South Portland City Council

Position Paper of the Interim City Manager

Subject:

ORDINANCE #8-16/17 - Amending Chapter 27, “Zoning Ordinance”, regarding moratorium on the land use permitting and development of retail marijuana establishments and marijuana social clubs. First reading. Passage requires majority vote.

Position:

At the City Council workshop on November 14, 2016 the Council discussed amending Chapter 27, “Zoning Ordinance,” regarding a moratorium on the land use permitting and development of retail marijuana establishments and social clubs.

Under the citizen-initiated legislation, the State of Maine Department of Agriculture, Conservation, and Forestry will have up to nine months to promulgate rules regarding the licensure of various retail marijuana establishments, including retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana stores, and retail marijuana testing facilities, in addition to retail marijuana social clubs. All of these business types are further defined in the proposed statute, which is included in your meeting packet. The legislation empowers municipalities to decide, at the local level, whether to allow these types of businesses in the community or prohibit them altogether. Should a municipality choose to allow such businesses, it has the authority to regulate those businesses through local zoning, business licensing, etc.

The effect of a moratorium is to temporarily prohibit a certain activity or development in order to give City officials time to thoughtfully construct local regulations to meet the needs of the community. Moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356, subject to certain requirements set forth in the statute. The principal statutory requirement for a moratorium ordinance is that it be necessary either (1) to prevent a shortage or overburdening of public facilities (e.g., sewer, water, roads, schools, public safety), or (2) because existing plans, ordinances or regulations, if any, are inadequate to prevent serious public harm. In this instance, due to a lack of local regulatory regime to address this soon-to-be-enacted state law, the City of South Portland is currently unprepared to receive, evaluate, and approve applications that would license and permit the development of recreational marijuana establishments and social clubs.

Because the proposed moratorium ordinance constitutes an amendment of the Zoning Ordinance (Chapter 27), at least 5 affirmative votes are required for the City Council to adopt the moratorium ordinance after second reading. See Sec. 27-115 of the Zoning Ordinance. (Passage of first reading only requires four affirmative votes.) Because the proposed moratorium ordinance involves a temporary ban on land use activity and is an
amendment of the Zoning Ordinance, the Planning Board must conduct a public hearing on the ordinance.

The moratorium would be effective for 180 days from November 21, 2016, but could be terminated early if appropriate (or extended if necessary).

**Requested Action:**

Council passage of first reading of the ordinance; referral of the ordinance to Planning Board for a public hearing at its December 13, 2016 meeting; and set December 19, 2016 as the date for the City Council’s public hearing and final action on the ordinance.

Interim City Manager
THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, “Zoning,” of the “Code of Ordinances of the City of South Portland, Maine” be and hereby is amended by the enactment of a new Article XVI as follows (deletions are struck through; additions are underlined):

CHAPTER 27
ZONING

ARTICLE XVI. MORATORIUM ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL MARIJUANA SOCIAL CLUBS

Sec. 27-1601. Moratorium declared.

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

WHEREAS, the Act, subject to a pending recount that may change the result of that referendum vote, will take effect 30 days after the Governor proclaims the official results of the election; and
WHEREAS, the Act authorizes municipalities to regulate the number of retail marijuana stores and the location and operation of 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 in the Act, as well as providing the local option to prohibit or limit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities, within their jurisdiction; and

WHEREAS, the Act requires the Department of Agriculture, Conservation and Forestry (the “CAF Department”), as the State licensing authority for retail marijuana establishments and social clubs, to adopt rules within nine months of the effective date of the Act; and

WHEREAS, the Act authorizes municipalities to impose a separate local licensing requirement as part of their restrictions on time, place, manner and number of retail marijuana establishments and social clubs; and

WHEREAS, the Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S. §§ 2421 – 2430-B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications; and

WHEREAS, the City’s current Code of Ordinances does not include any land use development regulations related to retail marijuana establishments or retail marijuana social clubs; and

WHEREAS, the unregulated location and operation of retail marijuana establishments and retail marijuana social clubs within the City of South Portland raises legitimate and substantial questions about the impact of such establishments and social clubs on the City, including questions about the compatibility of retail marijuana establishments and social clubs with existing uses and development in residential, commercial and industrial zoning districts; 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 for non-medicinal purposes and the potential increased burden on the City’s public safety departments; and the adequacy of the City’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 unregulated location and operation of retail marijuana establishments and/or retail marijuana social clubs within the City has
potentially serious implications for the health, safety and welfare of the City and its residents; and

WHEREAS, the City needs time to review the Act and CAF Department rules proposed to be adopted pursuant to the Act and to review its own Code of Ordinances to determine the implications of future proposed retail marijuana establishments and/or social clubs to develop reasonable ordinances governing the location and operations of such establishments and social clubs to address the concerns cited above; and

WHEREAS, the City’s current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development, location and operation of retail marijuana establishments and social clubs and other uses authorized by the changes in law voted on at the November 8, 2016 referendum election, thereby necessitating a moratorium; and

WHEREAS, the City Council, with the professional advice and assistance of the Planning Department, Planning Board and such professional advice and assistance as it deems necessary and appropriate, shall study the City’s current Code of Ordinances to determine the land use and other regulatory implications of 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, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and social clubs and other uses authorized by the changes in law voted on at the November 8, 2016 referendum election, being located in the City; 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 City enacts this moratorium on retail marijuana establishments and retail marijuana social clubs;

NOW, THEREFORE, the City of South Portland, acting through its City Council, does hereby ordain that the following Article be, and hereby is, enacted, and, in furtherance thereof, the City does hereby declare a moratorium on the location, operation or licensing of any 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 City. This Article shall take effect in accordance with the provisions of the City Charter, but shall be applicable as of November 21, 2016, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Article, unless extended, repealed, or modified by the City Council, for the express purpose of drafting an amendment or amendments to Chapter 27 of the City’s current Code of Ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments and social clubs with existing and permitted uses in residential, commercial and industrial zoning districts; 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 for non-medicinal purposes and the potential increased burden on the public
safety departments serving the City in responding to the same; and the adequacy of the
City’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 in
the City.

BE IT FURTHER ORDAINED, that this Article 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 Act to be codified at
7 M.R.S.A. §§ 2442(35), (36), (38), (39), (40) and (41), that may be proposed to be
located within the City on or after the November 21, 2016 applicability date of this
Article; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A.
§ 302 or any other law to the contrary, this Article, when enacted, shall govern any
proposed retail marijuana establishments or social clubs for which an application for a
building permit, certificate of occupancy, special exception, site plan review and/or any
other required approval has not been submitted to and granted final approval by the
Building Inspector, Code Enforcement Officer, Planning Board, Board of Appeals or
other City official or board prior to November 21, 2016, the applicability date of this
Article; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or
operate a retail marijuana establishment or social club within the City on or after the
November 21, 2016 applicability date of this Article without complying with whatever
ordinance amendment or amendments the City Council may enact as a result of this
Article; and

BE IT FURTHER ORDAINED, that during the time this moratorium 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 building
permit, certificate of occupancy, special exception, site plan review and/or any other
required land use approval or any permits, licenses or approvals related to a retail
marijuana establishment or retail marijuana social club under Chapter 27 of the Code of
Ordinances; and

BE IT FURTHER ORDAINED, that those provisions of Chapter 27 of the 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 retail marijuana establishments or retail marijuana social clubs are established in violation of this Article, each day of any continuing violation shall constitute a separate violation of this Article, 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 ORDAINED, that should any section or provision of this Article be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

**Sec. 27-1602. Applicability date.**

The applicability date of this Article is November 21, 2016.

Fiscal Note: Less than $1,000

Date: November 21, 2016