

City Council Minutes
July 24, 2018

Emergency Special Meeting
City Hall Council Chambers

Tuesday, July 24, 2018
10:15 a.m.

The emergency special meeting was called to order by Chairman Jerry Goss. The City Clerk called the roll:

Councilor Vachon-present
Councilor O’Connell-present
Councilor Ferris-absent

Councilor Uhlenhake-present
Chairman Goss-present

Chairman Goss declared a quorum present. City Manager Stephen Bost and City Solicitor Jonathan Pottle were also present.

Chairman Goss led members of the Council and others present in reciting the pledge of allegiance to the flag of the United States of America.

Chairman Goss read the notice for the emergency special meeting.

TO: Joseph Ferris, Jerry Goss, Kevin O’Connell, Matthew Vachon and Beverly Uhlenhake
MEMBERS OF THE BREWER CITY COUNCIL you are hereby notified an emergency special meeting of the City Council will be held on Tuesday, July 24, 2018 at 10:15 a.m. in the Council Chambers at Brewer City Hall to consider and act on the items on the attached agenda.

s/Jerry Goss
Mayor and Chairman of the City Council
Or _____
Majority of the City Council

a true copy, attest: s/Ronda J. Hogan
City Clerk

I have on the date(s) and time(s) indicated given notice of this meeting by giving in hand of by leaving at the usual dwelling place of the within named an attested copy of this notice of meeting:

Given/Delivered to:	by (person delivering)	Title	Date	Time
Joseph Ferris	E. Willey	SGT	7/23/18	11:20
Matthew Vachon	E. Willey	SGT	7/23/18	12:45
Beverly Uhlenhake	E. Willey	SGT	7/23/18	12:35
Jerry Goss	E. Willey	SGT	7/23/18	11:05
Kevin O’Connell	E. Willey	SGT	7/23/18	12:30

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CITY COUNCIL EMERGENCY SPECIAL MEETING
Tuesday, July 24, 2018 10:15 A.M.
Brewer City Hall Council Chambers

I. Call to Order. (Mayor Goss)

II. Roll Call. (City Clerk)

III. Pledge of Allegiance to the Flag of the United States of America. (Mayor Goss)

A. Minutes.

B. Awards, Petitions and Public Comments.

C. Consent Calendar.

D. Monthly Reports.

E. Nominations, Appointments, Elections.

F. Unfinished Business.

G. New Business.

1. (2018-A130) ORDER Executive Session pursuant to 1 M.R.S. § 405(1)(6)(E)
(consultation with City Solicitor on rights and duties of City Council) (Councilor Ferris)
2. (2018-C006) Enact and add Chapter 48 entitled "City of Brewer Moratorium Ordinance on Certain Medical Marijuana Activities" to the City of Brewer Charter, Codes and Ordinances (Councilor O'Connell & Councilor Goss)

H. New Items with Leave of Council.

I. ADJOURN.

A. Minutes.

ACTION: There were no minutes to approve.

B. Awards, Petitions and Public Comments.

ACTION: There were no awards, petitions or public comments.

C. Consent Calendar.

ACTION: There were no items on the consent calendar.

D. Monthly Reports.

ACTION: There were no monthly reports to accept.

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E. Nominations, Appointments, Elections.

ACTION: There were no nominations, appointments or elections.

F. Unfinished Business.

ACTION: There was no unfinished business.

G. New Business.

2018-A130A

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TITLE: ORDER, Executive Session pursuant to 1 M.R.S. § 405(1)(6)(E)
(consultation with City Solicitor on rights and duties of City
Council)

Filed July 20, 2018

By Joseph L. Ferris

ACTION: Councilor O’Connell moved that the order have passage. The motion was seconded and passed.

The order was passed by unanimous vote.

Chairman Goss said the meeting would resume after the executive session.

The regular meeting was called back to order by Chairman Goss.

The City Clerk called the roll:

Councilor Vachon – present

Councilor Ferris - absent

Councilor O’Connell – present

Chairman Goss - present

Councilor Uhlenhake – present

2018-C006

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TITLE: ENACT AND ADD CHAPTER 48 ENTITLED “CITY OF BREWER MORATORIUM
ORDINANCE ON CERTAIN MEDICAL MARIJUANA ACTIVITIES” TO THE CITY
OF BREWER CHARTER, CODES AND ORDINANCES.

filed July 20, 2018

by Kevin O’Connell &

Jerry Goss

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Chapter 48
MORATORIUM ORDINANCE ON CERTAIN MEDICAL MARIJUANA ACTIVITIES

WHEREAS, on July 9, 2018, the Maine Legislature enacted Public Law 2017, Chapter 452 (P.L. 2017, ch. 452) (LD 1539) “An Act to Amend the Maine Medical Marijuana Law”, which, among other things, contemplates authorization for registered caregiver retail stores, registered dispensaries, marijuana testing facilities, and manufacturing facilities as stated in P.L. 2017, ch. 452; and

WHEREAS, P.L. 2017, ch. 452 states it shall not be effective until 90 days after adjournment of the Second Special Session of the 128th Maine Legislature, which has not yet adjourned but is anticipated; and

WHEREAS, P.L. 2017, ch. 452 states caregiver retail stores, registered dispensaries, marijuana testing facilities, and manufacturing facilities operating as of the effective date of this law may not be prohibited by local regulation; and

WHEREAS, P.L. 2017, ch. 452 states caregiver retail stores, registered dispensaries, marijuana testing facilities, and manufacturing facilities not operating as of the effective date of P.L. 2017, ch. 452 may not be authorized to operate by a municipality, unless the municipal legislative body has voted to adopt or amend an ordinance allowing caregiver retail stores, registered dispensaries, marijuana testing facilities, and manufacturing facilities, as applicable, to operate within the municipality; and

WHEREAS, P.L. 2017, ch. 452 states, in addition to the 8 dispensary registration certificates issued as of April 1, 2018, the State, through the appropriate authority (the “Department”), shall issue 6 dispensary registration certificates to applicants the Department determines to meet all criteria established in rule; and

WHEREAS, P.L. 2017, ch. 452 states, of the new registration certificates for dispensaries, the Department may not issue more than one additional registration certificate to any dispensary operating in the State on April 1, 2018 or to its successor in interest, and may not issue more than one dispensary registration certificate to any person that did not hold a dispensary registration certificate as of April 1, 2018; and

WHEREAS, P.L. 2017, ch. 452 states after January 21, 2021, the Department may not limit the number of registration certificates it issues to a person to operate as a dispensary; and

WHEREAS, P.L. 2017, ch. 452 expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities, and marijuana manufacturing facilities, except that a municipality may not prohibit or limit the number of registered primary caregivers; and

WHEREAS, on July 9, 2018, the Maine Legislature also enacted Public Law 2017, Chapter 447 (P.L. 2017, ch. 447) (LD 238), “An Act to Amend the Maine Medical Marijuana Law”, which, among other things, also expressly recognizes municipal home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities, and marijuana manufacturing facilities, except that a municipality may not prohibit or limit the number of registered

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primary caregivers; and

WHEREAS, the unregulated location and operation of registered caregiver retail stores, additional registered dispensaries through the expansion contemplated in P.L. 2017, ch. 452, marijuana testing facilities, and marijuana manufacturing facilities within the City of Brewer, all as contemplated in P.L. 2017, ch. 452 (collectively hereinafter the “Activities”, unless otherwise stated), raises legitimate and substantial questions about the impact of such activities on the City of Brewer, including but not limited to questions on compatibility with existing land uses and developments within the City, the sufficiency of City infrastructure to accommodate such activities, and the possible unlawful sale of harvested marijuana (including marijuana products or marijuana concentrate) or any other form of medical marijuana intended for medical use; and

WHEREAS, the City of Brewer currently has inadequate ordinances and regulations governing the Activities to prevent serious public harm within the City of Brewer; and

WHEREAS, a shortage or an overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of the unregulated location and operation of the Activities; and

WHEREAS, as a result of the foregoing, the location and operation of the Activities within the City of Brewer present potentially serious implications for the public’s health, safety, and welfare; and

WHEREAS, the City needs time to review P.L. 2017, ch. 452 and P.L. 2017, ch. 447, its Land Use Code, and all other applicable Codes and Ordinances to determine the implications of the Activities to address the concerns cited above; and

WHEREAS, pursuant to the foregoing the City has the authority to impose reasonable regulations on the Activities; and

WHEREAS, the City Council, with the professional advice and assistance of the Brewer Police Department, other law enforcement agencies, and the City’s Departments 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 the Activities, and consider what locations, if any, and conditions of approval, if any, might be appropriate for the Activities; and

WHEREAS, a moratorium is necessary to prevent a shortage or an overburdening of public facilities that is reasonably foreseeable as a result of the Activities; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinances, amendments, or other regulatory changes will take at least one hundred and eighty (180) days from the date the City enacts this Ordinance; and

WHEREAS, this 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

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Ordinances of the City of Brewer and require that this Ordinance 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 this Ordinance entitled, "Moratorium Ordinance on Certain Medical Marijuana Activities" 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 registered caregiver retail stores, additional registered dispensaries through the expansion contemplated in P.L. 2017, ch. 452, marijuana testing facilities, and marijuana manufacturing facilities within the City of Brewer, all as contemplated in P.L. 2017, ch. 452, within the City.

This Ordinance shall take effect, once enacted by the City Council, in accordance with the provisions of the City Charter, City Code, and the provisions of this Ordinance, but shall be applicable as of July 9, 2018, 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 health, safety, and welfare.

BE IT FURTHER ENACTED, that this Ordinance shall apply to any and all of the Activities that may be proposed to be located within the City on or after the July 9, 2018, the applicability date of this Ordinance; and

BE IT FURTHER ENACTED, that notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, this Ordinance shall govern any application, pending or otherwise, for a building permit, Certificate of Occupancy, site plan or any other required approval regarding any and all of the Activities that has not been submitted or that has not been granted final approval by the Code Enforcement Officer, Planning Board or other City officials or boards prior to July 9, 2018, the applicability date of this Ordinance; and

BE IT FURTHER ENACTED, that no person or organization shall develop, operate, or conduct any or all of the Activities covered by this Ordinance on or after the July 9, 2018 applicability date 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 the Activities; 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

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BE IT FURTHER ENACTED, that if any person violates any provision of 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 the existing medical marijuana dispensaries or medical marijuana cultivation facilities as previously defined and contemplated under the Maine Medical Use of Marijuana Act (22 M.R.S.A. 2421-2430-B) in the City of Brewer for activities previously authorized prior to July 9, 2018; 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.

Emergency Clause: Due to the Emergency stated above, this Ordinance shall become effective upon the date of adoption and have an applicability date as stated below.

Applicability Date: July 9, 2018

ACTION: Councilor O'Connell moved that the order be filed with the City Clerk for posting. The motion was seconded.

The motion passed unanimously.

H. New Items with Leave of Council.

ACTION: There were no new items with leave of Council.

I. ADJOURN.

Chairman Goss said he would accept a motion for adjournment.

ACTION: Councilor O'Connell moved that the meeting be adjourned. The motion was seconded and passed by unanimous vote.

ADJOURNED, ATTEST: _____ Ronda J. Hogan
City Clerk

A TRUE COPY, ATTEST: _____ Brewer, Maine