

TOWN OF CAMDEN, MAINE
(Draft of November 30, 2016)

ORDINANCE, Enacting a Moratorium on Retail Marijuana Establishments and Retail Marijuana Social Clubs, upon the following findings and conclusions of law:

WHEREAS, the Marijuana Legalization Act (the “Act”), was passed by Referendum Ballot in Maine as voted upon on November 8, 2016 which legalized the recreational use of marijuana;

WHEREAS, the Act allows a municipality to regulate or prohibit the operation of retail marijuana establishments (stores, cultivation facilities, product manufacturing facilities, and testing facilities) and retail marijuana social clubs (businesses selling marijuana for consumption on the premises) within the municipality’s jurisdiction;

WHEREAS, there are concerns about the public health and safety of marijuana as well as concerns about the impact that this law will have in the Town of Camden, and being cognizant, the State of Maine Department of Agriculture, Conservation and Forestry has yet to adopt the required Rules for such retail establishment;

WHEREAS, the Town needs time to understand the outcomes of this legislation and rulemaking before determining how, and where within the zoning districts previously adopted, retail marijuana can be safely and best compatibly permitted in the Town of Camden;

WHEREAS, the local legislative process provides an opportunity for increased discussion and awareness of the consequences of retail recreational marijuana, and discussion of the impacts on the community;

WHEREAS, retail marijuana establishments and social clubs require public health, safety, and welfare consideration in that there is no readily available measure for public safety personnel to employ to determine a person’s ability to safely operate motorized vehicles after recreational consumption at social clubs;

WHEREAS, the increased use of marijuana, including through its cultivation, sale, and use in social clubs in the Town of Camden create the potential additional burden on the Town of Camden’s public facilities, especially the Town’s public health and public safety resources;

WHEREAS, the Town of Camden needs to consider the impact of such establishments regarding the proximity to schools, churches, residential neighborhoods and other permitted uses;

WHEREAS, a temporary prohibition on retail marijuana establishments and social clubs is therefore appropriate in order to determine what regulation, if any, is necessary at the local level within the Town of Camden;

NOW THEREFORE, be it Ordained by the Voters of the Town of Camden as follows, that:

A moratorium on the use and issuance of permits for retail marijuana establishments and retail marijuana social clubs is hereby enacted and approved as follows:

§1. Necessity.

Municipalities are authorized by 30-A M.R.S. § 4356(1) to enact moratoria:

(a) to prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or

(b) because the application of existing comprehensive plans, land use Ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographical area.

In accordance with 30-A M.R.S. § 4356(1), and consistent with the findings referenced above, the Town of Camden Select Board finds that a moratorium on retail marijuana and retail marijuana social clubs is necessary and warranted.

§2. Moratorium.

Retail marijuana establishments and retail marijuana social clubs, as defined in the Marijuana Legalization Act, are hereby prohibited in the Town of Camden. Furthermore, no building or use permit, certificate of occupancy, or other permit shall be issued for any such use pending the Moratorium enactment period.

§3. Term.

This moratorium shall continue for one hundred eighty (180) days from the date of passage. It may be extended for an additional one hundred eighty (180) days in accordance with 30-A M.R.S. § 4356(2) upon a finding by the Town of Camden Select Board that the problem giving rise to this moratorium continues to exist and reasonable progress is being made to alleviate the problem giving rise to the need for this moratorium.

§4. Applicability.

Notwithstanding the provisions of 1 M.R.S. § 302, this moratorium shall apply retroactively to all actions, inquiries and proceedings introduced or pending as of November 8, 2016 or thereafter.

7. Retail marijuana social club license. The following provisions govern retail marijuana social clubs.

A. A licensed retail marijuana social club may sell only retail marijuana, retail marijuana products, marijuana accessories, nonconsumable products such as apparel, marijuana-related products and edible products that do not contain marijuana, including but not limited to sodas, candies and baked goods, but may not sell or give away cigarettes or alcohol. All retail marijuana and retail marijuana products purchased at a licensed retail marijuana social club must be consumed or disposed of on and may not be taken off the licensed premises.

B. A retail marijuana social club shall track all of its retail marijuana and retail marijuana products from the point at which they are transferred from a retail marijuana cultivation facility, retail marijuana store or retail marijuana products manufacturing facility to the point of sale.

C. The following provisions govern procedures for preventing sales to persons under 21 years of age.

(1) Prior to allowing a person onto the retail marijuana social club's licensed premises, an employee of the retail marijuana social club shall verify that the person has a valid government-issued identification card, or other acceptable identification, showing that the person is 21 years of age or older. If a person under 21 years of age presents a fraudulent proof of age, any action relying on the fraudulent proof of age may not be grounds for the revocation or suspension of any license issued under this chapter.

(2) The state licensing authority shall adopt rules, which are routine technical rules as described in Title 5, chapter 375, subchapter 2-A, to prohibit certain signs, marketing and advertising, including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching persons under 21 years of age.

These rules may include:

(a) A prohibition on health or physical benefit claims in advertising, merchandising and packaging;

(b) A prohibition on unsolicited advertising on the Internet;

(c) A prohibition on opt-in marketing that does not permit an easy and permanent opt-out feature; and

(d) A prohibition on marketing directed toward location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

(3) Notwithstanding any other provision of state law, sales of retail marijuana and retail marijuana products are not exempt from state sales tax.

(4) Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment. A law enforcement agency may run a Maine criminal history

record check of a licensee, or employee of a licensee, during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

D. Retail marijuana and retail marijuana products may be transported between a licensed retail marijuana social club and other retail marijuana social clubs or retail marijuana testing facilities.

8. Inspection of books and records. Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which must be open at all times during business hours for the inspection and examination by the state licensing authority or its duly authorized representatives. The state licensing authority may require any licensee to furnish such information as it considers necessary for the proper administration of this chapter and may require an audit to be made of the books of account and records on such occasions as it may consider necessary by an auditor to be selected by the state licensing authority. The auditor must have access to all books and records of the licensee, and the cost of the audit must be paid by the licensee.

The licensed premises, including any places of storage, where retail marijuana or retail marijuana products are stored, cultivated, sold, dispensed or tested are subject to inspection by the State or the municipality in which the licensed premises are located and by the investigators of the State or municipality during all business hours and other times of apparent activity for the purpose of inspection or investigation. Access must be granted during business hours for examination of any inventory or books and records required to be kept by a licensee. When any part of the licensed premises consists of a locked area, upon demand to the licensee this area must be made available for inspection, and, upon request by authorized representatives of the State or municipality, the licensee shall open the area for inspection.

Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period comprising the current tax year and the 2 immediately preceding tax years.

9. Product pricing. Nothing in this chapter may be construed as granting to the state licensing authority the power to fix prices for retail marijuana or retail marijuana products.

10. License fees. The state licensing authority shall determine the revenue needed to set up the licensing and enforcement operations of the department and set the fees applicable to the categories as outlined in subsection 1 within the ranges specified in the following schedule:

A. Retail marijuana store license, \$250 to \$2,500, with a \$10 to \$250 nonrefundable application fee;

B. Retail marijuana cultivation facility license, \$10 to \$100 per unit block, with a \$10 to \$250 nonrefundable application fee;

C. Retail marijuana products manufacturing facility license, \$100 to \$1,000, with a \$10 to \$250 nonrefundable application fee;

D. Retail marijuana testing facility license, \$500, with a \$10 to \$250 nonrefundable application fee;

D. A state or local agency may not be required to cultivate or care for any retail marijuana or retail marijuana products belonging to or seized from a licensee. A state or local agency is not authorized to sell marijuana, retail or otherwise.

18. Judicial review. Final agency actions by the state licensing authority are subject to judicial review pursuant to Title 5, section 11001, et seq.

§2449. Local licensing

1. Municipality may regulate retail marijuana establishments and retail marijuana social clubs. A municipality may regulate the location and operation of retail marijuana establishments and retail marijuana social clubs pursuant to Title 30-A, chapter 187, subchapter 3. A municipality may adopt and enforce regulations for retail marijuana establishments and retail marijuana social clubs that are at least as restrictive as the provisions of this chapter and any rule adopted pursuant to this chapter. Nothing in this chapter prohibits the registered voters of a municipality from calling for a vote on any regulations adopted by a municipal legislative body.

2. Municipal approval required. A retail marijuana establishment or retail marijuana social club may not operate until it is licensed by the state licensing authority pursuant to this chapter and approved by the municipality in which it is located. If an application is denied by the municipality, the licensee has 90 days to locate and obtain legal interest in another property in a municipality that approves of the retail marijuana establishment or retail marijuana social club before the license is revoked.

3. Notice and portion of fee must be given to municipality. When the state licensing authority receives an application for original licensing, or renewal of an existing license, for any retail marijuana establishment or retail marijuana social club, the state licensing authority shall, within 7 business days, provide a copy of the application and 50% of the licensing fee to the municipality in which the establishment or club is to be located. The municipality shall determine whether the application complies with the local land use ordinance and any other restrictions on time, place, manner and the number of marijuana businesses within the municipality. The municipality shall inform the state licensing authority whether the application complies with the local land use ordinance and other local restrictions.

4. Municipality may impose licensing requirement. A municipality may impose a separate local licensing requirement as a part of its restrictions on time, place, manner and the number of marijuana businesses. A municipality may decline to impose any local licensing requirements, but a municipality shall notify the state licensing authority that it either approves or denies each application forwarded to it within 14 business days.

5. Public hearing notice. The following provisions govern local public hearings and notice.

A. If a municipality issues local licenses for a retail marijuana establishment or retail marijuana social club, a public hearing on the application may be scheduled. If the municipality schedules such a hearing, it shall post and publish public notice of the hearing not less than 10 days prior to the hearing. The municipality shall give public notice by posting a sign in a conspicuous place on the premises identified in a local

license application and by publication in a newspaper of general circulation in the county in which the premises are located.

B. If a municipality does not issue local licenses, the municipality may give public notice of the state application by posting a sign in a conspicuous place on the premises identified in the application and by publication in a newspaper of general circulation in the county in which the premises are located.

§2450. Transfer of ownership

A license granted under the provisions of this chapter is not transferable except as provided in this section, but this section does not prevent a change of location as provided in section 2451, subsection 7.

For a transfer of ownership, a licensee shall apply to the state licensing authority on forms prepared and furnished by the state licensing authority. Upon receipt of an application for transfer of ownership, the state licensing authority shall, within 7 days, submit a copy of the application to the appropriate municipality to determine whether the transfer complies with any local restriction on transfer of ownership. In determining whether to permit a transfer of ownership, the state licensing authority shall consider only the requirements of this chapter, any rules adopted by the state licensing authority and any other local restrictions. The municipality may hold a hearing on the application for transfer of ownership. The municipality may not hold a hearing pursuant to this section until the municipality has posted a notice of hearing in the manner described in section 2449, subsection 5 on the licensed premises for a period of 10 days and has provided notice of the hearing to the applicant at least 10 days prior to the hearing. Any transfer of ownership hearing by the state licensing authority must be held in compliance with the requirements specified for a municipality in this section.

§2451. Licensing in general

The following provisions govern licensing in general.

1. Notice of new owner, officer, manager or employee. A retail marijuana establishment or retail marijuana social club shall notify the state licensing authority in writing of the name, address and date of birth of an owner, officer, manager or employee before the new owner, officer, manager or employee begins managing, owning or associating with the establishment or club. The owner, officer, manager or employee must pass a fingerprint-based criminal history record check as required by the state licensing authority and obtain the required identification card prior to being associated with, managing, owning or working at the establishment or club.

2. Each license separate. Each license issued under this chapter is separate and distinct. A person may not exercise any of the privileges granted under a license other than the license that the person holds and a licensee may not allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.