

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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May 25, 2017

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

RE: Sudbury Annual Town Meeting of May 1, 2017 - Case # 8330
Warrant Articles # 17 and 20 (Zoning)
Warrant Articles # 11, 18, 35 and 36 (General)

Dear Ms. Harvell:

Article 11 - We approve Article 11 from the May 1, 2017 Sudbury Annual Town Meeting.

Articles 17, 18, 20, 35 and 36 - We have retained Articles 17, 18, 20, 35 and 36 for further review. We will issue our decision on these Articles on or before August 9, 2017.

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.

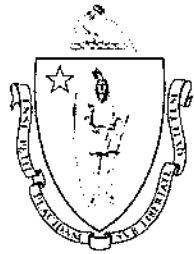
Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel Barbara J. Saint Andre



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August 1,

2017

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

Re: **Sudbury Annual Town Meeting of May 1, 2017 - Case # 8330**
Warrant Articles # 17 and 20 (Zoning)
Warrant Articles # 11, 18, 35 and 36 (General)

2017 AUG - 1 PM 6:17
TOWN CLERK
ROSEMARY HARVELL

Dear Ms. Harvell:

Articles 17, 18, 20, 35 and 36 – We approve Articles 17, 18, 20, 35 and 36 from the Sudbury Annual Town Meeting of May 1, 2017. Our comments on Articles 17 and 36 are detailed below.¹

Article 17 – Article 17 proposes to amend the Town’s zoning by-laws to add a new Section 4800, “Temporary Moratorium on Marijuana Establishments.” The new Section 4800 imposes a moratorium through June 30, 2018 on the use of land or structures for marijuana establishments or other uses related to marijuana for personal use. The stated purpose of the moratorium is:

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for personal use (new M.G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, is effective on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on or before April 1, 2018. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Marijuana Establishments. The regulation of

¹ In a decision issued May 25, 2017 we approved Article 11.

marijuana for personal use raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Marijuana Establishments and address such 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 Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Marijuana Establishments so as to allow the Town sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

Further, Section 4830 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 recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Marijuana Establishments, and shall consider adopting Zoning Bylaw amendments in response to these new issues.

We approve this 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 Recreational Marijuana Establishments, 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, 2018) appears to be reasonable in these circumstances, where the Cannabis Control Commission regulations have not yet been issued and those regulations "may provide guidance on certain aspects of local regulation of Marijuana Establishments." Section 4810. The moratorium is limited in time period and scope (to the use of land and structures for marijuana establishments and other uses related to personal use of marijuana), and thus does not present the problem of a rate-of-development bylaw of unlimited duration that the Zuckerman court determined was 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 development are in derogation of the general welfare and thus are unconstitutional.")

Because we find the amendments adopted under Article 17 are clearly 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.

Article 36 – We approve Article 36 which imposes a ban on the sale of non-reusable polyethylene terephthalate (PET) bottles of 1 liter (34 ounces) or less containing uncarbonated, unflavored drinking water in the Town. In approving Article 36, we incorporate by reference our comments in our decision on the Town of Concord's by-law approved by this Office on

September 5, 2012 (Case # 6273). We attach a copy of the Concord by-law decision. The Town should consult with Town Counsel regarding any questions on this issue.

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,

MAURA HEALEY
ATTORNEY GENERAL

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