

**South Portland City Council**  
***Position Paper of the City Manager***

***Subject:***

ORDINANCE #18-16/17 - Amending Chapter 27, "Zoning Ordinance", regarding extension of moratorium on the land use permitting and development of retail marijuana establishments and marijuana social clubs. First reading. Passage requires majority vote.

***Position:***

On December 19, 2016, the City Council enacted Ordinance #8-16/17 establishing a moratorium on retail marijuana establishments and retail marijuana social clubs. The moratorium is in effect until May 20, 2017.

The moratorium was enacted in response to a ballot initiative to legalize, regulate, and tax marijuana for non-medicinal purposes known as the "Marijuana Legalization Act," to be codified in the Maine Revised Statutes in Title 7, Chapter 417 (the "Act"), which was adopted by the voters at a State-wide referendum election on November 8, 2016. Pursuant to the Act, the State of Maine as licensing authority must adopt rules for the proper regulation and control of the cultivation, manufacture, distribution, sale, and testing of retail marijuana and retail marijuana products and for the enforcement of the Act on or before November 30, 2017. The Maine Legislature's Joint Select Committee on Marijuana Legalization Implementation is currently working to help guide the State agencies that will craft the rules and regulations around the recreational marijuana industry. The State of Maine licensing authority that is to draft the rules and regulations around the recreational marijuana industry has not done so yet. It is anticipated that these rules and regulations will address requirements for business entity and individual background checks, business operating plans, canopy size, cultivation plan, electricity and water use, premises security, product transportation, inspections, and minor access control. There may also be some additional rules and regulations developed related to medical marijuana caregiver cultivation.

State statute specifically allows the City Council to extend the moratorium so long as it finds that the problem giving rise to the need for the moratorium still exists and reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. See 30-A M.R.S.A. § 4356(2).

Following a workshop with the City Council on March 8, 2017, staff has worked on proposed Zoning Ordinance amendments related to the proposed land use regulation of retail marijuana establishments. The Planning Board conducted a workshop on the draft Zoning Ordinance amendments on March 28, 2017, but the City Council has not yet

reviewed those proposed amendments at a workshop meeting. On April 24, 2017, the City Council scheduled a workshop on the topic of marijuana for May 22, 2017. Staff believes the extension would allow the City Council, the Planning Board, and staff time to further consider what locations, performance standards, and/or conditions of approval, if any, might be appropriate for such retail marijuana establishments. In the absence of a moratorium on retail marijuana establishments, the Code Enforcement Officer and Planning Board will have to receive, evaluate, and act on land use applications that are filed under existing zoning regulations. As these regulations do not address this new use, it can be both difficult and frustrating for applicants and local officials without a land use moratorium in place.

Because the proposed moratorium ordinance constitutes an amendment of the Zoning Ordinance (Chapter 27), at least 5 affirmative votes are required for the City Council to adopt the moratorium ordinance after second reading. See Sec. 27-115 of the Zoning Ordinance. (Passage of first reading only requires four affirmative votes.)

The moratorium extension would be effective for 180 days from May 21, 2017 (*i.e.*, until November 16, 2017) but it could be terminated early if appropriate.

***Requested Action:***

Council passage of first reading of the ordinance and set May 15, 2017 as the date for the City Council's public hearing and final action on the ordinance.



City Manager



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH  
Mayor

SCOTT T. MORELLI  
City Manager

EMILY F. SCULLY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

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CLAUDE V. Z. MORGAN

District Two  
PATRICIA A. SMITH

District Three  
EBEN C. ROSE

District Four  
LINDA C. COHEN

District Five  
BRAD FOX

At Large  
MAXINE R. BEECHER

At Large  
SUSAN J. HENDERSON

**IN CITY COUNCIL  
ORDINANCE #18-16/17**

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

**CHAPTER 27  
ZONING**

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**ARTICLE XVI. MORATORIUM ON RETAIL MARIJUANA  
ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS**

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**Sec. 27-1603. Moratorium extended.**

WHEREAS, a ballot initiative to legalize, regulate, and tax marijuana for non-medicinal purposes – known as the "Marijuana Legalization Act" and codified in the Maine Revised Statutes as Chapter 417 of Title 7 ("the Act") – was the subject of a state-wide referendum election on November 8, 2016;

WHEREAS, the results of the ballot initiative were certified by the Secretary of State and subsequently proclaimed by the Governor on December 31, 2016, and the Act became law effective on January 30, 2017;

WHEREAS, applicable as of January 30, 2017, the Maine Legislature amended the Act to reflect that its operative provisions – including the provisions pertaining to State licensing and municipal regulation – do not become effective until February 1, 2018;

WHEREAS, pursuant to the Act, the State of Maine licensing authority must adopt rules for the proper regulation and control of the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products and for the enforcement of the Act on or before November 30, 2017;

WHEREAS, a moratorium on retail marijuana establishments and retail marijuana social clubs was enacted by the City Council on December 19, 2016 for a period of one hundred and eighty (180) days from the date of applicability of the moratorium, i.e., until May 20, 2017;

WHEREAS, the Maine Legislature's Joint Select Committee on Marijuana Legalization Implementation is working to help guide the state agencies that will craft the rules and regulations around the recreational marijuana industry;

WHEREAS, the State of Maine licensing authority that is to draft the rules and regulations around the recreational marijuana industry has not done so yet;

WHEREAS, the City needs to know the State of Maine regulatory framework for the recreational marijuana industry before it can determine the land use and other regulatory implications of retail marijuana establishments and social clubs and consider what locations, if any, and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, the problems giving rise to the need for the moratorium still exist and reasonable progress is being made to alleviate the problems;

NOW, THEREFORE, the City of South Portland, acting through its City Council, does hereby ordain that all provisions of Secs. 27-1601 and 27-1602 are hereby extended for an additional one hundred and eighty (180) days from May 21, 2017 to November 16, 2017.

Fiscal Note: Less than \$1,000

Date: May 1, 2017