

Town of Mount Desert
Board of Selectmen
Agenda
Special Meeting
Tuesday, January 23, 2018
Location: Meeting Room, Town Hall, Northeast Harbor

Present were: Chairman John Macauley, Selectmen Rick Mooers, Wendy Littlefield, Matt Hart, and Martha Dudman.

Also present were Town Manager Durlin Lunt, and Deputy Town Clerk Jennifer McWain.

Members of the public were also present.

I. Call to order at 5:00 p.m.

Chairman Macauley called the meeting to order at 5:00 PM.

II. Old Business

A. Special Town Meeting for Proposed Moratorium Ordinance Regarding Retail Recreation Marijuana

- 1. Review Draft Warrant for Proposed Moratorium Ordinance*
- 2. Set Date for Special Town Meeting for February 26, 2018*
- 3. Sign Municipal Officer's Certification of Official Text of a Proposed Moratorium Ordinance*
- 4. Set Public Hearing Date for February 5, 2018*

Chairman Macauley stated the meeting's purpose was to discuss the wording for the Moratorium, and whether a Town Meeting was necessary. He introduced State Representative Brian Hubble, who agreed to provide a report on where the State Legislation stands.

Representative Hubble provided an unofficial report on the status of the Ordinance regarding the Marijuana Use Legislation. The Committee working on creating the regulatory framework for this Ordinance at the State level voted unanimously to extend the Moratorium that expires February 1. He felt it safe for the Town to assume the State will not leave Municipalities exposed by letting the Moratorium expire.

Representative Hubble felt less certain how to advise the Town on what to expect regarding the Resolution. The Committee is working hard to rectify the concerns that prompted the Governor's veto. It was noted the State can extend a Moratorium indefinitely. Representative Hubble clarified that if Legislation is passed, it will be passed as Emergency Legislation, making it effective immediately.

Representative Hubble noted the intent of the Moratorium was to allow for time to develop the rules surrounding the Legislation. He felt that the chance of Legislation being in place to allow anyone to engage in retail marijuana operations this year is small. In the interim between now and the creation of State Legislation, there would be no

1 access to State licensing, and Representative Hubble felt this meant the Town would be
2 under no obligation to accept a request or application.

3
4 Town Manager Lunt asked whether Mr. Hubble felt the “opt-in” policy would still be in
5 place when the Legislation is approved. Mr. Hubble did not know what the status was of
6 this particular piece of the proposed Legislation. He did confirm the Committee is
7 modifying the wording primarily in relation to the portions that incited objections. It’s an
8 effort to reconcile the concerns, and the final product should not be radically different
9 from what was previously submitted.

10
11 Selectman Dudman inquired what the major concerns are. Representative Hubble noted
12 some of the issues being discussed include revenue potential, the distinctions between
13 recreational and medical marijuana and how they’re treated, and the way cultivated plants
14 are calculated.

15
16 Representative Hubble agreed that it looked as if the Moratorium would be extended to
17 the end of the April session. Selectman Hart asked whether the Town would be safe from
18 potential business owners looking to start a business, if no Legislation is in place at the
19 time the Moratorium ends? Mr. Hubble noted there is some uncertainty regarding
20 whether a Town could be sued to allow such a business to open, should the State fail to
21 extend the Moratorium. Mr. Hubble felt this should be motivation enough to extend the
22 Moratorium.

23
24 Representative Hubble felt it hard to believe the State would take on the responsibility of
25 creating Policy at the Town level. He’s never heard such a thing suggested.

26
27 Ellen Kappes asked whether the State or the Town would issue the license?
28 Representative Hubble thought the Town would be the entity to issue the license, but the
29 State would provide a framework regarding how the license could be issued. These are
30 some of the things that still need to be clarified, and Towns really can’t move forward
31 until the State has presented something.

32
33 Phil Lichtenstein inquired about revenues. Mr. Hubble reported the subject had not been
34 addressed. There is a concern at the policy level. Mr. Lichtenstein noted that medical
35 marijuana is taxed by the State. Chairman Macauley asked what the issue was with
36 banking marijuana revenue. Mr. Hubble noted there was an issue, due to the Federal
37 stance on marijuana. This is a concern in every state.

38
39 Caroline Pryor asked how much citizen and municipal input the State is receiving on the
40 issue? Is it helpful to hear from community groups? Representative Hubble felt that
41 while yes, information is always welcome, he was doubtful anyone could provide new
42 information, given the rigorous public process through which the State has heard from
43 many people and groups, and have worked on the subject in depth for months. He opined
44 the chance of getting the policy “right” on the first try is nearly impossible. A policy will
45 be created, flaws will then be exposed, and the policy will be fine-tuned. Eventually a
46 good policy will be the result.

47
48 There were no more questions for Representative Hubble.

1
2 Town Manager Lunt summarized that a revised draft of the Moratorium was sent out and
3 there were still concerns voiced about the wording, specifically in Sections 2 and 3. It
4 was suggested that Items 2 and 3 be removed from the draft. The Town attorney advised
5 that the Sections needed to remain; removing them would limit the Town's Statutory
6 authority to regulate the Moratorium.
7

8 If the process moves forward, a Special Town Meeting February 26, 2018 will be
9 scheduled. If the State's Moratorium is extended to April within the week, the Special
10 Town Meeting can be cancelled. Chairman Macauley felt the proposed Special Town
11 Meeting was a placeholder. Mr. Lunt noted that as long as a posting has not been up
12 seven days or more, a Town meeting can be cancelled. The meeting of February 26
13 would have to be posted by February 16. Mr. Lunt reminded the Board there would also
14 have to be a special Board of Selectmen's meeting prior to the Special Town Meeting.
15

16 Selectman Mooers felt that in light of last week's meeting, and what the Board has heard
17 from Representative Hubble, the risk appears so miniscule that a Special Town Meeting
18 in February is not necessary. Selectman Hart noted that the risk is miniscule, however
19 there is a risk. He felt that starting the process for scheduling a Special Town Meeting
20 would be prudent. Selectman Mooers felt the information discussed has only
21 strengthened his support of the unanimous vote taken last week. Supporting a Special
22 Town Meeting will send a mixed message to those interested residents who felt the issue
23 had been resolved the week prior.
24

25 Town Manager Lunt noted there were deadlines for the May Town Meeting as well.
26

27 Selectman Littlefield pointed out that it's been pointed out that the attendance will be
28 better for the May Town Meeting. Furthermore, the back and forth for the Special Town
29 Meeting is becoming confusing.
30

31 Chairman Macauley felt the first issue to address is the wording of the Moratorium.
32

33 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding, to accept
34 the amended Moratorium language as presented by the Town Manager and reviewed by
35 the Town's Attorney tonight (January 24, 2018); not to be confused with the Moratorium
36 language presented on February 19, 2018.
37

38 Jerry Miller felt the new language was no different from the previous language. Town
39 Manager Lunt reported that the Attorney did not feel he could soften the language any
40 further without reducing its effectiveness for the Town. Mr. Lunt noted a Moratorium
41 cannot be considered unless there's the potential of risk to the community. The wording
42 must show the Moratorium is necessary.
43

44 Kathy Miller asked whether the Town has started addressing the issues surrounding the
45 question of Marijuana. Selectman Dudman agreed the Town needs to start considering
46 the framework for an Ordinance. Usually the Ordinances in the Town are created with
47 citizen input. Town Manager Lunt felt the Zoning Committee would take part, and make

1 recommendations to the Planning Board. This particular issue is new territory for the
2 Town. There are very few definitive answers.

3
4 Representative Hubble noted the real risk is not so much a health risk, but an applicant
5 coming in during a gap, and the potential of a resulting lawsuit.

6
7 Chairman Macauley noted the wording establishes the need for a Moratorium. Selectman
8 Dudman felt that the point was to get the issue out there. People will have opinions and
9 she doubted the wording of the Moratorium would sway those attending.

10
11 Selectman Mooers noted that without the State creating a licensing mechanism for
12 marijuana sales, it would be hard for Towns to be held liable for not allowing sales. A
13 permit can't be issued without a licensing mechanism from the State.

14
15 Chairman Macauley asked if a situation occurred where there is no Moratorium, and
16 there is no legislation that governs marijuana sales, do Towns then refer to the
17 referendum language as the governing document? Representative Hubble noted that if
18 the Moratorium expires with no action taken, there is no clear protocol to follow. There
19 is uncertainty about what is permissible without a Moratorium. Logic would dictate that
20 if there's no way for the State to issue a retail license then the license cannot be issued,
21 but he did not know with any certainty.

22
23 Motion approved 5-0.

24
25 Town Manager Lunt noted the next item to discuss was approving the February 26, 2018
26 date for a Special Town Meeting.

27
28 MOTION: Selectman Hart moved to set the date of February 26, 2018 for a Special
29 Town Meeting. Selectman Dudman seconded the Motion.

30
31 Chairman Macauley reiterated this was a placeholder for a meeting he expected would
32 not happen. But it is insurance should the Town find a meeting is necessary. Selectman
33 Hart agreed.

34
35 Town Manager Lunt asked what the timeframe would be for the State's April date of a
36 Moratorium extension. Representative Hubble felt the State would act quickly. The
37 State should know by February 1.

38
39 Selectman Mooers noted a Moratorium can be cancelled. Selectman Hart did not feel the
40 balance of days on a Moratorium cancelled early could be banked for later use.

41
42 It was noted that a Board can extend a Moratorium without a Town Meeting, but not
43 cancel one.

44
45 Ms. Kappes noted that starting a Moratorium now will result in a gap in 2019 between
46 the time the Moratorium ends and the Regular Town Meeting. She suggested waiting till
47 May.

1 Selectman Littlefield noted there is extra expense and time involved in Town Meetings,
2 all to cover a very small risk. Selectman Hart agreed there is additional time and work
3 for the Town Office employees. However, he felt the meeting was still warranted.
4 Selectman Dudman agreed there was a small chance the meeting is necessary.
5

6 Town Manager Lunt noted that the timing of when best to discuss and vote on the issue
7 should be considered. He noted that if the February Special Town Meeting votes the
8 Moratorium down, it will be too late to put it on the May Town Meeting Agenda for
9 discussion.
10

11 Chairman Macauley felt that the Board's job was to protect the Town, and this meeting is
12 one way to protect the Town. He felt being prepared by scheduling the meeting was the
13 Board's job, regardless of the time and work involved.
14

15 Katrina Carter inquired from what would a Moratorium would protect the Town?
16 Selectman Dudman explained that if a gap occurs in the State's Moratorium, then the
17 Town is open to a lawsuit should an Applicant insist on applying. Ms. Carter opined that
18 an Ordinance might protect the Town from illegal drug dealers already in the Town.
19

20 Ms. Miller asked if the issue was on the agenda for a Committee to begin discussing. Mr.
21 Miller noted that no ordinance would come before the Town before next year. Chairman
22 Macauley felt there was not much that could be done without the State's legislation.
23

24 Selectman Dudman noted that if a Moratorium is put before the voters in February and
25 it's voted down, the Town is unable to re-address it at the May Town Meeting due to
26 deadlines.
27

28 Motion failed, 2-3 (Littlefield, Mooers, and Dudman opposed)
29

30 Town Manager Lunt noted that the Failed Motion makes Items II.A.3 and 4 on the
31 Agenda Moot.
32

33 Selectman Dudman endorsed beginning citizen conversations about the future Ordinance.
34 The Town should be ready to start the initial discussions, as the process can be long.
35 Chairman Macauley agreed that conversations may be the Town's best protection, as Ms.
36 Miller noted.
37

38 Town Manager Lunt planned to include a placeholder for the Moratorium in the May
39 Town Meeting, and the process will start again.
40

41 Selectman Hart asked if a new committee would need to be started to discuss the issue.
42 Selectman Dudman noted there is an Ordinance Committee.
43

44 **III. Other Business**

45 There was no other Business
46

47 **IV. Adjournment**

1 MOTION: Selectman Mooers moved, with Selectman Littlefield seconding, to adjourn
2 the meeting. Motion approved 5-0.

3
4 Meeting was adjourned at 6:11PM

5
6
7 Respectfully Submitted,

8
9
10 Wendy Littlefield, Secretary
11
12