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July 10, 2013

Rosemary B. Harvell, Town Clerk
Town of Sudbury
322 Concord Road
Sudbury, MA 01776

RE: Sudbury Annual Town Meeting of May 6, 2013 - Case # 6733
Warrant Articles # 25, 26 and 30 (Zoning)
Warrant Articles # 22 and 41 (General)

Dear Ms. Harvell:

Article 30 – We approve the amendments to the Sudbury by-laws adopted Article 30 on the warrant for the Annual Town Meeting of May 6, 2013.

Article 30 amends the Town’s Zoning Bylaw to add a new Section 8000, “Temporary Moratorium on Medical Marijuana Treatment Centers.”¹ The new Section 8300 imposes a temporary moratorium through June 30, 2014 on the use of land and/or structures for a medical marijuana treatment center. Section 8100 establishes the purpose of the temporary moratorium:

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law’s effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town of Sudbury and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town

¹ The by-law’s definition of Medical Marijuana Treatment Center mirrors the definition in Chapter 369 of the Acts of 2012, “An Act for the Humanitarian Medical Use of Marijuana.” The Department of Public Health (DPH) regulations (105 CMR 725.000) promulgated pursuant to Chapter 369 clarify that a medical marijuana treatment center will now “be known as a registered marijuana dispensary (RMD)” (725.004). We use the term “registered marijuana dispensary” throughout this decision.

in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of medical marijuana treatment centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

Further, Section 8300 includes the following text regarding the Town's planning process:

During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, consider the Department of Public Health regulations Regarding Medical Marijuana Treatment Facilities and related uses, and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers and related uses.

We approve the temporary moratorium because it is consistent with the Town's authority to "impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies." Sturges v. Chilmark, 380 Mass. 246, 252-253 (1980). Such a temporary moratorium is clearly within the Town's zoning power when the stated intent is to manage a new use, such as a registered marijuana dispensary and related uses, and there is a stated need for "study, reflection and decision on a subject matter of [some] complexity..." W.R. Grace v. Cambridge City Council, 56 Mass. App. Ct. 559, 569 (2002) (City's temporary moratorium on building permits in two districts was within city's authority to zone for public purposes). The time limit Sudbury has selected for its temporary moratorium (through June 30, 2014) appears to be reasonable in these circumstances, where the DPH regulations were approved on May 8, 2013, and those regulations are expected to provide guidance to the Town.² The moratorium is definite in time period and scope (to the use of land and/or structures for registered marijuana dispensaries), and thus does not present the problem of a rate-of-development by-law of unlimited duration which the Zuckerman court determined was ordinarily unconstitutional. Zuckerman v. Hadley, 442 Mass. 511, 512 (2004) ("[A]bsent exceptional circumstances not present here, restrictions of unlimited duration on a municipality's rate of

² The Town may wish to expeditiously proceed with its planning process regarding RMDs and related uses now that the final version of the DPH regulations has been issued. The DPH process for registration of RMDs pursuant to 105 CMR 725.100 appears likely to begin shortly, and a moratorium ending too long after the May 8, 2013 approval of the DPH regulations could be found to frustrate the purposes of the Act in the same way that the disapproved Wakefield ban would have done. We suggest the Town consult with Town Counsel on this issue.

development are in derogation of the general welfare and thus are unconstitutional.”)

Because we find the amendments adopted under Article 30 are within the Town’s zoning power, and otherwise do not conflict with the laws or Constitution of the Commonwealth, (*see Bloom v. Worcester*, 363 Mass. 136, 154 (1973)), we approve them.

Articles 22, 25, 26 and 41 – We retain for further review the amendments adopted under these Articles, and will issue our decision on them on or before our deadline of August 22, 2013.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MARTHA COAKLEY
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August 16, 2013

Rosemary B. Harvell, Town Clerk
Town of Sudbury
322 Concord Road
Sudbury, MA 01776

RE: Sudbury Annual Town Meeting of May 6, 2013 - Case # 6733
Warrant Articles # 25, 26 and 30 (Zoning)
Warrant Articles # 22 and 41 (General)

Dear Ms. Harvell:

Articles 22, 25, 26, and 41 - We approve the amendments to the Sudbury by-laws adopted under these Articles on the warrant for the Annual Town Meeting of May 6, 2013. Our comments on Article 41 are provided below.¹

Article 41 - The amendments adopted under Article 41 add to Article III, "Town Affairs" of the general by-laws a new Section 11. The new Section 11 provides as follows:

The Town will conduct a Town Forum on an annual (minimum requirement) basis. The Forum will be an open, public meeting for Town residents. The Town Forum will provide a planned, scheduled opportunity for constructive engagement between the Town and residents. The Town participants/panel will include, but not limited to all department heads, committee chairpersons and Trust chairpersons. One member of the Town panel will act as moderator. The moderator will facilitate and manage questions from Town residents to the appropriate panel member for response. 2 ½ hours will be scheduled for each Forum. Forums may be adjourned earlier by a majority vote of the participating residents.

We approve the new Section 11. However, we offer the following comments. The new

¹ In a decision dated July 10, 2013, we approved with comments the amendments adopted under Article 30.

Section 11 does not specify who in the Town is charged with coordinating and scheduling the “Town Forum.” Also, Section 11 does not specify the notice requirements for the Town Forum. For example, G.L. c. 30A, §§ 18-25, the Open Meeting Law, imposes certain notice requirements for meetings of governmental bodies to be held in public. We suggest that the Town discuss with Town Counsel what notice requirements apply to the Town Forum, specifically, whether the Open Meeting Law and its notice requirements apply to the Town Forum and to any local boards or committees that attend the Town Forum.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
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cc: Town Counsel Paul Kenny (via electronic mail)