

**CHAPTER 47**  
**CITY OF BREWER MORATORIUM**  
**ORDINANCE ON RETAIL MARIJUANA ESTABLISHMENTS**  
**AND RETAIL MARIJUANA SOCIAL CLUBS**

WHEREAS, a ballot initiative to legalize, regulate and tax marijuana for non-medicinal purposes known as the “Marijuana Legalization Act” proposed to be codified in the Maine Revised Statutes in Title 7, chapter 417, will be voted on by a Statewide referendum election on November 8, 2016; and

WHEREAS, the proposed Act authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of 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 in the proposed Act, as well as the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities within its jurisdiction; 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; and

WHEREAS, the outcome of the Statewide referendum vote is yet to be determined and the City’s current Land Use Code and other applicable Codes and Ordinances provides for regulations of medical marijuana cultivation facilities and dispensaries pursuant to the Maine Medical Use of Marijuana Act cited above, but does not include any 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 and retail marijuana social clubs within the City of Brewer raises legitimate and substantial questions about the impact of such establishments and social clubs on the City, including questions of the compatibility of retail marijuana establishments and social clubs with existing uses and development in all zoning districts; the potential adverse health and safety effects of retail marijuana establishments and 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; 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 public safety agencies serving the City in responding to the same; and the adequacy of the City’s streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs; and

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

WHEREAS, the City needs time to review the proposed Act in anticipation of the election and to review its Land Use Code and other applicable Codes and Ordinances to determine the implications of future proposed retail marijuana establishments and/or social clubs to develop reasonable codes and ordinances governing the location and operations of such establishments and social clubs to address the concerns cited above; and

WHEREAS, the City, under its home rule authority, its police power generally, and under 30-A M.R.S.A., Chapter 187, Subchapter 3 (“land use regulation”), as provided by the proposed new Act, or as otherwise provided by current law, has the authority to impose reasonable restrictions, conditions, and limitations on such retail marijuana establishments and social clubs; and

WHEREAS, the City Council, with the professional advice and assistance of the Brewer Police Department, Penobscot County Sheriff’s Office and the Maine State Police, the Planning Board and the Planning Department shall study the City’s current Land Use Code and other applicable Code and Ordinances to 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 City’s current Land Use Code and other Codes and Ordinances are not adequate to prevent serious public harm that could be caused by the development of retail marijuana establishments and social clubs and other uses authorized by the proposed changes in law to be voted on in the November 8, 2016, referendum election, thereby necessitating a moratorium; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and social clubs and other uses authorized by the proposed changes in law, if passed, to be voted on in the November 8, 2016 referendum election, being located in the City; 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 City enacts this Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs; and

WHEREAS, this Moratorium Ordinance does not become effect until five (5) days after approval, unless it contains an emergency preamble; and

WHEREAS, the facts set forth above create an emergency within the Charter, Codes and Ordinances of the City of Brewer and require that the following resolves become effective immediately upon its approval to protect the public health, common welfare and safety of the citizens of Brewer.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Brewer that the following Chapter 47 entitled, “Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Social Clubs” be, and hereby is, enacted, and, in furtherance thereof, the City Council does hereby declare a moratorium on the location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the City.

This Moratorium Ordinance shall take effect, once enacted by the City Council, in accordance with the provisions of the City Charter, but shall be applicable as of September 19, 2016, 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 City Council, for the express purpose of drafting an amendment or amendments to the City’s current Land Use Code and other applicable Code and Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and social clubs with existing and permitted uses in residential, commercial, industrial zoning districts and other zoning districts; the correlation of retail marijuana establishments and social clubs with medical marijuana cultivation facilities and dispensaries; the potential adverse health and safety effects of retail marijuana establishments and 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 City in responding to the same; and the adequacy of the City’s streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or social clubs

BE IT FURTHER ENACTED, that this Ordinance shall apply to 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 proposed “Marijuana Legalization Act” to be codified, if passed, at 7 M.R.S.A. §§ 2442 (36), (39), (40), that may be proposed to be located within the City on or after the September 19, 2016 applicability date of this Ordinance; and

BE IT FURTHER ENACTED, 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 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 City officials or boards prior to September 19, 2016, the applicability date of this Ordinance; and

BE IT FURTHER ENACTED, that no person or organization shall develop or operate a retail marijuana establishment or social club within the City on or after the September 20, 2016 applicability date of this Ordinance without complying with whatever Ordinance amendment or amendments the City Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ENACTED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the City shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other permits or licenses related to a retail marijuana establishment, or retail marijuana social club; and

BE IT FURTHER ENACTED, that those provisions of the City's current Land Use Code and other applicable Codes and 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 ENACTED, that if retail marijuana establishments, retail marijuana social clubs, new medical marijuana cultivation facilities or this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the City 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 ENACTED that this Moratorium Ordinance shall not apply to existing medical marijuana dispensaries or medical marijuana cultivation facilities as defined under the Maine Medical Use of Marijuana Act ( 22 M.R.S.A. 2421-2430-B ) in the City of Brewer or the expansion thereof; and

BE IT FURTHER ENACTED, 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.

Applicability Date: September 19, 2016, pursuant to its emergency preamble.