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January 18, 2017

Anne G. Iannitelli, Town Clerk
Town of West Bridgewater
65 North Main Street
West Bridgewater, MA 02379

**Re: West Bridgewater Special Town Meeting of December 14, 2016 - Case # 8242
Warrant Article # 2 (Zoning)**

Dear Ms. Iannitelli:

Article 2 – We approve the amendments adopted under Article 2 at the West Bridgewater Special Town Meeting of December 14, 2016 because, as explained below, the temporary moratorium on recreational marijuana establishments is consistent with the Town’s authority to impose reasonable time limitations on development so that the Town can engage in a legitimate planning study.

The amendments adopted under Article 2 amend the Town’s zoning by-laws to add a new Section 10.1, “Temporary Moratorium on the Sale and Distribution of Recreational Marijuana.” The new Section 10.1 institutes a temporary moratorium, through June 30, 2018, on the use of land or structures for a Recreational Marijuana Establishment and Marijuana Retailer (as defined in Section 10.1.2). The stated purpose of the temporary moratorium is:

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. The law provides that it is effective on December 15, 2016 and the Cannabis Advisory Board is required to issue regulations regarding implementation by September 15, 2017.^[1]

Currently under the Zoning Bylaw, Recreational Marijuana Establishments and Marijuana Retailers are not a permitted use in the Town and any regulations promulgated by the State Cannabis Advisory Board are expected to provide guidance to the Town in regulating Recreational Marijuana Establishments and Marijuana Retailers.

¹ We note that it is the Cannabis Control Commission, not the Cannabis Advisory Board, that is charged with issuing regulations. See Section 4(a) of Chapter 94G (as amended by Chapter 351 of the Acts of 2016).

Further, the ballot measure establishes two important provisions that require ballot action by the Town prior to the adoption of zoning. First, the Town must, by ballot, determine whether it will issue licenses for Recreational Marijuana Establishments and Marijuana Retailers and second, by ballot that cannot occur before November 6, 2018, the next biennial state election, on whether to allow on-site consumption of marijuana products should the Town decide to allow licenses for such facilities.^[2]

The regulation of Recreational Marijuana Establishments and Marijuana Retailers raise novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and Marijuana Retailers 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 Recreational Marijuana Establishments and Marijuana Retailers and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments and Marijuana Retailers 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 adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

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 West Bridgewater 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 “are expected to provide guidance” to the Town.³ Section 10.1.1. The moratorium is limited in time period and scope (to the use of land

² Although not determinative of our decision on Article 2, we note that this text in Article 2 does not clearly reflect the language of the state ballot question passed on November 8, 2016 (Chapter 334 of the Acts of 2016). First, it is not clear from the state ballot question that a town has the power to issue a “license” for marijuana establishments or marijuana retailers. The state ballot question appears to establish the Cannabis Control Commission as the sole licensing authority. See G.L. c. 94G, § 5. The state ballot question does indicate that a town may prohibit the operation of one or more types of marijuana establishments in the town, but whether a complete prohibition on such establishments must be made by by-law vote or town ballot vote (or both) is not clear from the text of the state ballot question. See G.L. c. 94G, § 3(a) (2).

³ 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

and structures for recreational marijuana establishments and marijuana retailers), and thus does not present the problem of a rate-of-development bylaw of unlimited duration which 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 2 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,

MAURA HEALEY
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March 15, 2018. (See Section 11 of Chapter 351 of the Acts of 2016). This amendment supports the conclusion that a moratorium through June 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.