



THE COMMONWEALTH OF MASSACHUSETTS
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April 21, 2017

Susan F. Brooks, Town Clerk
Town of Lincoln
16 Lincoln Road
Lincoln, MA 01773

Re: Lincoln Annual Town Meeting of March 25, 2017 - Case # 8278
Warrant Articles # 12, 38, 39, and 40 (Zoning)
Warrant Article # 26 (General)

Dear Ms. Brooks:

Articles 12, 26, 38, 39 and 40 - We approve these Articles from the Lincoln Annual Town Meeting of March 25, 2017. Our comments on Article 39 are detailed below.

Article 39 – Article 39 proposes to amend the Town’s zoning by-laws to add a new Section 18.6, “Temporary Moratorium on Recreational Marijuana Establishments.” The new Section 18.6 imposes a moratorium on the use of land or structures for Recreational Marijuana Establishments (as defined in G.L. c. 94G, § 1) and other uses related to recreational marijuana. The proposed time period for the moratorium is “through November 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier.” Section 18.6.3. 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 recreational purposes. The law, which allows certain personal use and possession of marijuana, began to take effect on December 15, 2016 and requires a Cannabis Control Commission to issue regulations regarding licensing of commercial activities by March 15, 2018.

Currently under the Zoning Bylaw, a Recreational Marijuana Establishment, as defined in G.L. c. 94G, § 1, is not a permitted use in the Town. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments.

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

Further, Section 18.6.3 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 a recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and shall consider adopting a new Zoning Bylaw in response to these new uses.

We approve this temporary moratorium because it 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 Lincoln has selected for its temporary moratorium (through November 30, 2018 or adoption of a Zoning Bylaw regulating Recreational Marijuana Establishments, whichever occurs first) 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 Recreational Marijuana Establishments." ¹ Section 18.6.1. The moratorium is limited in time period and scope (to the use of land and structures for Recreational Marijuana Establishments and other uses related to recreational 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

¹ We note that Chapter 351 of the Acts of 2016, approved by the Governor on December 30, 2016 and effective immediately as an emergency law, extends the time period for the issuance of the regulations by six months to March 15, 2018. (See Section 11 of Chapter 351 of the Acts of 2016). This amendment supports the conclusion that a moratorium through November 30, 2018 is reasonable in order to provide the Town time to study and consider the regulations and engage in a planning process within the context of the regulations.

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 39 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.

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 Joel Bard