

City Council Minutes  
July 31, 2018

Special Meeting  
City Hall Council Chambers

Tuesday, July 31, 2018  
4:00 p.m.

The 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 a special meeting of the City Council will be held on Tuesday, July 31, 2018 at 4:00 p.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

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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 Matthew Vachon Beverly Uhlenhake Jerry Goss	S.Bost	C.M.	7/27/18	4:00pm
Kevin O’Connell	S.Bost	C.M.	7/27/18	4:00pm

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**CITY COUNCIL SPECIAL MEETING**  
**Tuesday, July 31, 2018 4:00 P.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.**
    - 1. (2018-A130) ORDER Grant approval to Delano G. Merritt d/b/a Cap's Tavern to allow patrons to consume alcohol at a special outdoor event on the establishment's property. (Councilor Vachon)
  - D. Monthly Reports.**
  - E. Nominations, Appointments, Elections.**
  - F. Unfinished Business.**
    - 1. (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)
  - G. New Business.**
  - H. New Items with Leave of Council.**
  - I. ADJOURN.**
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**A. Minutes.**

**ACTION:** There were no minutes to approve.  
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**B. Awards, Petitions and Public Comments.**

**ACTION:** There were no awards, petitions or public comments.  
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**C. Consent Calendar.**

**ACTION:** Councilor Vachon moved that the order have passage. The motion was seconded.  
  
The order passed unanimously.

2018-A130

July 31, 2018

TITLE: ORDER, GRANT APPROVAL TO DELANO G. MERRITT D/B/A  
CAP'S TAVERN TO ALLOW PATRONS TO CONSUME

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ALCOHOL AT A SPECIAL OUTDOOR EVENT ON THE  
ESTABLISHMENT'S PROPERTY.

Filed May 30, 2018  
By Matthew Vachon

WHEREAS, Delano G. Merritt d/b/a Cap's Tavern, is licensed by the State of Maine, Bureau of Alcoholic Beverages, to sell liquor within the confines of its establishment at 494 South Main Street; and

WHEREAS, Cap's Tavern has submitted a request to the City Council for approval to allow consumption of alcohol in an outdoor area on its premises at 494 South Main Street on Sunday, August 12, 2018 (with a rain date of Sunday, August 19<sup>th</sup>) for an outdoor event from 12:00 noon to 11:00 p.m. with a live band; and

WHEREAS, it is the understanding of the City Council that the Bureau of Alcoholic Beverages may permit patrons of Cap's Tavern to consume alcohol in an outdoor area if the City Council approves of such activity; and

WHEREAS, it is the sense of the Brewer City Council that permitting patrons of Cap's Tavern to consume alcohol in an outdoor area at 494 South Main Street under conditions established by the Bureau of Alcoholic Beverages will not be detrimental to the peace, health and safety of the citizens of the City of Brewer.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council herewith approves Delano G. Merritt d/b/a Cap's Tavern's request for permission to sell and allow patrons to consume alcohol in an enclosed and designated area at 494 South Main Street from 12:00 noon to 11:00 p.m. Sunday, August 12, 2018 (or Sunday, August 19, 2018) for an outdoor event with a live band; and

FURTHER, ORDERED, that the City Clerk inform the Bureau of Alcoholic Beverages of this approval of the Brewer City Council.

**STATEMENT OF FACT**

Annual order for request from Brewer establishments to conduct an outdoor event which needs City Council approval. This order was previously requested and granted but the original date was rained out and the applicant is looking to reschedule the event.

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**D. Monthly Reports.**

**ACTION:** There were no monthly reports to file.

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**E. Nominations, Appointments, Elections.**

**ACTION:** There were no nominations, appointments or elections.

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**F. Unfinished Business.**

2018-C006

July 24, 2018

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

**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

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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 retain 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 retain 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**, 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

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**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 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

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**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

**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 made a motion that the ordinance have passage. The motion was seconded.

The motion passed unanimously.

**G. New Business.**

**ACTION:** There was no new business.

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**H. New Items with Leave of Council.**

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

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**I. ADJOURN.**

Chairman Goss said he would accept a motion for adjournment.

**ACTION:** Councilor Vachon moved that the meeting be adjourned. The motion was seconded and passed by unanimous vote. The meeting adjourned at 4:09 p.m.

ADJOURNED, ATTEST: \_\_\_\_\_ Ronda J. Hogan  
City Clerk

A TRUE COPY, ATTEST: \_\_\_\_\_ Brewer, Maine