

Moratoriums on Marijuana

(*Maine Townsman*, Legal Notes, January 2017)

As we noted here last month, Maine's new "recreational" marijuana law will, whenever it takes effect, legalize the personal use, possession and cultivation of marijuana by persons at least 21 years of age and the operation of "retail marijuana establishments," including retail stores, cultivation, manufacturing and testing facilities, and social clubs (see "Legal Marijuana & Municipalities," *Maine Townsman*, Legal Notes, December 2016).

Many municipalities have responded to the new law by either enacting a moratorium on retail marijuana establishments or at least considering one. We'd like to take this opportunity to clear up some of the apparent misconceptions now circulating about moratoriums on marijuana.

To begin, a moratorium is an ordinance, and as such it must be enacted by the municipal legislative body (town meeting or town or city council). The municipal officers (selectmen or councilors) have no authority to adopt a moratorium – not even an interim one – unless they are also the municipal legislative body.

But a moratorium is not a permanent ordinance. Instead it temporarily defers land use activities until a more permanent ordinance can be prepared and enacted. By law a moratorium is limited to 180 days, subject to additional 180-day extensions if the problem still exists and reasonable progress is being made to resolve it. (Municipal officers do have authority to extend moratoriums.)

Also, a moratorium on retail marijuana establishments does not require a comprehensive plan or a zoning ordinance. It merely prohibits these uses from being permitted or operated for the duration of the moratorium.

Finally, since a moratorium is not a zoning ordinance, neither a planning board public hearing nor any special notices are required, as they are for zoning ordinances under State law. (A public hearing before the municipal officers is required, though, if enactment will be by secret ballot referendum.)

For a sample moratorium on retail marijuana establishments, see: <https://goo.gl/louCjG>

For more on moratoriums generally, see our "Information Packet" on the subject, available free to members at www.memun.org. (By R.P.F.)