

September 20, 2018

City of Auburn, Maine  
Zoning Board of Appeals  
60 Court Street  
Auburn, ME 04210

RE: Legal Peaces, 197 Turner Street, Auburn, Maine – Petition for Appeal of Certificate of Occupancy

Dear Members of the Board of Appeals:

In anticipation of the Board of Appeals meeting scheduled for September 24, 2018 to hear an appeal filed by Shanon and Vincent Gogan, d/b/a Legal Peaces, the City of Auburn Office of Planning and Permitting and the Office of Economic and Community Development (the “City”) has requested that I prepare a letter to you summarizing the City’s position concerning this matter.

Subject of the Appeal

Legal Peaces is appealing the City’s issuance of a certificate of occupancy (“CofO”) for its premises located at 197 Turner Street because the CofO limits use of the premises to a tobacco smoke shop and does not authorize Legal Peaces to use the premises as a medical marijuana caregiver storefront.

Background and Permitting History

By way of background, Legal Peaces submitted a commercial building permit application on May 9, 2018 for a change of use of the premises from office space to a medical marijuana caregiver storefront and to renovate a bathroom. The building permit issued on May 18, 2018, with a condition that Legal Peaces secure a CofO before occupying the premises. (See Attachment 1.) A copy of the building permit was delivered to Legal Peaces on June 1, 2018.

On or about May 29, 2018, after completing the bathroom renovations, Legal Peaces contacted the City to request that the City complete a final inspection of the premises, as required prior to the issuance of a CofO. A City inspection was scheduled for June 1, 2018; however, the

applicant requested that the inspection be rescheduled. Accordingly, the inspection was rescheduled for and occurred on June 4, 2018.

The City issued the CofO a week later, on or about June 11, 2018, and delivered a copy to Legal Peaces on June 13, 2018. (*See Attachment 2.*) The CofO authorizes a change of use of the premises “from office space to retail store (Tobacco Smoke Shop)” but states that it “does not authorize any uses of the building premises or the retail sales of goods that are not authorized under state law.” On June 11, 2018, I advised Legal Peaces by letter that the CofO does not authorize the retail sale of medical marijuana. (*See Attachment 3.*)

On June 15, 2018, Attorney Matt Dubois, counsel for Legal Peaces, submitted a letter to the Office of Planning & Permitting appealing to the Auburn City Council the City’s “refusal to issue a Certificate of Occupancy for their caregiver business.” I advised the City Clerk to place this matter on the next City Council agenda, but informed Mr. Dubois that I would advise the City Council that it does not have jurisdiction to take up the appeal. On July 6, 2018, Mr. Dubois advised me that Legal Peaces would file a new petition for appeal.

On July 9, 2018, the City received a petition for appeal on behalf of Legal Peaces seeking an appeal of the City’s “refusal to issue a certificate of occupancy for my clients’ caregiver business,” and requested that the appeal be taken up by “whichever reviewing body is responsible for hearing appeals regarding certificates of occupancy.” (*See Attachment 4.*)

After discussion with Attorney Michael Malloy, general counsel for the City, and Mr. Dubois regarding the proper administrative jurisdiction for this appeal<sup>1</sup> and related scheduling matters, the petition for appeal was scheduled for a hearing before the Zoning Board of Appeals on September 24, 2018.

### The Moratorium Ordinance

On June 18, 2018, the City Council enacted a moratorium on medical marijuana caregiver storefronts. The moratorium governs and applies to all proceedings, licenses, and applications for medical marijuana caregiver storefronts that were or are pending before the City on or any time after May 31, 2018. The moratorium also nullifies the issuance of any final approvals of the City Clerk, Code Enforcement Officer, or the Planning Board made on or any time after May 31, 2018 that authorizes the operation of a medical marijuana caregiver storefront. (*See Attachment 5.*)

The City Council selected May 31, 2018 as the date of applicability of the moratorium ordinance because that was the date when information that the City Council would be considering a moratorium on medical marijuana caregiver storefronts was first published on the City’s website as part of a packet of materials attached to the City Council’s June 4, 2018 workshop agenda. (*See Attachment 6.*)

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<sup>1</sup> *See Defosses v. City of Saco*, 2015 ME 151, ¶ 23 & n.14 (holding that the ZBA has jurisdiction to consider an appeal of the issuance of a certificate of occupancy).

On June 22, 2018, I advised Mr. Dubois in writing of the effect of the moratorium on his clients' various filings, including the initial appeal petition concerning the CofO. (See Attachment 7.)

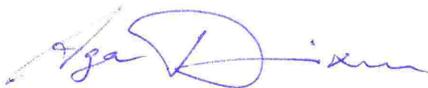
### Analysis

The moratorium governs and applies to “all proceedings, licenses, and applications for a . . . Medical Marijuana Caregiver Storefront that were or are pending before the City Clerk, Code Enforcement Officer, or the Planning Board on or any time after May 31, 2018.” Although Legal Peaces' request to issue the CofO was made prior to May 31, 2018, it could not be processed without an inspection of the premises. That inspection occurred on June 4, 2018. Accordingly, the CofO request became a pending proceeding on the date of the inspection.<sup>2</sup> At that time, the City was without authority to issue a CofO for a medical marijuana caregiver storefront. Instead, the City issued a CofO for those proposed uses that were not affected by the moratorium—namely, the tobacco smoke shop.

In addition, the moratorium nullifies the issuance of any final approvals that City officials make on or after May 31, 2018 concerning medical marijuana caregiver storefronts. Because the CofO issued by the City on or about June 11, 2018—after the May 31, 2018 date of applicability—it would have been nullified by the moratorium to the extent it authorized a medical marijuana caregiver storefront. The City avoided this result by issuing a CofO that is limited to the tobacco smoke shop. Moreover, the City cannot now issue a CofO to Legal Peaces for a medical marijuana caregiver storefront while the moratorium is in effect.

For all of the above reasons, while the moratorium is in effect, the Zoning Board of Appeals is deprived of authority to take up Legal Peaces' appeal of the CofO. In addition, to the extent that Legal Peaces' appeal involves a challenge to the validity of the moratorium ordinance itself, the Zoning Board of Appeals should refuse to hear the appeal on the ground that it lacks jurisdiction to determine the validity of a legislative enactment.<sup>3</sup>

Very truly yours,



Agnieszka A. Dixon

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<sup>2</sup> See *Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶¶ 13-14 (holding that the issuance or denial of a certificate of occupancy is a decision subject to judicial review that is separate from the underlying permit); see also *Littlefield v. Inhabitants of Town of Lyman*, 447 A.2d 1231, 1235 (Me. 1982) (holding that the mere presentment of a request to a reviewing authority, as opposed to the acceptance of that request by the reviewing authority, is inadequate to deem the request pending).

<sup>3</sup> See *Minster v. Town of Gray*, 584 A.2d 646, 648 (upholding the ZBA's refusal to hear an administrative appeal on the ground that the ZBA had been deprived of jurisdiction over the appeal by the enactment of a moratorium).

Attachment 1



60 Court Street  
 Auburn, Maine 04210  
 Tel: (207) 333-6601 ext. 1158  
 Fax: (207) 333-6625

Commercial Building  
**PERMIT**

Permit No: CB-12254-2018

Work Class: Alterations  
 Status: Issued

Expiration Date: 05/18/2019

**Permit Information**

<b>Job Address</b>	<b>Parcel:</b>	251022000	<b>Square Feet:</b>	0
197 TURNER ST AUBURN, ME 04210	<b>District:</b>	City of Auburn	<b>Valuation:</b>	\$ 300.00
	<b>Issue Date:</b>	5/18/2018		

**Description of Work**

changing from office space to retail/medical caregiver and removing a bathroom

**Additional Info**

Front Setback: 0.00    Rear Setback: 0.00    Side Setback: 0.00    Shoreside Setback: 0.00

**Contacts**

Type	Contact Name	Address	Business Phone
Owner	Shanon and Vincent Gogan	560 Sabattus RD Sabattus, ME United States	240-7307

**Contractors**

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**Permit Conditions**

Conditions	COMMENTS
<p>All Construction shall meet the standards of MUBEC 2009, NEC 2014, State of Maine Internal Plumbing Code , 2015 Edition, and NFPA 101, 2009 edition, ADA 2015 &amp; MHRA</p> <p>An occupancy permit is required to be issued prior to the use of the space affected by this building permit</p>	<p>The removal of the single user bathroom is allowed under the plumbing code, as a mercantile space less than 1500 s.f. can be served by 1 single user unisex bathroom. If and when an addition is added, an additional bathroom will be needed to be added (ADA compliant), again if the space is mercantile use only.</p> <p>With the change of use, Existing Building Code (IEBC 2015) requires at least 1 ADA compliant entrance, at least 1 accessible route from the accessible entrance to the primary function area, signage complying with IBC section 1111 , and accessible parking,</p>

<b>Fees Due</b>	<b>Invoice Number: 11197</b>	
	Commercial Alteration	\$28.00
	PM: Citation Ordinance	\$40.00
	<b>Invoice Total:</b>	<b>\$68.00</b>

<b>Fees Paid</b>	<b>Invoice Number: 11197</b>	
	<b>Cash</b>	
	PM: Citation Ordinance	\$40.00
	Commercial Alteration	\$28.00
		\$68.00
<b>Invoice Fees Paid:</b>	<b>\$68.00</b>	

<b>Inspections</b>	
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**IMPORTANT: APPLICATION IS HEREBY MADE TO THE BUILDING OFFICIAL FOR A PERMIT SUBJECT TO THE CONDITIONS AND RESTRICTIONS SET FORTH ON THIS APPLICATION AND THE FOLLOWING:**

- The City's approved plans and permit inspection card must remain on the job site for use by City inspection personnel.

Date: 5/18/2018

Approved By: 



City of Auburn
Economic & Community Development

"WE WANT DEVELOPMENT!"

- \*Appointments for permits are recommended.
\*Please fill out any part which applies to project.
\*Proper plans must accompany application as required.

For Official Use Only
Date: 6/1/18
Issued:
Telephone:
Zone: 6B
Map No.: 251-022
Bldg. Code: MUSEC 15
Use Group:
Type of Construction:
Est. Cost: 300.00
Fee: 68.00

Permit Number: CB-10254-2018

ADDRESS OF CONSTRUCTION: 197 Turner Street
Owner: Sharon Vincent Gagan Cell # 240-7307
Address:

CONTRACTOR: Cell # 140.00 cu

\* Project Description: Changing office to store / Removing walls
Building Dimensions: Square Footage:
Lot Size:
Plans Submitted:
Plan Number:
Reviewed By: MS

For Commercial Properties: Is there a license required for your business? YES NO

If YES, Please be aware that the license may require a background investigation.

Email Permit To: shonagagan@aol.com Fax Permit To:

Foundation:

- 1. Type of Soil:
2. Set Backs - Front: Rear: Side(s):
3. Footings Size:
4. Foundation Size:
5. Slab Size: Slab Thickness: Heated?
6. Other:

RECEIVED
MAY 09 2018
BY:

Floor:

- 1. Sills Size: \*\*Sills must be anchored
2. Carrying Beam Size:
3. Column Spacing:
4. Joist Size: \*\*Spacing 16" O. C.
5. Floor Sheathing Type: Thickness:
6. Other Material:
7. Floor Coverings:

Exterior Walls:

- 1. Studding Size: Spacing:
2. Corner Posts Size:
3. No. of Doors:
4. Header Sizes: Spans:
5. Bracing: YES: NO:
6. Egress Windows: Brand: Model #:
7. Insulation Type: Thickness:
8. Sheathing Type: Thickness:
9. Siding Type:
10. Masonry Materials:
11. Metal Materials:
12. Other Materials:

Interior Walls:

- 1. Studding Size: Spacing:
2. Header Sizes: Span(s):
3. Wall Covering Type:
4. Fire Separation Wall if Required:
5. Other Materials:

Ceilings:

- 1. Ceiling Joist Size:
2. Type Ceilings:
3. Insulation Type:
4. Thickness:

Roof:

- 1. Truss or Rafter Size:
2. Span:
3. Sheathing Type:
4. Thickness:
5. Roof Covering Type:
6. Other:

Address:

197 Turner St

Owner:

Sharon Vincent Gagan

Chimneys: 1. Type: \_\_\_\_\_

**Heating:**

1. Type of Fuel - check all that apply: Oil \_\_\_\_\_ Propane \_\_\_\_\_ Natural Gas \_\_\_\_\_ Electric \_\_\_\_\_ Other \_\_\_\_\_

**\*\*If Oil Fired Appliance is being installed - A Permit from the Fire Department must be obtained\*\***

2. Type of Heating Source & Number of Systems - check all that apply:

<input type="checkbox"/> FHA	# _____	<input type="checkbox"/> Unit Heaters	# _____
<input type="checkbox"/> FHW	# _____	<input type="checkbox"/> Warm & Cool	# _____
<input type="checkbox"/> Radiant Electric	# _____	<input type="checkbox"/> Solar	# _____
<input type="checkbox"/> Radiant Hot Water	# _____	<input type="checkbox"/> Complete HVAC	# _____
<input type="checkbox"/> Geothermal	# _____	<input type="checkbox"/> Package Units	# _____
<input type="checkbox"/> Electric Basebds	# _____	<input type="checkbox"/> Other _____	# _____

**Electrical:**

1. Service Entrance Size: \_\_\_\_\_ Wiring Required: \_\_\_\_\_

**Plumbing:**

1. Approved Soil Test if Required: YES: \_\_\_\_\_ NO: \_\_\_\_\_ City Sewer: \_\_\_\_\_

2. Number of Tubs and Showers: \_\_\_\_\_ # of Flushes: \_\_\_\_\_ # of Lavatories: \_\_\_\_\_

**Swimming Pools:**

1. Type: \_\_\_\_\_ Pool Size: \_\_\_\_\_ Square Footage: \_\_\_\_\_

**Comments/Drawing:**

The permit holder, property owner, person or persons, firm or corporation accepting this permit agrees to comply with all the provisions of the statutes of Maine and the Ordinances of the City of Auburn regulating the construction, maintenance, use of buildings, structures and of the application on file in this department. Permit holder understands he/she is responsible for correct set backs from ALL PROPERTY LINES and from all buildings and structures.

Application Signature: \_\_\_\_\_

*Sharon Gogan*

Attachment 2



# Certificate of Occupancy

Date Issued: June 11, 2018

Certificate Number: CB-12254-2018

PID: 251022000

Issued To: Sharon and Vincent Gogan  
d/b/a Legal Peaces  
560 Sabattus Rd  
Sabattus, ME

Contractor:

This is to certify that the building premises, or part thereof, indicated below and building, altered, changed as to use at: 197 TURNER ST under building permit # CB-12254-2018 has had a final inspection, has been found to conform substantially to requirements of the Auburn Zoning Ordinance and Building Code, and is hereby approved for occupancy, limited or otherwise, as indicated below:

Use group: - changing from office space to retail store (Tobacco Smoke Shop) - removing walls  
The approval of this certificate does not authorize any uses of the building premises or the retail sales of goods that are not authorized under state law.

The removal of the single user bathroom is allowed under the plumbing code, as a mercantile space less than 1500 s.f. can be served by 1 single user unisex bathroom. If and when an addition is added, an additional bathroom will be needed to be added (ADA compliant), again if the space is mercantile use only.

With the change of use, Existing Building Code (IEBC 2015) requires at least 1 ADA compliant entrance, at least 1 accessible route from the accessible entrance to the primary circulation area, signage complying with IBC section 1111, and accessible parking.

  
Plumbing Inspector

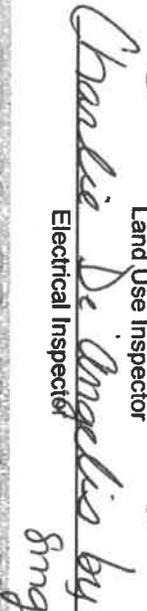
  
Heating Appliance Inspector

  
Fire Inspector

  
Land Use Inspector

  
Building Inspector

  
Electrical Inspector

  
Charles DeAngelis by  
smg

Attachment 3

June 11, 2018

**DELIVERY BY E-MAIL**

Matt Dubois, Esq.  
P.O. Box 22  
49 Haymarket Square  
Bangor, ME 04402

RE: Legal Peaces, 197 Turner Street, Auburn, Maine – Pre-Packaged Food Establishment Business License and Certificate of Occupancy Request

Dear Matt:

As you know, I represent the City of Auburn in the above-identified matter. I understand that your clients, Vincent and Shanon Gogan d/b/a Legal Peaces, submitted an application on May 31, 2018 for a pre-packaged food establishment business license and are awaiting receipt of a certificate of occupancy (“COO”) from the City to change the use of a pre-existing office building to a retail store for the sale of tobacco products, pre-packaged food, and medical marijuana.

In your letter to Mr. Eric Cousens, dated June 5, 2018, you assert that the license and COO has not issued because of a “discriminatory intent specifically to shut down my clients’ business.” To the contrary, the license and COO has not issued because, at your clients’ request, the inspection that had been scheduled for Friday, June 1, was cancelled and rescheduled for Monday, June 4, which resulted in some delay in processing the application. It also bears mention that the City’s Business License Application expressly states that there is a 14-day review period after the receipt of a completed application. Moreover, the license application submitted by your clients, and the inspection conducted on June 4, has raised some question as to whether your clients’ proposed retail sale of medical marijuana at 197 Turner Street is a lawful use under applicable state statutes and rules.

Pursuant to Article II, Section 14-26 of the City’s Code of Ordinances, all applicants for business licenses are required to comply with state statutes and rules which pertain to the business or activity for which a license is desired. The burden is on your client to satisfy all applicable ordinance provisions. Accordingly, I have advised the City to issue a limited license and COO authorizing your clients to engage in the sale of tobacco products and pre-packaged foods, but not authorizing the retail sale of medical marijuana from this business location.

To the extent your clients wish to expand the City’s authorizations to include the retail sale of medical marijuana at 197 Turner Street, please submit evidence, such as a statement from the Maine Department of Health and Human Services, that your clients’ intended retail caregiver medical marijuana storefront complies with the Act and related state rules.

Very truly yours,

  
Agnieszka A. Dixon

Attachment 4



MATT DUBOIS  
P.O. Box 22  
49 Haymarket Square  
Bangor ME 04402  
207 951 6395  
207 433 1215 FAX  
matt@duboislawmaine.com

Eric Cousens  
Deputy Director  
Economic & Community Development  
60 Court Street  
Auburn, ME 04210  
**BY ELECTRONIC MAIL (VIA COUNSEL) & HAND FILING**

RECEIVED  
JUL 09 2018  
BY: RWR

July 7, 2018

**RE: PETITION FOR APPEAL  
197 Turner Street Certificate of Occupancy**

Mr. Cousens:

As you know, I represent Vincent Gogan and Shanon Gogan with regard to their tobacco shop and licensed caregiver business, d/b/a Legal Peaces, located at 197 Turner Street in Auburn. Please accept this letter as a petition for appeal of the city's refusal to issue a certificate of occupancy for my clients' caregiver business. Filed with this petition is the requisite \$350 filing and advertising fee.

Please forward a copy of this notice to the board of appeals, planning director, the chairman of the planning board, the city solicitor, and all other appropriate parties and notify me as required when an appeal hearing may be scheduled before the City Council, the Zoning Board of Appeals, the city manager, **or whichever reviewing body is responsible for hearing appeals regarding certificates of occupancy** under the Auburn Code of Ordinances or City Charter. Feel free to contact me if you require additional information to schedule the hearing.

Sincerely,

A handwritten signature in cursive script that reads 'Matthew T. Dubois'.

Matthew T. Dubois, Esq.

Vincent Gogan: Vincent Gogan

Shanon Gogan: Shanon Gogan

MTD/mrp



60 Court Street  
Auburn, Maine 04210  
Tel: (207) 333-6601 ext. 1158  
Fax: (207) 333-6625

# RECEIPT

**BILL TO:**

Shanon and Vincent Gogan  
560 Sabattus RD  
Sabattus, ME United States

Receipt Number: TRC-012084-09-07-2018

Date: 07/09/2018

**Amount****PRIMARY FEES**

Invoice Number: 11515

Petition for Appeal	\$150.00
Petition for Appeal Required Advertising	\$200.00

**PAYMENTS RECEIVED**

Date	Payment Method	Amount Received
07/09/2018	Cash	\$350.00
	<b>Total Payment</b>	<b>\$350.00</b>
	Change Due	\$0.00

Attachment 5



**City Council Workshop & Meeting  
June 18, 2018  
Agenda**

**5:30 P.M. Workshop**

- A. Executive Session – to consult with legal counsel regarding the Council’s legal rights and duties in regards to the proposed marijuana moratorium, pursuant to 1 M.R.S.A. §405(6)(E)
- B. LA 911 Radio System Proposal and Resolve – Paul LeClair, Phil Crowell, Bob Chase (25 minutes)
- C. FY 19 Proposed CIP & 800Mhz Discussion – Peter Crichton (10 minutes)
- D. Marijuana Moratorium – Phil Crowell (30 minutes)

**7:00 P.M. City Council Meeting**

**Roll call votes will begin with Councilor Gerry**

**Pledge of Allegiance**

- I. **Consent Items** - None
- II. **Minutes**
  - June 4, 2018 Regular Council Meeting
- III. **Communications, Presentations and Recognitions**
  - Presentation of the Bruce J. Gerry Scholarship award – Jean Doherty, recipient
- IV. **Open Session** – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*.
- V. **Unfinished Business**
  - 1. **Ordinance 02-06042018**  
Adopting the zone change for 33 Dunn Street – Public hearing and second reading.
  - 2. **Order 51-06042018**  
Authorizing the Finance Director to execute the issuance of general obligation bonds and a tax levy therefore. Second reading. *Passage requires an affirmative vote of 5 Councilors.*
  - 3. **Order 52-06042018**  
Reallocation of bonds. Second reading. *Passage requires an affirmative vote of 5 Councilors.*

4. **Resolve 07-06042018**  
Adopting the Appropriations Resolve for Fiscal Year 2019. Second reading.  
*Passage requires an affirmative vote of 4 Councilors.*
  
- VI. **New Business**
  1. **Ordinance 03-06182018**  
Adopting a Marijuana Moratorium – Public hearing and first reading.
  2. **Order 53-06182018**  
Approving the Mass Gathering Permit for the Liberty Festival to be held July 4, 2018 (rain date July 5, 2018). Public hearing.
  3. **Ordinance 03-06182018**  
Adopting the zone change for Niskayuna Street – Public hearing and first reading.
  4. **Resolve 08-06182018**  
Supporting an 800Mhz Replacement Radio System for LA 911.
  5. **Order 54-06182018**  
Authorizing the use of funds in the amount of \$1,012,000, from the funds listed below to be used to fund the Capital Improvements.
  
- VII. **Reports**
  - a. **Mayor's Report**
  - b. **City Councilors' Reports**
  - c. **City Manager Report**
  - d. **Finance Director, Jill Eastman**
    - Acceptance of the April 2018 and May 2018 Monthly Finance Reports
  
- VIII. **Open Session** - Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*.
  
- IX. **Executive Session**
  - A. Discussion regarding a personnel matter, pursuant to 1 M.R.S.A. §405(6)(A).
  
- X. **Adjournment**



**City of Auburn  
City Council Information Sheet**

**Council Workshop Meeting Date:** June 18, 2018

**Author:** Phillip L. Crowell, Jr., Chief of Police

**Subject:** Marijuana Moratorium

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**Information:** The marijuana workgroup has been meeting regularly since the City Council meeting on February 5, 2018 to consider local impacts relating to adult use marijuana to include medical marijuana retail. The workgroup will have a report to present to the council at a future meeting.

At the request of City Councilor Andy Titus, this workshop is being held to determine the action that the City Council will need to take regarding medical retail caregiver “storefront” operations. As such, the committee recommends that a moratorium ordinance be enacted to allow the Legislature and involved state agencies to finalize the statutory and rule amendments. Currently, the City of Auburn Code of Ordinance is insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and other uses authorized by the “Marijuana Legalization Act” approved at the November 8, 2016 referendum election, thereby necessitating a moratorium to provide an opportunity for the city to amend its code of ordinances to mitigate the potential impact and harm on the city and its residents.

While the “Marijuana Legalization Act” has been approved, the rulemaking has yet to be completed. In addition, the city has had four (4) medical retail storefronts begin unregulated operations. In addition, Police and Code Enforcement have received several inquiries regarding retail and medical retail operations.

Workshop follow-up from June 4, 2018

*The city council requested further clarification regarding when the moratorium would be in effect and any additional impacts. Legal counsel will be available to answer any questions. A revised draft moratorium ordinance is attached.*

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**City Budgetary Impacts:** A moratorium would have no direct budgetary impacts.

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**Staff Recommended Action:** To adopt a marijuana moratorium for medical retail “storefront” operations with an effective date of May 31, 2018.

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**Previous Meetings and History:** December 5, 2016, January 23, 2017, February 5, 2018, and June 4, 2018.

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**City Manager Comments:**

I concur with the recommendation. Signature:

A handwritten signature in blue ink that reads "Peter J. Caulton".

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**Attachments:**

Holly C. Lasagna, Ward One  
Robert P. Hayes, Ward Two  
Andrew D. Titus, Ward Three  
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five  
Belinda A. Gerry, At Large  
David C. Young, At Large

Jason J. Levesque, Mayor

## IN CITY COUNCIL

### ORDINANCE 03-06182018

#### CITY OF AUBURN CITY COUNCIL

#### MORATORIUM ORDINANCE ON SOCIAL CLUBS AND RETAIL MEDICAL MARIJUANA CAREGIVER STOREFRONTS

The City Council of the City of Auburn, Maine (the “City”) hereby amends the City’s Code of Ordinances by adding the following words to Chapter 61, immediately following Chapter 60 (Zoning):

#### CHAPTER 61. MORATORIA

#### ARTICLE I. MORATORIA

#### Sec. 61-1. Moratorium on Social Clubs and Retail Medical Marijuana Caregiver Storefronts.

WHEREAS, the Maine Medical Use of Marijuana Act, codified at 22 M.R.S. §§ 2421 to 2430-B, (the “Medical Act”) authorizes the possession, cultivation, and furnishing of medical marijuana to qualifying patients by caregivers, as those terms are defined in 22 M.R.S. § 2422; and

WHEREAS, section 401 of the Marijuana Legalization Act, codified at 28-B M.R.S. ch. 1 (the “Adult Use Act”) authorizes municipalities pursuant to home rule authority to regulate adult use marijuana establishments, including cultivation facilities, products manufacturing facilities, testing facilities, and marijuana stores, as those terms are defined in 28-B M.R.S. § 102; and

WHEREAS, neither the Medical Act nor the Adult Use Act nor any state agency rules promulgated thereunder expressly authorize the operation of retail stores by registered caregivers for the purpose of selling medical marijuana or medical marijuana products to qualifying patients (hereafter, “Retail Medical Marijuana Caregiver Storefronts”) or the furnishing or sale of marijuana or marijuana products to consumers for on-premises consumption (hereafter, “Social Clubs”); and

WHEREAS, during the first regular session, the 128th Maine Legislature considered LD 1539, “An Act to Amend Maine’s Medical Marijuana Law,” which, if enacted, would amend the Medical Act to expressly authorize the operation of Retail Medical Marijuana Caregiver Storefronts, and LD 238, “An Act to Amend the Maine Medical Use of Marijuana Act,” which, if enacted, would expressly authorize municipalities to regulate registered caregiver operations; however, the ultimate disposition of LD 1539 and LD 238 is unknown at this time; and

WHEREAS, no specific regulations governing Social Clubs or Retail Medical Marijuana Caregiver

Holly C. Lasagna, Ward One  
Robert P. Hayes, Ward Two  
Andrew D. Titus, Ward Three  
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five  
Belinda A. Gerry, At Large  
David C. Young, At Large

Jason J. Levesque, Mayor

Storefronts exist under the City's Code of Ordinances; and

WHEREAS, the City's Code of Ordinances is insufficient to prevent serious public harm that could result from the unregulated siting and operation of Social Clubs or Retail Medical Marijuana Caregiver Storefronts within the City; and

WHEREAS, the unregulated siting and operation of Social Clubs or Retail Medical Marijuana Caregiver Storefronts within the City raises legitimate and substantial questions about the impact of such facilities and related uses and activities on the City, including questions as to compatibility of such facilities with existing and permitted land uses in the City; potential adverse health and safety effects on the community; the adequacy of the City's infrastructure to accommodate such facilities; and the possibility of unlawful sale of marijuana and marijuana products; and

WHEREAS, as a result of the foregoing issues, the siting and operation of Social Clubs or Retail Medical Marijuana Caregiver Storefronts and related uses and activities within the City has potentially serious implications for the health, safety, and welfare of the City and its residents and visitors; and

WHEREAS, an overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of unregulated Social Clubs or Retail Medical Marijuana Caregiver Storefronts and related uses and activities located and operated in the City; and

WHEREAS, the City has established a working group charged with studying, reviewing, and making recommendations to the City Council regarding the regulation of adult and medical marijuana facilities, uses and activities, including Social Clubs and Retail Medical Marijuana Caregiver Storefronts; and

WHEREAS, the City and the working group needs time to understand the disposition of LD 1539, LD 238, and any State department rules promulgated pursuant to the Adult Use Act or the Medical Act in relation to its own Code of Ordinances and to evaluate the effects of Social Clubs and Retail Medical Marijuana Caregiver Storefronts and related uses and activities in order to prepare reasonable ordinance provisions governing the siting, licensing, and operation of such facilities, uses, and activities; and

WHEREAS, 30-A M.R.S. § 4356 authorizes the City to establish a moratorium on the processing or issuance of development permits or licenses; and

WHEREAS, in the judgment of the City Council, the foregoing findings constitute a necessity within the meaning of 30-A M.R.S. § 4356.

NOW, THEREFORE, be it ordained by the City Council of the City of Auburn, Maine, as follows:

1. Moratorium. The City does hereby declare a moratorium on the siting, operation, or licensing of any Social Club or Retail Medical Marijuana Caregiver Storefront within the City. For purposes of this Moratorium Ordinance, these terms shall have the following meanings:

Holly C. Lasagna, Ward One  
Robert P. Hayes, Ward Two  
Andrew D. Titus, Ward Three  
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five  
Belinda A. Gerry, At Large  
David C. Young, At Large

Jason J. Levesque, Mayor

- a. "Social Club" shall mean any premises where marijuana or marijuana products are furnished or sold to consumers for on-premises consumption, excluding the personal adult consumption of marijuana or marijuana products pursuant to 28-B M.R.S. § 1501(2) or the consumption of medical marijuana or medical marijuana products pursuant to 22 M.R.S. § 2422 et seq.
- b. "Retail Medical Marijuana Caregiver Storefront" shall mean a retail store, a retail business, or an establishment that resembles a retail storefront in terms of signage, hours of operation, and accessibility to patrons (including without limitation retail use or retail space, as those terms are defined in Article I, Sec. 60-2 of the City's Code of Ordinances) where a licensed caregiver furnishes or sells marijuana or marijuana products to qualifying patients, as those terms are defined in 22 M.R.S. § 2422.

***[NOTE: Paragraph 2, below, concerns the retroactive applicability of this Moratorium Ordinance. This provision will be up for discussion at the City Council meeting scheduled for Monday, June 18, 2018.]***

2. Date of Applicability. Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, and regardless of the Effective Date, this Moratorium Ordinance shall govern and apply to all proceedings, licenses, and applications for a Social Club or Medical Marijuana Caregiver Storefront that were or are pending before the City Clerk, Code Enforcement Officer, or the Planning Board on or any time after \_\_\_\_\_ and, to the extent allowed by 30-A M.R.S. § 3007(6), shall nullify the issuance of any final approval of the City Clerk, Code Enforcement Officer, or the Planning Board made on or at any time after \_\_\_\_\_ that authorizes the operation of a Social Club or Medical Marijuana Caregiver Storefront (the "Date of Applicability").
3. Effective Date. This Ordinance shall become effective immediately upon its final passage by the City Council (the "Effective Date") and shall remain in full force and effect for a period of 180 days, unless extended, repealed, or modified in accordance with applicable law.
4. Conflicts; Savings Clause. Any provisions of the City's Code of Ordinances that are inconsistent with or conflict with the provisions of this Moratorium Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Moratorium Ordinance is declared by a court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.
5. Violations. If any Social Club or Medical Marijuana Caregiver Storefront is located or operates in the City, in violation of this Moratorium Ordinance, each day of any continuing violation shall

Holly C. Lasagna, Ward One  
Robert P. Hayes, Ward Two  
Andrew D. Titus, Ward Three  
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five  
Belinda A. Gerry, At Large  
David C. Young, At Large

Jason J. Levesque, Mayor

constitute a separate violation of this Moratorium Ordinance and the City shall be entitled to all rights available to it pursuant to 30-A M.R.S. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

Given under our hands this \_\_\_\_ day of \_\_\_\_\_, 2018.

_____	_____
_____	_____
_____	_____
_____	

A Majority of the City Council of the City of Auburn, Maine.

First Reading:  
Second Reading:  
Final Passage:

Holly C. Lasagna, Ward One  
Robert P. Hayes, Ward Two  
Andrew D. Titus, Ward Three  
Alfreda M. Fournier, Ward Four



Leroy G. Walker, Ward Five  
Belinda A. Gerry, At Large  
David C. Young, At Large

Jason J. Levesque, Mayor

Attest: A true copy of an ordinance entitled, "Moratorium Ordinance on Social Clubs and Retail Medical Marijuana Caregiver Storefronts," as certified to me by the municipal officers of the City of Auburn, Maine, on the \_\_\_ day of \_\_\_\_\_, 2018.

---

Susan Clements, City Clerk  
City of Auburn, Maine

that he does support them adding that because it is a safety issue, we need to support them.

**Councilor Gerry** – reported on her garden plot at the Newbury Street Garden.

**City Manager** – reported that he met with the School Superintendent to talk about how they can work together more. He recognized Assistant City Manager Denise Clavette noting this was her last official meeting before moving on to Saco. He thanked Jill Eastman and the Department Directors on their work on the budget. Last, he reported on a meeting he had today on the Androscoggin River and safety and rescue measures they can take.

**VIII. Open Session**

Joe Gray, Sopers Mill Road commented on the budget process and the vacant Assistant City Manager position.

Dan Herrick, Hatch Hill Road commented on the Minot Avenue construction project and some issues in that area. He also commented on the budget, salaries, contracts and employee benefits.

**IX. Executive Session**

Motion was made by Councilor Fournier and seconded by Councilor Gerry to suspend the rules and enter into executive session pursuant to 1 M.R.S.A. Sec. 405(6)(A). Passage 4-3 (Councilors Young, Titus, and Hayes opposed). Time 9:29 PM.

Council was declared out of executive session at 9:47 PM.

**X. Adjournment** – Motion was made by Councilor Walker and seconded by Councilor Fournier. Passage 7-0. Time 9:48 PM.

A TRUE COPY

ATTEST \_\_\_\_\_

Susan Clements-Dallaire, City Clerk

Mayor Levesque called the meeting to order at 7:02 P.M. in the Council Chambers of Auburn Hall and led the assembly in the salute to the flag. All Councilors were present.

**XI. Consent Items - None**

**II. Minutes - June 4, 2018 Regular Council Meeting**

Motion was made by Councilor Walker and seconded by Councilor Fournier to approve the minutes of the June 4, 2018 Regular City Council Meeting.

Passage 7-0.

**XXIII. Communications, Presentations and Recognitions**

1. Presentation of the Bruce J. Gerry Scholarship award – Jean Doherty, recipient

**XXIV. Open Session**

Robert W. Spencer, Auburn resident commented on the proposed beach study and the stagnant water issue at the outlet beach.

**V. Unfinished Business**

**9. Ordinance 02-06042018**

Adopting the zone change for 33 Dunn Street – Public hearing and second reading.

Motion was made by Councilor Hayes and seconded by Councilor Walker for passage.

Public Hearing - no one from the public spoke.

Passage 6-1 (Councilor Titus opposed). A roll call vote was taken.

**10. Order 51-06042018**

Authorizing the Finance Director to execute the issuance of general obligation bonds and a tax levy therefore. Second reading.

Motion was made by Councilor Fournier and seconded by Councilor Lasagna.

Public comment – no one from the public spoke.

Motion was made by Councilor Titus and seconded by Councilor Fournier to amend the language by adding the phrase not to exceed 11 years.

Passage 5-2 (Councilors Walker and Gerry opposed).

Passage of Order 51-06042018 as amended 6-1 (Councilor Gerry opposed).

**IN COUNCIL REGULAR MEETING JUNE 18, 2018 VOL. 35 PAGE 148**

Motion was made by Councilor Fournier and seconded by Councilor Lasagna to reconsider passage of the motion.

Passage 5-2 (Councilors Gerry and Young opposed).

Motion by Councilor Fournier and seconded by Councilor Hayes to rescind the amendment adopted at the 6/4/2018 meeting (to fund Museum LA \$15,000 instead of \$25,000 as proposed) which would restore full funding of the \$25,000 that was originally proposed.

Passage 5-2 (Councilors Gerry and Young opposed). A roll call vote was taken.

Motion was made by Councilor Titus and seconded by Councilor Fournier to remove the funding of \$125,000 for the Norway Savings Bank Arena floor.

Passage 7-0. A roll call vote was taken.

Passage of Order 51-06042018 as amended 6-1 (Councilor Gerry opposed). A roll call vote was taken.

**11. Order 52-06042018**

Reallocation of bonds. Second reading.

Motion was made by Councilor Titus and seconded by Councilor Walker for passage.

Public comment – no one from the public spoke.

Passage 6-1 (Councilor Gerry opposed). A roll call vote was taken.

**12. Resolve 07-06042018**

Adopting the Appropriations Resolve for Fiscal Year 2019. Second reading.

Motion was made by Councilor Titus and seconded by Councilor Walker for passage.

Public comment – no one from the public spoke.

Motion was made by Councilor Gerry and seconded by Councilor Walker to fund an additional \$59,000 to LATC.

The Mayor opened it up to public comment again – Robert Spencer commented.

Failed 3-4 (Councilors Lasagna, Hayes, Titus, and Fournier opposed). A roll call vote was taken.

Passage of Resolve 07-06042018 6-1 (Councilor Gerry opposed). A roll call vote was taken.

**VI. New Business**

1. **Ordinance 03-06182018**

**Adopting a Marijuana Moratorium – Public hearing and first reading.**

Motion was made by Councilor Titus and seconded by Councilor Hayes for passage with a date of applicability under paragraph #2 as May 31, 2018.

Public hearing:

Peter Vondel, 153 Broad Street spoke in opposition of the moratorium.

Alexander, owner of Canna Source of Maine located at 747 Minot Avenue spoke in opposition of the moratorium.

Dan Jackson owner of Fire Pharms, spoke in opposition of the moratorium.

John Morrison, owner of Port City Relief, spoke in opposition of the moratorium.

Angela McNamara, resident of Ornaville Township, Maine spoke in opposition of the moratorium.

Chuck McNamara, spoke in opposition of the moratorium.

Charlene St. Laurent, owner of Fire Pharms, spoke in opposition of the moratorium.

Motion was made by Councilor Fournier and seconded by Councilor Young to suspend the rules and dispense of the second reading with a unanimous vote at the first reading. Passage 7-0.

**Passage of Ordinance 03-06182018 7-0.** A roll call vote was taken.

2. **Order 53-06182018**

Approving the Mass Gathering Permit for the Liberty Festival to be held July 4, 2018 (rain date July 5, 2018). Public hearing.

Motion was made by Councilor Titus and seconded by Councilor Fournier for passage.

Public hearing – Cathy McDonald, Chair of the Liberty Festival spoke and said she appreciates the support of the City Council.

Passage 7-0.

3. **Ordinance 04-06182018**

Adopting the zone change for Niskayuna Street – Public hearing and first reading.

Motion was made by Councilor Fournier and seconded by Councilor Walker for passage.

Public hearing – no one from the public spoke. Passage 6-1 (Councilor Titus opposed). A roll call vote was taken.

**4. Resolve 08-06182018**

Supporting an 800Mhz Replacement Radio System for LA 911.

Motion was made by Councilor Titus and seconded by Councilor Walker for passage.

Public comment – no one from the public spoke. Passage 5-2 (Councilors Titus and Fournier opposed). A roll call vote was taken.

**5. Order 54-06182018**

Authorizing the use of funds in the amount of \$1,012,000, from the funds listed below to be used to fund the Capital Improvements.

Motion was made by Councilor Fournier and seconded by Councilor Walker for passage.

Public comment - no one from the public spoke. Passage 6-1 (Councilor Gerry opposed). A roll call vote was taken.

**VII. Reports**

**Mayor Levesque** – thanked the Council and staff for their efforts during the budget process. He then announced that we will be rolling out Auburn’s 150<sup>th</sup> Anniversary celebration. On July 2, 2018 at 5:00 PM there will be a press conference where we will be unveiling a new Sesquicentennial city seal.

**Councilor Young** – no report

**Councilor Lasagna** – reported that there will be a discussion around opioids in our community on June 28, 2018 from 6:00-8:00 PM at the Lewiston Middle School.

**Councilor Hayes** – commented that he was disappointed that he was unable to attend the Chambers remodeled Business to Business session a few weeks ago adding that they have a new logo “*Make It Here*”.

**Councilor Titus** – reported that a Sewer District meeting was scheduled for June 19<sup>th</sup> at 4:00 PM, on Wednesday, June 20<sup>th</sup> the Water District meeting at 4:00 PM and he will be attending both.

**Councilor Fournier** – reported that she was unable to attend the School’s Task Force Committee meeting where a resolve was passed to return to the 0-100 grading system (middle and high schools). She also reported that the next Library Board of Trustees meeting is scheduled for Wednesday.

**Councilor Walker** – reported that the Age Friendly Committee meeting is scheduled for tomorrow at the Senior Center at 6:30 PM, next Tuesday the United New Auburn  
**IN COUNCIL REGULAR MEETING JUNE 18, 2018 VOL. 35 PAGE 151**

Association will meet at 6:00 PM at Rolly's Diner where Michael Chammings will be the guest speaker. Thursday, June 28th the Neighborhood Watch Group will be meeting at the Sixth Street Congregational Church at 6:30 PM, and on Saturday, there will be a yard sale and bottle drive at Rolly's Diner to raise money for the Marshall Popcorn Truck.

**Councilor Gerry** – reported that there are still vacant slots to fill on the Age Friendly Committee.

**City Manager** – clarified some comments that were made at the last Council meeting during the public comment period regarding the number of employees in the Economic and Community Development office, he reported on the City and School Joint Cooperation Group, the Chamber Market Place event, and he recognized Auburn staff that put together a booth, and he thanked the Council, Jill Eastman and staff for their efforts during the budget process.

**Finance Director, Jill Eastman** – April 2018 and May 2018 Monthly Finance Reports

Motion was made by Councilor Lasagna and seconded by Councilor Walker to accept and place on file the April 2018 monthly finance report. Passage 7-0.

Motion was made by Councilor Lasagna and seconded by Councilor Fournier to accept and place on file the May 2018 monthly finance report. Passage 7-0.

**VIII.** Open Session – Ned Claxton, reported on Refugee Day being cancelled.

**IX.** Executive Session – Discussion regarding a personnel matter, pursuant to 1 M.R.S.A. §405(6)(A).

Motion was made by Councilor Fournier and seconded by Councilor Walker to enter into executive session. Passage 7-0, time in 9:16 AM.

Council was declared out of executive session at 9:57 PM.

**X.** **Adjournment** - Motion was made by Councilor Fournier and seconded by Councilor Hayes to adjourn. Passage 6-0 (Councilor Walker was not in the room at the time of the vote). The meeting adjourned at 9:58 PM.

A TRUE COPY

ATTEST \_\_\_\_\_

Susan Clements-Dallaire, City Clerk

Attachment 6

**From:** Susan Clements-Dallaire <sdallaire@auburnmaine.gov>  
**Sent:** Tuesday, September 18, 2018 10:48 AM  
**To:** Agnieszka A. (Pinette) Dixon; Eric Cousens  
**Subject:** FW: City Council Meeting - June 4, 2018

This was the email alert that was sent out on May 31<sup>st</sup> too for all subscribers of Council Agendas and Auburn News.

Sue

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**From:** City of Auburn Maine <donotreply@auburnmaine.gov>  
**Sent:** Thursday, May 31, 2018 4:55 PM  
**To:** Susan Clements-Dallaire <sdallaire@auburnmaine.gov>  
**Subject:** City Council Meeting - June 4, 2018

A City Council meeting has been scheduled for Monday, June 4, 2018 in Council Chambers of Auburn Hall. The workshop will begin at 5:30 PM and the meeting at 7:00 PM. For the agenda, please click on the link below.

<https://www.auburnmaine.gov/pages/government/city-council-agendas>

[Click Here to Unsubscribe](#)

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This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**From:** Susan Clements-Dallaire <sdallaire@auburnmaine.gov>  
**Sent:** Wednesday, June 6, 2018 12:54 PM  
**To:** Agnieszka A. (Pinette) Dixon  
**Subject:** FW: 6-4-2018 Council Agenda Packet  
**Attachments:** 00 AGENDA PACKET 6-4-2018.pdf

Hello,

This is the packet that was sent out on 5/31/2018. I will forward the email alert that went out as well. Please let me know if I can be of further assistance.

Sue

---

**From:** Susan Clements-Dallaire  
**Sent:** Thursday, May 31, 2018 4:47 PM  
**To:** Department Directors <DepartmentDirectors@ci.auburn.me.us>; admin <rwalton@auburnschl.edu>; Andrew Rice <arice@sunjournal.com>; Angela Dow <adow@auburnmaine.gov>; Bonnie Washuk <bwashuk@sunjournal.com>; Brian Soucy (GFTV) <bsoucy@auburnmaine.gov>; Geri Crane <gcrane@auburnmaine.gov>; Jody Durisko <jdurisko@auburnmaine.gov>; Karen Veilleux <kveilleux@auburnmaine.gov>; Kathy Montejo <kmontejo@lewistonmaine.gov>; Kelsey Earle <kearle@auburnmaine.gov>; Mike Malloy <msm@malloyfirmmaine.com>; Rhonda Russell <rrussell@auburnmaine.gov>; Rita Beaudry <rbeaudry@auburnmaine.gov>; Sheri Buck <sbuck@auburnmaine.gov>; Tammy Thatcher <tthatcher@auburnmaine.gov>; Alfreda Fournier (Council) <afournier@auburnmaine.gov>; Andy Titus (Council) <atitus@auburnmaine.gov>; Belinda Gerry <bgerry@auburnmaine.gov>; David Young <dyoung@auburnmaine.gov>; Holly Lasagna (Council) <hlasagna@auburnmaine.gov>; Leroy Walker (Council) <lwalker@auburnmaine.gov>; Jason Levesque (Council) <jlevesque@auburnmaine.gov>; Robert Hayes (Council) <rhayes@auburnmaine.gov>  
**Subject:** 6-4-2018 Council Agenda Packet

Good evening,

Attached is the agenda packet for the 6-4-2018 Council meeting. It will be posted to the website momentarily.

Sue



**City Council Workshop & Meeting  
June 4, 2018  
Agenda**

**5:30 P.M. Workshop**

- A. Joint TIF Policy – Michael Chammings (20 minutes)
- B. Opportunity Zone – Michael Chammings (15 minutes)
- C. LA 911 – Paul LeClair (45 minutes)
- D. **Marijuana Moratorium – Phil Crowell (10 minutes)**

*If needed, workshop discussions will resume after the Council Meeting is adjourned.*

**7:00 P.M. City Council Meeting**

- I. **Consent Items** – All items listed with an asterisk (\*) are considered as routine and will be approved in one motion. There will be no separate discussion of these items unless a Councilor or citizen so requests. If requested, the item will be removed from the consent agenda and considered in the order it appears on the agenda.
  - 1. **Order 49-06042018\***  
Accepting the transfer of \$11,000. (5% of \$220,000) in forfeiture assets in Rem in U.S. Currency to the Auburn Police Department (U.S. Department of Treasury Seizure 04180002-01 – Scott Ferland).
- II. **Minutes** – May 21, 2018 Regular Council Meeting
- III. **Communications, Presentations and Recognitions**
  - Communications – Liberty Festival Mass Gathering/Special Event Application
- IV. **Open Session** – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*.
- V. **Unfinished Business** - None
- VI. **New Business**
  - 1. **Order 50-06042018**  
Amending the 2010 Comprehensive Plan Future Land Use Map for the property located at 33 Dunn Street.

2. **Ordinance 02-06042018**  
Adopting the zone change for 33 Dunn Street – 1<sup>st</sup> reading.
  
  3. **Order 51-06042018**  
Authorizing the Finance Director to execute the issuance of general obligation bonds and a tax levy therefore. Public hearing and first reading. ***Passage requires an affirmative vote of 5 Councilors at the second and final reading.***
  
  4. **Order 52-06042018**  
Reallocation of bonds. Public hearing and first reading. ***Passage requires an affirmative vote of 5 Councilors at the second and final reading.***
  
  5. **Resolve 07-06042018**  
Adopting the Appropriations Resolve for Fiscal Year 2019. Public hearing and first reading. ***Passage requires an affirmative vote of 5 Councilors at the second and final reading.***
- VII. Reports**
- A. **Mayor's Report**
  - B. **City Councilors' Reports**
  - C. **City Manager Report**
- VIII. Open Session** - Members of the public are invited to speak to the Council about any issue directly related to City business which is *not on this agenda*.
- IX. Executive Session**
- X. Adjournment**



**City of Auburn  
City Council Information Sheet**

**Council Workshop Meeting Date: June 4, 2018**

**Author:** Phillip L. Crowell, Jr., Chief of Police

**Subject:** Marijuana Moratorium

---

**Information:** The marijuana workgroup has been meeting regularly since the City Council meeting on February 5, 2018 to consider local impacts relating to adult use marijuana to include medical marijuana retail. The workgroup will have a report to present to the council at a future meeting.

At the request of City Councilor Andy Titus, this workshop is being held to determine the action that the City Council will need to take regarding retail and medical retail "storefront" operations. As such, the committee recommends that a moratorium ordinance be enacted to allow the Legislature and involved state agencies to finalize the statutory and rule amendments. Currently, the City of Auburn Code of Ordinance is insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and other uses authorized by the "Marijuana Legalization Act" approved at the November 8, 2016 referendum election, thereby necessitating a moratorium to provide an opportunity for the city to amend its code of ordinances to mitigate the potential impact and harm on the city and its residents.

While the "Marijuana Legalization Act" has been approved, the rulemaking has yet to be completed. In addition, the city has had four (4) medical retail storefronts begin unregulated operations. In addition, Police and Code Enforcement have received several inquiries regarding retail and medical retail operations.

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**City Budgetary Impacts:** A moratorium would have no direct budgetary impacts.

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**Staff Recommended Action:** To adopt a marijuana moratorium for retail and medical retail "storefront" operations beginning June 18, 2018 and shall remain in effect until December 17, 2018.

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**Previous Meetings and History:** December 5, 2016, January 23, 2017, February 5, 2018.

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**City Manager Comments:**

I concur with the recommendation. Signature:

A handwritten signature in blue ink that reads "Peter J. Coakley".

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**Attachments:**

## IN COUNCIL REGULAR MEETING JUNE 4, 2018 VOL. 35 PAGE 143

Mayor Levesque called the meeting to order at 7:00 P.M. in the Council Chambers of Auburn Hall and led the assembly in the salute to the flag. All Councilors were present.

### IX. Consent Items

#### 6. Order 49-06042018\*

Accepting the transfer of \$11,000. (5% of \$220,000) in forfeiture assets in Rem in U.S. Currency to the Auburn Police Department (U.S. Department of Treasury Seizure 04180002-01 – Scott Ferland).

Motion was made by Councilor Lasagna and seconded by Councilor Hayes for passage. Passage 7-0.

### X. Minutes – May 21, 2018 Regular Council Meeting

Motion was made by Councilor Walker and seconded by Councilor Hayes to approve the minutes of the May 21, 2018 Regular Council meeting. Passage 7-0.

### XXI. Communications, Presentations and Recognitions

Communications – Liberty Festival Mass Gathering/Special Event Application was presented to the Council and a public hearing and vote will take place at the June 18, 2018 City Council Meeting.

### XXII. Open Session – Matthew Dubois, 49 Haymarket Square, Bangor commented on the Marijuana Moratorium discussion.

Mamie Anthoine Ney, Director of the Auburn Public Library reminded everyone about the Library's online auction fundraiser.

### V. Unfinished Business - None

### VI. New Business

#### 4. Order 50-06042018

Amending the 2010 Comprehensive Plan Future Land Use Map for the property located at 33 Dunn Street.

Motion was made by Councilor Fournier and seconded by Councilor Walker for passage.

Public comment – no one from the public spoke.

Passage 6-1 (Councilor Titus opposed).

#### 5. Ordinance 02-06042018

Adopting the zone change for 33 Dunn Street – 1<sup>st</sup> reading.

Attachment 7

June 22, 2018

**DELIVERY BY E-MAIL**

Matt Dubois, Esq.  
P.O. Box 22  
49 Haymarket Square  
Bangor, ME 04402

RE: Legal Peaces, 197 Turner Street, Auburn, Maine – Pre-Packaged Food Establishment Business License and Certificate of Occupancy Appeal; Moratorium on Retail Medical Marijuana Caregiver Storefronts

Dear Matt:

As you know, on Monday, June 18, 2018, the Auburn City Council enacted a moratorium on retail medical marijuana caregiver storefronts. The moratorium governs and applies to all proceedings, licenses, and applications for retail medical marijuana caregiver storefronts that were or are pending before the City on or any time after May 31, 2018. The moratorium also nullifies the issuance of any final approvals of the City Clerk, Code Enforcement Officer, or the Planning Board made on or any time after May 31, 2018 that authorizes the operation of a retail medical marijuana caregiver storefront.

City records indicate that your clients submitted a business license application for the sale of pre-packaged food at your clients' proposed retail medical marijuana caregiver storefront at 197 Turner Street on May 31, 2018, and that the license is currently pending before the City Clerk.

City records also indicate that your clients submitted an application on May 9, 2018 for a change of use of an office space to a tobacco shop and retail medical marijuana caregiver storefront, and that a certificate of occupancy for these premises was issued by the Code Enforcement Officer on or about June 13, 2018.

With respect to both the business license and the certificate of occupancy, you were advised by me on June 11, 2018 that these City approvals would be limited to authorizing the sale of tobacco products and pre-packaged foods but would not authorize the retail sale of medical marijuana. You were also informed that, to the extent your clients wanted to expand these approvals to include the retail sale of medical marijuana, your clients would need to submit evidence to the City that your clients' intended retail caregiver medical marijuana storefront complies with the Maine Medical Use of Marijuana Act and related state rules.

In response, on June 18, 2018, you submitted a snapshot of a one-page on-site assessment report completed by an investigator at the Maine CDC on May 14, 2018. In addition, on June 15, 2018, you filed a letter on behalf of your clients appealing to the Auburn City Council the City's "refusal to issue a Certificate of Occupancy for their caregiver business without further documentation."

June 22, 2018

Page 2

Because the moratorium applies to all pending proceedings as of May 31, 2018, the City Clerk is without jurisdiction to act on your pending business license application. Likewise, because the moratorium nullifies the issuance of any final approvals that City officials made on or after May 31, 2018, the certificate of occupancy issued on June 13 is nullified by the moratorium to the extent it authorizes a retail medical marijuana caregiver storefront. The certificate of occupancy remains in effect with respect to your clients' operation of a tobacco shop.

With respect to your June 18 submission seeking to expand the City's approval of the certificate of occupancy to include authorization to operate a retail medical marijuana caregiver storefront, the moratorium suspends all proceedings and applications for retail medical marijuana caregiver storefronts pending on or after May 31. Accordingly, to the extent your June 18 submission can be considered a pending proceeding or application, the City cannot accept your request for processing because of the enactment of the moratorium.

Finally, with respect to your June 15 notice of appeal to the City Council, I have advised the City Clerk to place this matter on the next Council agenda. Please note, however, that I will be advising the Council that it does not have jurisdiction to take up your appeal. In light of this, please let me know if you wish to proceed with your appeal to the City Council.

Very truly yours,

/s/ *Aga Dixon*

Agnieszka A. Dixon