

**TOWN OF GRAY
MORATORIUM ORDINANCE
ON RETAIL AND MEDICAL MARIJUANA USES**

WHEREAS, a ballot initiative to regulate the distribution of medical marijuana known as the “Maine Use of Medical Marijuana Act” was approved by the voters at a State-wide referendum election on November 3, 2009, and codified in the Maine Revised Statutes in Title 22, chapter 558-C (the “Medical Marijuana Act”); and

WHEREAS, a ballot initiative to legalize, regulate and tax marijuana for non-medicinal purposes known as the “Marijuana Legalization Act” was approved by the voters at a State-wide referendum election on November 8, 2016 and codified in the Maine Revised Statutes in Title 7, chapter 417 (the “Retail Marijuana Act”); and

WHEREAS, the Maine Legislature adopted amendments to the Retail Marijuana Act in the Second Regular Session of the 128th Legislature via LD 1719 and adopted amendments to the Medical Marijuana Act in the Special Session of the 128th Legislature via LD 238 and LD 1539; and

WHEREAS, LD 1719 repealed chapter 417 of Title 7 of the Maine Revised Statutes and enacted the new Title 28-B of the Maine Revised Statutes; and

WHEREAS, LD 1719 was enacted upon the override of the Governor’s veto on May 2, 2018, and became effective immediately, but the agencies responsible for adopting rules pursuant to the Retail Marijuana Act have estimated that the rulemaking process will take at least nine months and will require approval by the Legislature; and

WHEREAS, LD 238 amended several provisions of Chapter 558-C of Title 22 of the Maine Revised Statutes and was enacted upon the override of the Governor’s veto on July 9, 2018, and became effective immediately; and

WHEREAS, LD 1539 also amended several provisions of Chapter 558-C of Title 22 of the Maine Revised Statutes, including some of the same provisions amended by LD 238, but LD 1539 was not enacted as emergency legislation and will take effect 90 days after the Legislature adjourns; and

WHEREAS, the Department of Health and Human Services adopted rules related to the Medical Marijuana Act that went into effect as of May 10, 2018, but those rules do not include provisions related to the amendments in LD 238 and LD 1539; and

WHEREAS, the Town adopted amendments to its Zoning Ordinance and Shoreland Zoning Ordinance related to retail marijuana establishments and retail marijuana social clubs prior to the effective date of LD 1719, and LD 1719 includes additional provisions regarding local regulation of retail marijuana establishments; and

WHEREAS, LD 238 authorizes registered caregivers to operate one retail store to sell harvested marijuana to qualifying patients for the patients' medical use, manufacture marijuana products and marijuana concentrate for medical use including marijuana extraction, compounding or other preparation of marijuana concentrate or products; and

WHEREAS, LD 238 expressly authorizes municipalities to regulate registered primary caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities; and

WHEREAS, LD 1539 additionally authorizes registered caregivers to manufacture marijuana products and marijuana concentrate for medical use including marijuana extraction, compounding or other preparation of marijuana concentrate or products; and

WHEREAS, LD 1539 expressly authorizes municipalities to regulate or prohibit registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities and regulate registered caregivers, and provides that a municipality may not authorize caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities that are not operating on the effective date of the section unless the legislative body has adopted an ordinance allowing such uses to operate within the municipality; and

WHEREAS, LD 1539 authorizes the continued operation of registered caregiver retail stores, registered dispensaries, marijuana testing facilities and marijuana manufacturing facilities that are operating with municipal approval prior to the effective date of the Act; and

WHEREAS, the Town's current Code of 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 contain provisions related to registered primary caregivers, marijuana testing facilities and manufacturing facilities as amended by LD 238 and LD1539; and

WHEREAS, the Town's current Code of Ordinances provides for regulations of retail marijuana establishments and retail marijuana social clubs, but does not contain provisions related to such uses as adopted in the new Title 28-B of the Maine Revised Statutes or the rules related to the same to be adopted by the State; and

WHEREAS, the unregulated location and operation of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, as well as retail marijuana establishments and retail marijuana social clubs within the Town of Gray raises legitimate and substantial questions about the impact of such uses and operations on the Town, including questions of the compatibility of marijuana stores, dispensaries, testing and manufacturing facilities and retail marijuana establishments and social clubs with existing uses and development in residential, commercial and industrial zoning districts; the possible connection 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; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town'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 registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and/or retail marijuana social clubs within the Town has serious implications for the health, safety and welfare of the Town and its residents; and

WHEREAS, the Town's existing ordinances do not provide comprehensive or sufficient provisions to regulate the location and operation of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and/or retail marijuana social clubs within the Town and the Town needs time to review the recent changes adopted by LD 1719, LD 238, LD 1539 and the rules promulgated by the State, and to review its own Code of Ordinances to determine the implications of future proposed registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and/or social clubs to develop reasonable ordinances governing the location and operations of such uses to address the concerns cited above; and

WHEREAS, the Town, under its home rule authority, its police power generally as established by the Constitution of Maine, Article VIII, Part Second and codified in part in Chapters 111 and 187 of Title 30-A of the Maine Revised Statutes, and as expressly provided by LD 1719, LD 238 and LD 1539, has the authority to impose reasonable restrictions, conditions, and limitations on such registered caregivers, registered caregiver

retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and social clubs; and

WHEREAS, the Town Council, with the professional advice and assistance of the Cumberland County Sheriff's Office and the Maine State Police, the Planning Board and the Planning Department, shall study the Town's current Code of Ordinances to determine the land use and other regulatory implications of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, 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, 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 Town enacts this Moratorium Ordinance on Retail and Medical Marijuana Uses;

WHEREAS, the Town's current Code of Ordinances and other applicable local laws are not adequate to prevent serious public harm that could be caused by the development of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and social clubs and other uses authorized by the changes, and a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of such uses being located in the Town; and

NOW, THEREFORE, pursuant to the authority granted to it by 30-A M.R.S.A. § 4356, be it ordained by the Town Council of the Town of Gray, that the following Moratorium Ordinance on Retail and Medical Marijuana Uses be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on the location, operation or licensing of any registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, 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 Town.

In addition, the Town Council does hereby declare a moratorium on the location, operation or licensing of any new medical marijuana cultivation facilities, dispensaries, manufacturing facilities, registered caregiver retail stores, food establishments and collectives, and the expansion of any existing medical marijuana cultivation facilities or dispensaries, as permitted under Section 402.8.7 of the Town's Zoning Ordinance, within the Town.

This Moratorium Ordinance shall take effect, once enacted by the Town Council, in accordance with the provisions of Article II, Section 14 of the Town Charter, but shall be applicable as of August 7, 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 Town Council, for the express purpose of drafting an amendment or amendments to the Town's current Code of Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishments and social clubs with existing and permitted uses in residential, commercial and industrial zoning districts; the correlation of retail marijuana establishments and social clubs with medical marijuana cultivation facilities, dispensaries, stores and manufacturing facilities; the potential adverse health and safety effects of registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, 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 and the potential increased burden on the public safety agencies serving the Town in responding to the same; and the adequacy of the Town'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 ORDAINED, 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" codified at Title 7, chapter 417 and as amended by LD 1719, and any applicable rules, that may be proposed to be located within the Town on or after the August 7, 2018 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that this Ordinance shall apply to food establishments, collectives, registered caregivers, registered caregiver retail stores, registered dispensaries, marijuana testing facilities and marijuana manufacturing facilities, as those terms are defined by the "Maine Use of Medical Marijuana Act" as codified at Title 22, chapter 558-C and as amended by LD 238 and 1539 respectively, and any applicable rules, that may be proposed to be located within the Town on or after the August 7, 2018 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, 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 registered caregivers, registered caregiver retail stores, registered

dispensaries, marijuana testing facilities and manufacturing facilities, 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 Town official or board prior to August 7, 2018, the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate registered caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities, retail marijuana establishment or social club within the Town on or after the August 7, 2018 applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate new medical marijuana cultivation facilities, dispensaries, manufacturing facilities, registered caregiver retail stores, food establishments and collectives or expand any existing medical marijuana cultivation facility or dispensary that may be currently permitted under Section 402.8.7 of the Town's Zoning Ordinance, within the Town on or after the August 7, 2018 applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town Council may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town 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 registered caregivers, registered caregiver retail stores, registered dispensaries, cultivation facilities, marijuana testing facilities and manufacturing facilities, retail marijuana establishments, retail marijuana social clubs, or the expansion of any such use; and

BE IT FURTHER ORDAINED, that those provisions of the Town's current Code of 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 ORDAINED, that if registered caregivers, registered caregiver retail stores, registered dispensaries, cultivation facilities, marijuana testing facilities, marijuana manufacturing facilities, retail marijuana establishments, retail marijuana social clubs, or expansions of any such use are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town 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 ORDAINED, 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: August 7, 2018