



THE COMMONWEALTH OF MASSACHUSETTS
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January 28, 2020

Michele Bissonnette, Town Clerk
Town of Wareham
54 Marion Road
Wareham, MA 02571

Re: Wareham Fall Town Meeting of October 28, 2019 - Case # 9659
Warrant Articles # 17, 18, 19 and 20 (Zoning)
Warrant Article # 22 (General)

Dear Ms. Bissonnette:

Article 19 – We approve Article 19 from the Wareham Fall Town Meeting of October 28, 2020.¹

Article 19 proposes to amend the Town’s zoning by-laws to add a new Section 399, “Marijuana Facilities.” The new Section 399 imposes a one-year moratorium (through October 28, 2020) on the issuance of any permits for Social Consumption marijuana establishments because the “State program development for cannabis businesses is on-going and State regulations have not been finalized.” (Section 399).

I. Cannabis Control Commission Regulations on Social Consumption Pilot Program

On September 24, 2019 the Cannabis Control Commission (CCC) issued final regulations regarding the adult use of marijuana (935 CMR 500.000) which became final on December 13, 2019 (after the Wareham town meeting vote on Article 19). The regulations include a Social Consumption Pilot Program wherein up to 12 communities in Massachusetts will be able to host adult use Marijuana Establishments in which adults ages 21 years and older may consume cannabis on site. 935 CMR 500.050 (6) (“Social Consumption Establishment Pilot Program”); 935 CMR 500.101(2)(a). Under the pilot program, for an initial period of two years, licenses for cannabis cafes will be exclusively available to only certain types of license holders (microbusinesses, craft marijuana cooperatives, certified economic empowerment priority applicants, and social equity participants). (*Id.*) The two-year pilot program will only be available to those communities that wish to participate and that are selected by the CCC. In

¹ We will issue our decision on Articles 17, 18, 20 and 22 by our deadline of February 4, 2020.

addition, state law at G.L. c. 94G, § 3(b) currently bans the issuance of social consumption licenses unless a municipality approves social consumption in the community by way of a local ballot vote at a biennial state election.

II. Analysis of Moratorium

We approve the temporary moratorium adopted under Article 19 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 social consumption marijuana establishments, and there is a 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 Wareham has selected for its temporary moratorium (through October 28, 2020) appears to be reasonable in these circumstances, where the CCC regulations have only recently been finalized on December 13, 2019 (after the town meeting vote on Article 19). The moratorium is limited in time period and scope (to the issuance of permits for social consumption marijuana establishments), 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 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 19 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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