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January 25, 2016

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

**RE: Hudson Fall Annual Town Meeting of November 16, 2015 - Case # 7823
Warrant Article # 9 (Zoning)**

Dear Ms. Wordell:

Article 9 - We approve Article 9 from the Hudson November 16, 2015, Fall Annual Town Meeting.

Article 9 is a petition article that amends the Town's zoning by-laws by deleting Section 5.2.2.j and adding a new Section 5.2.2.j, a definition of "Family day care home." The posted and published planning board hearing notices for Article 9 did not include a statement where the text of the proposed amendment be inspected. This statement is required pursuant to G.L. c. 40A, § 5. However, the notices included the exact text of Article 9. Therefore, we approve Article 9, but offer the following comments on it.

The new Section 5.2.2.j provides as follows:

"Family day care home" any private residence, which on a regular basis receives for temporary custody and care during all or part of the day, for children under seven years of age or children under sixteen years of age if such children have special needs; provided however that the total number of children does not exceed 10 including participating children living in the residence. Also, must be a licensed family day care provider regulated by the Department of Early Education and Care and abide by their rules and regulations.

General Laws Chapter 40A, Section 3, provides that family child care homes and large family child care homes, as defined in section 1A of chapter 15D, shall be an allowable use unless a town prohibits or specifically regulates such use in its zoning by-laws. General Laws Chapter 15D, Section 1A, defines "Family child care home" and "Large family child care home" as follows:

“Family child care home”, a private residence which, on a regular basis, receives for temporary custody and care during part or all of the day, children under 7 years of age, or children under 16 years of age if those children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations adopted by the board. The total number of children under 16 in a family child care home shall not exceed 6, including participating children living in the residence. Family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation

“Large family child care home”, a private residence which, on a regular basis, receives for temporary custody and care during part, or all of the day, children under 7 years of age, or children under 16 years of age if such children have special needs, and receives for temporary custody and care for a limited number of hours children of school age under regulations promulgated by the board, but the number of children under the age of 16 in a large family child care home shall not exceed 10, including participating children living in the residence. A large family child care home shall have at least 1 approved assistant when the total number of children participating in child care exceeds 6. Large family child care home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation.

If a certain family day care home satisfies the definition in G.L. c. 15D, § 1A, and qualifies for protection under G.L. c. 40A, § 3, the Town cannot apply its by-laws in a manner inconsistent with those protections. We suggest that the Town discuss this issue in more detail with Town Counsel.

Very truly yours,
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cc: Town Counsel Aldo A. Cipriano