



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

August 20, 2013

Joan M. Wordell, Town Clerk
Town of Hudson
78 Main Street
Hudson, MA 01749

**RE: Hudson Annual Town Meeting of May 6, 2013 - Case # 6734
Warrant Article # 18 (Zoning)**

Dear Ms. Wordell:

Article 18 – We approve the amendments to the Hudson by-laws adopted under Article 18 at the May 6, 2013 Annual Town Meeting.

The amendments adopted under Article 18 amend the Town's zoning by-laws to add a new Section 5.1.8, Temporary Moratorium on Medical Marijuana Treatment Centers and the Sale & Distribution of Drug Paraphernalia. The new Section 5.1.8 imposes a temporary moratorium through June 30, 2014 on the use of land or structures for a Medical Marijuana Treatment Center,¹ and on the sale and distribution of drug paraphernalia (as that term is defined in G.L. c. 94C).

Section 5.1.8.1 establishes the purpose of the temporary moratorium as follows:

By vote at the State election on November 6, 2012, the voters of the Commonwealth of Massachusetts 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

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.

the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town of Hudson and 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 unique and complex legal, planning, and public health, safety and general welfare issues and the Town needs sufficient time to study and consider the regulation of Medical Marijuana Treatment Centers and the Sale and Distribution of Drug paraphernalia and address such issues, as well as to address the potential impact of the state regulations on local zoning and to undertake a concise and meaningful planning process to consider amending the Protective Zoning Bylaw regarding regulation (*sic*) medical marijuana treatment centers and other uses related to the regulation of medical marijuana as well as the sale and distribution of drug paraphernalia. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers and the sale and distribution of drug paraphernalia 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 Zoning By-laws in a manner consistent with sound land use planning goals and objectives so as to encourage the appropriate use of the land.

Further, Section 5.1.8.3 includes the following text regarding the Town's planning process:

During the moratorium period, the Town shall undertake a comprehensive 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 as promulgated, and shall consider adopting new Protective Zoning Bylaw provisions 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 Hudson has selected for its temporary moratorium (through June 30, 2014) appears to be reasonable in these circumstances, where the final version of the DPH regulations was issued on May 8, 2013, and those regulations are expected to provide guidance to the Town. 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 development are in derogation of the general welfare and thus are unconstitutional.”)

Because we find the amendments adopted under Article 18 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,

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 Aldo Cipriano