



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

February 1, 2023

Valerie Reiner, Town Clerk
Town of Savoy
720 Main Street
Savoy, MA 01256

**Re: Savoy Annual Town Meeting of June 29, 2022 -- Case # 10722
Warrant Article # 20 (Zoning)**

Dear Ms. Reiner:

Article 20 - We approve Article 20 from the June 29, 2022 Savoy Annual Town Meeting. Under Article 20 the Town amended the zoning by-laws to add a new Section 11, "Commercial and Medical Marijuana Facilities Zoning Bylaw" to regulate Marijuana Establishments (ME) and Medical Marijuana Treatment Centers (MTC) in the Town. MEs and MTCs, are allowed by special permit with site plan approval in the Town. See Sections 11.4 and 11.6 (c).

The Town must ensure that the by-law amendments adopted under Article 20 are applied consistent with the applicable statutes and regulations, including amendments to 935 CMR §§ 500.000, "Adult Use of Marijuana" and 935 CMR 500.001, "Medical Use of Marijuana," effective January 8, 2021. In addition, the Town should consult with Town Counsel to determine if future by-law amendments are needed in light of the recently updated Cannabis Control Commission (CCC) regulations. This is especially important given the court's holding in West Street Associates LLC v. Planning Board of Mansfield, 488 Mass. 319 (2021) that towns are preempted from adopting by-law requirements that impose different requirements on marijuana establishments than those imposed by the CCC.

We offer comments on certain provisions in Section 11 for the Town's consideration.

A. Section 11.3 – Definitions

1. Ceases to Operate

Section 11.5 (i) (iv)(A) provides that a special permit issued under the by-law shall lapse if the ME or MTC ceases operation for 180 days. For purposes of the by-law, Section 11.3 defines the term "Ceases to Operate," as a MTC or ME that "closes and does not transact

business for [a] period greater than 180 days.” We approve this definition as it relates to section 11.5 (i)(iv)(A) of the by-law regarding a lapse of the special permit. However, we note that for purposes of CCC licensing, the CCC regulations, 935 CMR 500.002, define the term “Ceases to Operate” as a ME or MTC that does not transact business for greater than 60 days, as follows:

a Marijuana Establishment, Medical Marijuana Treatment Center (MTC) or Independent Testing Laboratory that closes and does not transact business for a period greater than 60 days with no substantial action taken to reopen. The Commission may determine that a Marijuana Establishment has Ceased to Operate based on its actual or apparent termination of operations.

In addition, the CCC regulations, 935 CMR 500.103 (2)(c), “Licensure and Renewal; Final License” also establish that a Marijuana Establishment license is void if the establishment ceases to operate, as follows: “[a] provisional or final license shall be immediately void if the Marijuana Establishment Ceases to Operate or if, without the permission of the Commission, it relocates.” See also 935 CMR 500.415 (“A Marijuana Establishment License is void if the Marijuana Establishment Ceases to Operate or transfers its location without Commission approval or adds a Person or Entity Having Direct or Indirect Control to the License without Commission approval.”) The Town must ensure that the by-law is applied consistent with the CCC regulations. The Town should consult with Town Counsel regarding whether a future amendment is needed.

2. Marijuana Research Facility

The by-law defines a “Marijuana Research Facility” as: “[a]n entity licensed to engage in research projects by the Commission.” This definition differs from the CCC regulations that define a “Marijuana Research Facility” as: “the Premises at which a Marijuana Research Facility Licensee is approved to conduct research.”

The by-law’s definition of “Marijuana Research Facility” relates to the entity licensed to engage in research but the CCC regulations’ definition relates to the premises where a “Marijuana Research Facility Licensee” is approved to conduct the research, meaning the physical location at which a Licensee is approved to conduct research. The CCC regulations separately define a “Marijuana Research Facility Licensee” as follows:

Marijuana Research Facility Licensee means an academic institution, nonprofit corporation or domestic corporation or entity authorized to do business in the Commonwealth, including a licensed Marijuana Establishment or MTC, that is licensed to conduct research.

The by-law has consolidated the terms “research facility” and “research facility licensee” whereas the CCC regulations define those terms separately and the terms are not interchangeable. The Town must apply the by-law consistent with 935 CMR §§ 500.002. The Town should consult with Town Counsel regarding future amendments to the by-law to address this issue.

3. Marijuana Retailer

The by-law defines a “Marijuana Retailer” as:

An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

This definition differs from the CCC regulations definition in 935 CMR 500.002 that defines a Marijuana Retailer as follows, with emphasis added”

means an entity licensed to purchase, Repackage, White Label, and transport Marijuana or Marijuana Product from Marijuana Establishments and to Transfer or otherwise Transfer this product to Marijuana Establishments and to sell to Consumers. Unless licensed, retailers are prohibited from offering Marijuana or Marijuana Products for the purposes of on-site social consumption on the Premises of a Marijuana Establishment.

The by-law’s definition of “Marijuana Retailer” differs from the CCC regulations in that the by-law definition is not as broad as the CCC regulations definition that authorizes a Marijuana Retailer to “Repackage [and] White Label” (as those terms are defined in the CCC regulations) marijuana or marijuana products from a marijuana establishment. In addition, the by-law prohibits a marijuana retailer from “delivering cannabis or marijuana products to consumers.” The delivery of marijuana or marijuana products from a marijuana establishment to a consumer is regulated in the CCC regulations. To deliver marijuana or marijuana products to a consumer, the CCC requires a “Delivery License” defined as “either a Marijuana Courier License or a Marijuana Delivery Operator License”¹ or a “Delivery Endorsement” defined as an “authorization granted to Licensees in categories of Marijuana Establishments identified by the Commission to perform deliveries directly from the establishment to Consumers.” See 935 CMR 500.002. The Town must apply this portion of the by-law consistent with the CCC regulations for a marijuana retailer that has received a delivery endorsement from the CCC. The Town should consult with Town Counsel to determine if a future by-law amendment is needed to address these issues.

¹ The CCC regulations’ definition of “Marijuana Courier” and “Marijuana Delivery Operator” provide that a courier or delivery operator is not considered to be a Marijuana Retailer. See 935 CMR 500.002 (A marijuana courier or marijuana delivery operator are “an additional license type under M.G.L. c. 94G, § 4(b)(1) that allows for limited delivery of Marijuana or Marijuana Products to Consumers; and shall not be considered to be a Marijuana Retailer under 935 CMR 500.002 or 500.050 and shall be subject to 935 CMR 500.050(1)(b).”)

B. Section 11.5 – Additional Requirements/Conditions

1. Section 11.5 (d) – Special Permits

Section 11.5 (d), regarding special permits, states that:

Special Permits granted under this section shall be limited to no more than one in use at any given time, shall be limited to one per Licensee, and shall apply to no more than one Licensee and no Special Permit shall allow for the concurrent operation of two or more Medical Marijuana Treatment Center and/or Marijuana Establishments on the same parcel of land.

It is not clear what the Town means by the limitation that “Special Permits granted under this section shall be limited to no more than one in use at any given time” and whether Section 11.5 (d) is intended to limit the number of each type of marijuana establishment in the Town to one. If the Town intends to limit the number of marijuana establishments that may be operated in the Town to one of each type, the Town should consult with Town Counsel to determine if a ballot vote is required under G.L. c. 94G, § 3(a).

General Laws Chapter 94G, Section 3(a) authorizes a municipality to adopt by-laws that govern the time, place and manner of marijuana establishment operations. In addition, G.L. c. 94G, § 3 (a) (2) specifically authorizes a town to “limit the number of marijuana establishments in the...town,” provided however that for certain limitations, the Town must submit the by-law for approval to the voters before such limitation may take effect. The provisions of G.L. c. 94G, § 3(a) (2) require the by-law to be submitted to the voters for approval if the by-law: (1) prohibits the operation of 1 or more types of marijuana establishments within the town; (2) limits the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138; or (3) limits the number of any type of marijuana establishment to fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the town.

It is not clear from the materials submitted to this Office whether the special permit limitation in Section 11.5 (d) results in a limit on marijuana retailers to “fewer than 20 per cent of the number of licenses issued within the town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138”; or limits other types of marijuana establishments to “fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the town,” such that the Town must obtain ballot approval before the zoning by-law amendments take effect.

The Town should consult with Town Counsel regarding the scope of Section 11.5 (d) to determine whether a ballot vote is needed. In addition, the Town should consult with Town Counsel regarding whether the limitations in Section 11.5 (d) should be further clarified at a future Town Meeting.

2. Section 11.5 (e) – Place

Section 11.5 (e) requires a 500 foot buffer zone from any of the following: (A) a public or

private school providing education in preschool, kindergarten or any of grades 1-12; (B) a public or private library; (C) duly licensed day care centers; (D) churches, synagogues or other places of worship; (E) public or private parks, playgrounds or recreation areas; and (F) any residential use, either established by right or with a Special Permit. In addition, Section 11.5 (e) provides that the buffer zone shall be measured “in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Medical Marijuana Treatment Center or Marijuana Establishment structure is or will be located.”

In applying Section 11.5 (e)’s buffer zone requirements from a school, the Town must apply the measurement requirement consistent with the CCC regulations, 935 CMR 500.110, “Security Requirements for Marijuana Establishments,” Subsection 3, “Buffer Zone,” that requires a buffer zone from a school to be measured from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, as follows:

(3) Buffer Zone. A Marijuana Establishment Entrance may not be closer than 500 feet from the nearest School Entrance, unless a city or town adopts an ordinance or bylaw that reduces the distance requirement.

(a) The buffer zone distance of 500 feet shall be measured in a straight line from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance, unless there is an Impassable Barrier within those 500 feet; in these cases, the buffer zone distance shall be measured along the center of the shortest publicly-accessible pedestrian travel path from the geometric center of the Marijuana Establishment Entrance to the geometric center of the nearest School Entrance.

When measuring a buffer zone from a school, the Town must ensure that the by-law is applied consistent with the CCC regulations that measure the buffer zone from the geometric center of the ME entrance to the geometric center of the nearest school entrance (not in a straight line from the nearest point of the property line in question to the nearest point of the property line where the MTC or ME will be located). The Town should consult with Town Counsel with any questions on this issue. In addition, the Town should consult with Town Counsel to determine if a future by-law amendment is needed to address this issue.

With regards to the buffer zones from other uses imposed in Section 11.5 (e), the Town should note that G.L. c. 94G, § 3 prohibits a Town from adopting by-laws that govern the time, place and manner of marijuana establishment operations that are “unreasonably impracticable” or in conflict with Chapter 94G or the CCC regulations, 935 CMR 500.000.¹ There are no appellate level decisions addressing the question whether a buffer zone requirement from other uses (such as places of worship or parks) would render it “unreasonably impracticable” for a marijuana establishment to operate in a municipality. However, in a case now pending before the

¹ General Laws Chapter 94G, Section 1 defines “unreasonably impracticable” as: “the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment.”

Land Court, Benevolent Botanicals LLC v. City of Malden, Miscellaneous Case No. 22 Misc. 00076, 2022 WL 3924099 (August 31, 2022, Rubin, J.), the Land Court may address this question. The Town may wish to consult with Town Counsel on this issue and monitor developments in the Benevolent Botanicals case.

3. Section 11.5 (g) – Design Standards

Section 11.5 (g)(E), “Roofing,” provides that: “[n]o enclosed structure, as defined herein, shall have a roof pitch of less than 5/12, unless the applicant can demonstrate to the satisfaction of the SPGA that any deviation from this standard is in better keeping with § 5(g)(i) of this section.” The Town should ensure that Section 11.5(g)(E) is applied consistent with the State Building Code. Specifically, 780 CMR § 15.00 of the Building Code includes provisions pertaining to the minimum requirements for design and construction of roof assemblies and roof structures. The Town should consult with Town Counsel with any questions on this issue.

C. Section 11.6 – Application Requirements

Section 11.6 (h), “Energy Use Plan,” provides that a special permit may be subject to certain requirements and conditions including the requirement that the special permit application include an energy use plan that will demonstrate the best practices for energy conservation, water usage and waste disposal as well as providing information regarding electrical, ventilation and water systems and proposed energy and utility demands.

We approve Section 911.6 (h) but the Town must ensure that it is applied consistent with the CCC regulations, 935 CMR 500.000 *et seq.* The CCC regulations impose requirements related to energy efficiency and conservation. See e.g. 935 CMR 500.103 (b) (requiring an applicant to submit an energy compliance letter prepared by a Massachusetts Licensed Professional Engineer or Massachusetts Licensed Registered Architect with supporting documentation); 935 CMR 500.105 (1)(q) (requiring a marijuana establishment to have a detailed written operating procedure that includes policies and procedures for energy efficiency and conservation); 935 CMR 500.105 (15) (requiring an applicant to demonstrate consideration of the factors related to energy efficiency and conservation as part of its operating plan and application for licensure); and 935 CMR 500.120 (11) (requiring a cultivator to “satisfy minimum energy efficiency and equipment standards established by the Commission” and be subject to minimum energy efficiency and equipment standards established by the CCC.)

The Town must ensure that any special permit application requirements imposed under Section 11.6 (h) are consistent with the CCC regulations. The Town should consult with Town Counsel regarding this issue.

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,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Donna MacNicol