § 4356 requiring immediate legislative action.

NOW, THEREFORE, pursuant to 30-A M.R.S. § 4356, be it ordained by the Town Council of the Town of Falmouth, Maine, in Town Council assembled, as follows:

Sec. 8-411. Moratorium

The Town does hereby declare a moratorium on the siting, permitting, operation, or licensing of any medical marijuana caregiver retail stores within the Town. For the purposes of this Ordinance, "medical marijuana caregiver retail store" is defined as a retail store, a retail business, or an establishment that resembles a retail store in terms of signage, hours of operation, accessibility to patrons, and sales directly to the consumer of the product where a licensed caregiver furnishes or sells marijuana or marijuana products to qualifying patients.

No person or organization shall locate or operate a medical marijuana caregiver retail store within the Town on or after the effective date of this Ordinance. During the time this Ordinance is in effect, no officer, official, board, agency, or employee 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 medical marijuana caregiver retail store.

Sec. 8-412. 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, applications, and proposals related to a medical marijuana caregiver retail store that were or are pending before any officer, official, board, agency, or employee of the Town on or any time after August 3, 2018 and, to the extent allowed by 30-A M.R.S. § 3007(6), shall nullify the issuance of any final approval of any officer, official, board, agency, or employee of the Town made on or at any time after August 3, 2018 authorizing any medical marijuana caregiver retail store (the "Date of Applicability").

Sec. 8-413. Effective Date; Duration

In accordance with Section 213 of the Town Charter, this Ordinance shall take effect immediately upon its adoption (the “Effective Date”) and shall remain in full force and effect for a period of 180 days from the Date of Applicability or until this Ordinance is extended, repealed, or modified, whichever shall first occur.

Sec. 8-414. Conflicts/Savings Clause

Any provisions of the Town’s ordinances that are inconsistent with or conflict with the provisions of this Article II-8-17 are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Article II-8-17 is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Sec. 8-415. Violations

If any medical marijuana caregiver retail store is established in violation of this Article II-8-17, each day of any continuing violation shall constitute a separate violation of this Article II-8-17 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 reasonable attorney fees and costs in prosecuting any such violations.

Given under our hands this ___ day of _____, 2018.

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

Attest: A true copy of an ordinance entitled, “Town of Falmouth, Maine, Ordinance Adopting a Moratorium Regarding Medical Marijuana Caregiver Retail Stores,” as certified to me by the town councilors of the Town of Falmouth, Maine, on the ___ day of _____, 2018.

Ellen Planer, Town Clerk
Town of Falmouth, Maine