

AMENDMENT TO ORDER NUMBER 69-18/19
PREPARED BY CORPORATION COUNSEL
FOR COUNCILOR COOK AND COUNCILOR BATSON
RE: ADDING MEDICAL MARIJUANA GROW FACILITIES, REMOVING
RETROACTIVITY AND ENDING MORATORIUM ON DECEMBER 13, 2018

AMENDMENT TO THE PORTLAND CITY CODE CHAPTER 17 RE:
MORATORIUM ON MEDICAL MARIJUANA RETAIL STORES, MEDICAL MARIJUANA
TESTING FACILITIES, AND MEDICAL MARIJUANA MANUFACTURING
FACILITIES, AND MEDICAL MARIJUANA GROW FACILITIES

WHEREAS, the Maine Medical Use of Marijuana Act (the "Act"),
codified in the Maine Revised Statutes in Title 22,
Chapter 558-C, authorizes registered caregivers to
possess, cultivate, and transfer medical marijuana to
qualifying patients, as those terms are defined by 22
M.R.S. § 2422; and

WHEREAS, on July 9, 2018 the Maine Legislature enacted as
emergency legislation PL 2017, c. 447 (LD 239), An Act
to Amend the Maine Medical Marijuana Law, which
expressly recognizes municipal home rule authority to
regulate registered caregiver operations; and

WHEREAS, on July 9, 2018, the Maine Legislature also enacted PL
2017, c. 452 (LD 1539), An Act to Amend Maine's
Medical Marijuana Law ("LD 1539"); and

WHEREAS, LD 1539 includes express authorization for registered
caregivers to 1) operate retail stores for the sale of
harvested medical marijuana to qualifying patients, 2)
conduct marijuana testing for research and development
purposes, ~~and~~ 3) manufacture marijuana products and
marijuana concentrates for distribution to patients,
and 4) grow up to 30 plants per caregiver for medical
use; and

WHEREAS, the unregulated location and operation of medical
marijuana retail stores, testing facilities, ~~and~~
manufacturing facilities and grow facilities within
the City of Portland (the "City") raises legitimate
and substantial questions about the impact of such

activity on the City, including questions as to compatibility with existing land uses and developments in the City; the sufficiency of municipal infrastructure to accommodate such activity; and the possibility of unlawful sale of medical marijuana and medical marijuana products; and

WHEREAS, as a result of the foregoing issues, the location and operation of medical marijuana retail stores, testing facilities, and manufacturing facilities, and grow facilities within the City have potentially serious implications for the health, safety and welfare of the City and its residents; and

WHEREAS, existing ordinances are insufficient to prevent serious public harm that could result from the unregulated development of medical marijuana retail stores, testing facilities, manufacturing facilities, and grow facilities; and

WHEREAS, the City needs time to understand the impact of the amendments to the Act on the City's existing rules and ordinances regarding, among other things, zoning, land use, and fire and life safety requirements; and

WHEREAS, in the judgment of the City Council, the foregoing findings and conclusions constitute an emergency within the meaning of 30-A M.R.S. § 4356 requiring immediate legislative action; and

WHEREAS, a temporary prohibition on medical marijuana retail stores, testing facilities, and manufacturing facilities, and grow facilities is therefore appropriate in order to determine what regulations, if any, are necessary within the City as a result of the amendments to the Act:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, that the Portland City Code is hereby amended by adding an Article, to be numbered X, which said Article reads as follows:

ARTICLE X. MORATORIUM ON MARIJUANA CAREGIVER RETAIL STORES, TESTING FACILITIES, AND MANUFACTURING FACILITIES, AND GROW FACILITIES

Sec. 17-124. Necessity.

Municipalities are authorized by 30-A M.R.S. § 4356(1) (a) and (b) to enact moratoria for the following reasons:

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 public harm from residential, commercial or industrial development in the affected geographic area.

In accordance with 30-A M.R.S. § 4356(1) (a) and (b) and for the reasons stated above, the Portland City Council hereby finds that a moratorium on medical marijuana retail stores, medical marijuana testing facilities, ~~and~~ medical marijuana manufacturing facilities, and medical marijuana grow facilities is necessary and warranted in the City of Portland.

Sec. 17-125. Definitions.

Except as otherwise provided, the following definitions shall apply to this Article:

Marijuana extraction means the process of extracting marijuana concentrate from harvested marijuana using water, lipids, gases, solvents or other chemicals or chemical processes.

Manufacturing or manufacture means the production, drying, blending, infusing, compounding or other preparation of marijuana and marijuana products, including the preparation of food, drink, or similar products from marijuana or marijuana products. Manufacturing includes, but is not limited to, marijuana extraction or preparation by means of chemical synthesis.

Medical marijuana grow facility means a lot or parcel where more than one registered caregiver is growing medical marijuana for medical use.

Medical marijuana manufacturing facility means an establishment that manufactures marijuana and marijuana products produced by a registered caregiver. Medical marijuana

manufacturing facility does not include a single registered caregiver who solely manufactures marijuana and marijuana products out of marijuana legally grown by that caregiver for distribution to that caregiver's own patients.

Medical marijuana retail store means an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, regular sales to more than five individual qualifying patients in any one week, and sales directly to the consumer of the product. This includes, but is not limited to, an establishment meeting the definition of a retail establishment in Sec. 14-47 of this Code that is used by a registered caregiver to offer harvested medical marijuana or marijuana products for sale to qualifying patients.

Medical marijuana testing facility means an establishment that tests marijuana produced by a registered caregiver. Medical marijuana testing facility does not include a single registered caregiver who solely tests the marijuana legally grown by that caregiver for distribution to that caregiver's own patients.

Sec. 17-126. Conflicts/Savings Clause.

Any provisions of this Code that are inconsistent or conflicting with the provisions of this Article are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Code is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Section 17-127. Violations.

If any medical marijuana retail store, medical marijuana testing facility, ~~or~~ medical marijuana manufacturing facility, or medical marijuana grow facility is established in violation of this Article, it shall be subject to the penalties provided for in Sec. 1-15 of this Code.

Sec. 17-128. Term.

This moratorium shall begin on October 1, 2018 and continue for 180 days from July 9, 2018 to January 5, 2019. until

December 13, 2018. It may be extended for additional 180 day periods by the City of Portland in accordance with 30-A M.R.S. § 4356(2).

~~Sec. 17-129. Applicability.~~

~~Notwithstanding the provisions of 1 M.R.S. § 302, this moratorium shall apply retroactively and include any and all actions and proceedings pending on July 9, 2018 or thereafter, including any proposed medical marijuana retail store, medical marijuana testing facility, or medical marijuana manufacturing facility for which an application for a building permit, certificate of occupancy, site plan or any other required approval has been submitted to the City.~~

~~BE IT FURTHER ORDERED, that this Moratorium shall go into effect and be applicable as of July 9, 2018, and remain in effect for one hundred and eighty (180) days thereafter, unless extended, repealed, or modified by the Portland City Council; and~~

~~BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, to make it effective immediately in order to protect the public safety and welfare of the City of Portland.~~