

**TOWN OF CAPE ELIZABETH EMERGENCY ORDINANCE ENACTING
A MORATORIUM ON RETAIL MARIJUANA BUSINESSES**

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

WHEREAS, the Act would authorize municipalities to regulate the number, location, and operation of various types of retail marijuana businesses (identified in more detail in the Act and hereinafter referred to as “retail marijuana businesses”) or to prohibit the operation of such businesses within their jurisdictions;

WHEREAS, the Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (codified at 22 M.R.S. §§ 2421 to 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities;

WHEREAS, the possible location of retail marijuana businesses in the Town of Cape Elizabeth raises legitimate and substantial questions and concerns about the impact of such facilities on the Town, including the compatibility of retail marijuana businesses within existing residential neighborhoods and near the Town’s public buildings and other facilities (including schools and playgrounds), the possibility of illicit sales of marijuana, the security of retail marijuana businesses, and associated criminal activity that may target retail marijuana businesses;

WHEREAS, the Town of Cape Elizabeth does not currently have in place any regulations pertaining to retail marijuana businesses and has not had an opportunity to assess whether it intends to allow the operation of such businesses within its jurisdiction and, if so, what regulations would be appropriate;

WHEREAS, the Town of Cape Elizabeth’s existing ordinances do not provide an adequate mechanism to regulate retail marijuana businesses and are inadequate to prevent the potential for serious public harm from the establishment and operation of retail marijuana businesses;

WHEREAS, the Town of Cape Elizabeth needs a reasonable amount of time to study the land use implications of retail marijuana businesses, decide whether it wishes to permit the operation of such businesses within its jurisdiction, and, if so, to develop reasonable regulations governing their number, location, and operation;

WHEREAS, during the period of this Moratorium, the Town of Cape Elizabeth will work on developing appropriate land use regulations concerning retail marijuana businesses, to the extent the Town intends to permit the operation of such businesses within its jurisdiction; and,

Adopted 12/12/2016

WHEREAS, based on the considerations outlined above, the lack of any extant Town of Cape Elizabeth regulation of retail marijuana businesses constitutes, in the judgment of the Council, an emergency affecting life, health, property, or the public peace;

NOW THEREFORE, pursuant to the authority granted by 30-A M.R.S. § 4356 and the authority granted to the Council under Town Charter Section 12, the Town of Cape Elizabeth, acting through a vote of at least 5 members of the Town Council, hereby enacts the following Emergency Ordinance establishing a moratorium on the location, establishment, operation, or licensing of retail marijuana businesses for a period of ninety (90) days from the date the Ordinance is enacted or until a non-emergency ordinance is enacted based on the procedures set forth in Section 11 of the Town Charter that expressly repeals the Emergency Ordinance:

Section 1 Definitions

As used in this Ordinance, the following terms have the following meanings:

“Marijuana”: as defined in State Administrative Rules (10-144 CMR Chapter 122), § 1.17,
“Marijuana.”

“Retail Marijuana Businesses”: retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, as those terms are defined by the Act to be codified at 7 M.R.S. § 2442(35, 36, 38, 39, 40 and 41).

Section 2 Authority

This Emergency Ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, section 1 of the Maine Constitution, the provisions of 30-A M.R.S. § 2101, et seq. (Home Rule), 30-A M.R.S § 3001, et seq. (Ordinance Power), 30-A M.R.S § 4356 (Moratoria) § 1B (Necessity) and § 2 (Definite Term), and Cape Elizabeth Town Charter Section 12.

Section 3 Applicability

This moratorium shall apply to Retail Marijuana Businesses, as defined above, which are proposed to be located within the Town of Cape Elizabeth on or after the effective date of the Emergency Ordinance.

Section 4 Marijuana-related Facilities Prohibited During Moratorium

No person, business, or organization shall locate, establish, or operate a Retail Marijuana Businesses within the Town of Cape Elizabeth during the period this Emergency Ordinance is in effect.

Adopted 12/12/2016

Section 5 Applications not to be Accepted or Acted Upon

During the period this Emergency Ordinance is in effect, no officer, board, body, agency, agent, official, or employee of the Town of Cape Elizabeth shall accept, process, or act upon any application for any approval related to the location, establishment, or operation of a Retail Marijuana Businesses.

Section 6 Conflicts with Other Ordinances

The provisions of this Emergency Ordinance supersede any conflicting provisions of the Town of Cape Elizabeth's Ordinances.

Section 7 Enforcement, Violation and Penalties

This Emergency Ordinance shall be enforced by the Town of Cape Elizabeth Code Enforcement Officer. Any person who violates any of the provisions of this Emergency Ordinance be subject to civil penalties and other remedies as provided in 30-A M.R.S. § 4452.

Section 8 Severability

Should any section or provision of this Emergency Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of the Emergency Ordinance.

Section 9 Effective Date

This Emergency Ordinance takes effect immediately upon adoption and shall apply, to the maximum extent permitted by law but subject to the severance clause above, to all proceedings, applications and petitions not pending as of the enactment date. This Ordinance shall expire at the end of the 90th day after its adoption, unless earlier extended, repealed or modified by the Town of Cape Elizabeth.