



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

July 9, 2013

Diane Crory, Town Clerk
Town of Littleton
PO Box 1305
Littleton, MA 01460

RE: Littleton Annual Town Meeting of May 6, 2013 - Case # 6732
Warrant Articles # 20 and 21 (Zoning)
Warrant Articles # 24 and 25 (General)

Dear Ms. Crory:

Article 21 – We approve the amendments to the Littleton by-laws adopted Article 21 on the warrant for the Annual Town Meeting of May 6, 2013.¹

Article 21 amends the Town's Zoning Bylaw to add a new Article XXVII, "Temporary Moratorium on Medical Marijuana Treatment Centers."² The new Section 173-187 imposes a temporary moratorium through June 30, 2014 on the use of land and/or structures for a medical marijuana treatment center. Section 173-185 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 and

¹ In a decision dated June 24, 2013 we approved the amendments adopted under Articles 20, 24 and 25.

² 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.

any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town 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 adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

Further, Section 173-187 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 Centers and related uses, and shall consider adopting new provisions of the 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 Littleton 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.³ 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

³ 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.

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 21 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.

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
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

cc: Town Counsel Thomas Harrington