

**7:00PM Special Board of Selectmen Meeting
Topsham Municipal Building
Donald A. Russell Meeting Room
May 30, 2018**

Pledge of Allegiance –

Roll Call of Board Members –

Town Manager's Report –

Board and Committee Reports and Updates-

Public Comment –

Correspondence –

Adjustments to the Agenda –

Consent Calendar –

Public Hearing –

Unfinished Business –

Old Business –

New Business –

18-33- Consideration and any appropriate action on the discussion to extend the Medical Marijuana storefront moratorium.

Executive Session-

Any public member desiring to address the Board shall be recognized by the Chair, shall state name and address for the record, and shall limit remarks to the question under discussion. All remarks and questions addressed to the administration of Town shall be addressed to the Town Manager or the Board of Municipal Officers through the Chair and not to any municipal town employee. No person other than members of the Board and the person having the floor shall enter into any discussion either directly or through a member of the Board without the permission of the presiding officer.

Public members attending Board Meetings also shall observe the same rules of propriety, decorum, and good conduct applicable to the members of the Board. Any person making personal impertinent and slanderous remarks, or who becomes boisterous while addressing the Board or those attending the Board meeting shall be removed from the room if so directed by the presiding officer. Aggravated cases shall be prosecuted on appropriate complaint signed by the presiding officer. In case the presiding officer should fail to act, any member of the Board may move to require the Chair to act to enforce the rules, and the affirmative vote of the Board shall require the presiding officer to act. 05/29/2003

Board of Selectmen Meeting

For the date of: 05/30/2018

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number: 18-33

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action on the discussion to extend the Medical Marijuana storefront moratorium.

Brief Description of Consent or Agenda Item:

Submitted by: Rich Roedner, Town Manager

Date: 05-22-2018

MEMORANDUM

To: Board of Selectmen
From: Richard Roedner, Town Manager
Date: May 24, 2018
Re: Medical Marijuana Storefronts
Extension of Moratorium

At last week's Town Meeting, voters opted to not amend our zoning ordinance with a permanent prohibition on medical marijuana storefronts. This use consists of a care provider that operates out of a retail establishment, say for glass pipes. While traditionally Care Providers are limited to five clients, under this scenario, the fifth slot is left open to whoever comes into the establishment with a valid condition. A card is issued, the client is signed up, the purchase is made, and then the client is then removed from the client list. In this manner, it operates more in line with a recreational retail facility, rather than a care giver facility.

However, under our current code, this use is viewed as strictly retail (glass pipes) with the clinic an accessory use. Consequently, this use is permitted anywhere in Town where retail uses are permitted. This could include the Lower Village, outer Main St., the mall, Rt. 196, etc.

On December 6, 2017, the Town imposed a six-month moratorium on this use. The Moratorium (attached) expires on June 4. The Moratorium language authorizes the Board of Selectmen to extend the moratorium by six months, upon a vote by the Board.

Should the Board find that the Town lacks proper standards by which to review and/or regulate this use, it has the authority to extend the moratorium by a six-month period. In this case, I would recommend that the Board also endorse the creation of an ordinance regulating medicinal marijuana storefronts, for consideration at a fall town meeting.

I would suggest something along the lines of the following motion:

"I move that the Topsham Board of Selectmen finds that the conditions identified in the December 6, 2017 moratorium on Medicinal Marijuana Storefronts are still in existence, and that to protect the Town of Topsham from unintended consequences that may arise from the improper placement of such uses, this Board declares that the identified emergency is still in existence, and the Medicinal Marijuana Storefront Moratorium is hereby extended for 6 months, starting on June 4, 2018"

TOWN OF Topsham, Maine

**EMERGENCY MORATORIUM ORDINANCE
ON MEDICAL MARIJUANA STOREFRONTS**

WHEREAS, the Town enacted a Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Stores and Retail Marijuana Social Clubs (the "Retail Marijuana Moratorium") on May 17, 2016; and

WHEREAS, medical marijuana storefronts are a new type of use which is not specifically regulated under the Maine Medical Use of Marijuana Act, and which causes the same questions and concerns set forth in the Retail Marijuana Moratorium (such questions and concerns being included herein by reference); and

WHEREAS, the Town has seen a medical marijuana store front open via a loophole in our existing Zoning Ordinance; and

WHEREAS, the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, is inadequate to prevent serious public harm that could be caused by the unregulated development of medical marijuana storefronts in the Town of Topsham, thereby necessitating a moratorium; and

WHEREAS, the Town needs time to review regulations being considered by the State and to review its own Zoning Ordinance to determine the implications of future proposed medical marijuana storefronts in order to develop reasonable ordinances governing the location and operations of such establishments;

WHEREAS, the Board of Selectmen, with the professional advice and assistance of the Town Manager, Planning Department and Police Department, as well as legal and medical professionals and stakeholders shall study the Town's current Zoning Ordinance to determine the land use and other regulatory implications of medical marijuana storefronts and to consider what locations, if any, and approval and performance standards, 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 Medical Marijuana Storefronts;

NOW, THEREFORE, be it ordained by the Town of Topsham, as approved by Town Meeting, that the following Moratorium Ordinance on Medical Marijuana Storefronts (the "Moratorium Ordinance") be, and hereby is, enacted, and, in furtherance thereof, the Town of Topsham, as approved by Town Meeting, does hereby declare a moratorium on the location, operation or licensing of any medical marijuana storefronts within the Town.

For the purposes of this Moratorium Ordinance, a medical marijuana storefront is defined as an establishment which resembles a retail storefront in terms of signage, hours of operation and accessibility to patrons, and which is operated by one or more registered Primary Caregivers as defined by 22 M.R.S.A. § 2422(8-A), Medical Providers as defined in the Zoning Ordinance, or any other individuals or entities for the sale, distribution or administration of medical marijuana and

medical marijuana products to Qualifying Patients as defined by 22 M.R.S.A. § 2422(9) or any other individuals.

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302, or any other statute to the contrary, this Moratorium Ordinance, when adopted by Town Meeting, shall prohibit the permitting, construction or operating of any Medical Marijuana Storefront that was not in operation by October 19, 2017 and shall apply to any and all applications for permits or approvals that were or have been pending on or any time after October 19, 2017. This Moratorium shall run concurrently with the Retail Marijuana Moratorium and shall expire one hundred and eighty (180) days after the effective date as adopted by Town Meeting, unless extended or repealed by the Board of Selectmen, for the express purpose of drafting an amendment or amendments to the Town's current Zoning Ordinance to protect the public from health and safety risks including, but not limited to, compatibility of medical marijuana storefronts with existing and permitted uses in residential, commercial and industrial zoning districts, the potential adverse health and safety effects of medical marijuana storefronts on the community if not properly regulated, and the adequacy of the Town's infrastructure to accommodate the presence of medical marijuana storefronts in the Town.

BE IT FURTHER ORDAINED, that this Moratorium Ordinance shall apply to medical marijuana storefronts that may be proposed to be located within the Town after the October 19, 2017 applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization shall develop or operate a medical marijuana storefront within the Town on or after the enactment date of this Moratorium Ordinance without complying with whatever ordinance amendment or amendments the Town 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 or any other type of land use approval or permit and/or any other permits or licenses related to a medical marijuana storefront; 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 medical marijuana storefronts are established in violation of this Moratorium Ordinance, each day of any continuing violation shall constitute a separate violation of this Moratorium 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 Moratorium Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Emergency Declaration¹

The Topsham Town Meeting declares the existence of an emergency because the existing Code of Ordinances is insufficient to prevent serious public harm that could be caused by the unregulated development of medical marijuana storefronts, thereby necessitating a moratorium to provide an opportunity for the Town to review the potential impacts and harm that may be caused by such storefronts, and to amend its Code of Ordinances to mitigate the potential impact and harm on the Town and its residents.

This Moratorium, in compliance with applicable State Statutes, shall be enacted as both an emergency and a regular ordinance. It shall be effective immediately upon adoption by Town Meeting, and shall remain in effect for one hundred eighty (180) days from the effective date unless it is terminated or extended in accordance with this Ordinance.

Proposed: October 19, 2017

Approved: _____ (EMERGENCY)

¹ Section 212. - Emergency ordinances.

- (a) To meet a public emergency affecting life, health, property or the public peace, the council may enact one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, or authorize the borrowing of money.
- (b) An emergency ordinance shall be plainly designated an emergency ordinance and, after the enacting clause, it shall contain a declaration stating the existence of an emergency, which shall be described in clear and specific terms.
- (c) An emergency ordinance may be enacted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least 6 councilors shall be required for enactment. After its enactment the text of the ordinance shall be published and printed in a newspaper having a general circulation in the community, where it is reasonable to do so in the opinion of the council, and posted in at least 2 public places. Otherwise, the notice must contain a reasonable summary of the enacted ordinance. It shall become effective upon enactment, but it shall automatically stand repealed as of the 50th day following the date on which it was enacted unless it had been enacted as a regular ordinance according to sections 210 and 211 of this article at the time it was adopted as an emergency ordinance.
- (d) An emergency ordinance may be repealed by the enactment of a repealing ordinance in the same manner specified in this section for the enactment of emergency ordinances. An emergency ordinance may become a regular ordinance by its reenactment according to sections 210 and 211 of this article.