



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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May 4, 2021

Barbara Hancock, Town Clerk
Town of Deerfield
8 Conway Street
Deerfield, MA 01373

**Re: Deerfield Special Town Meeting of October 22, 2020 -- Case # 9948
Warrant Articles # 6 and 7 (Zoning)**

Dear Ms. Hancock:

Article 7 - We approve Article 7, and the related map amendment, from the October 22, 2020 Deerfield Special Town Meeting.¹ We will return the approved map to you by regular mail.

Article 7 amends the Town's zoning by-laws by deleting Section 4650, "Medical Marijuana Treatment Centers," and Section 4660, "Marijuana Establishments," and inserting a new Section 4660, "Marijuana Establishments" to regulate the siting of Marijuana Establishments (ME) within the Town. MEs are allowed by special permit with site plan review in the Marijuana Overlay districts as shown on the Use Regulations Schedule. *See* Section 4665 and Use Regulation Schedule. We offer the following comments on the new Section 4660 for the Town's consideration.

1. Section 4662 – Definitions

Section 4662 defines several terms as used in the by-law. Recently, the Cannabis Control Commission (CCC) updated its regulations, 935 CMR 500.000, "Adult Use of Marijuana," effective January 8, 2021. The new regulations amended several definitions. Some of the by-law's definitions differ from the regulations; for example, the definitions of "marijuana retailer" and "marijuana social consumption operation."

In addition, the Town defines the term "Medical Marijuana Treatment Center," in relevant part as: "[a] not-for-profit entity registered under 105 CMR 725.100." The Town must apply the definition of "Medical Marijuana Treatment Center," consistent with 935 CMR 500.00 and 935

¹ On January 29, 2021, by agreement with Town Counsel in accordance with G.L. c. 40, § 32, we extended our deadline for review of Articles 6 and 7 for 60-days until April 1, 2021. In a decision issued on March 30, 2021, we approved Article 6 and elected to proceed under the defect waiver provisions of Chapter 299 of the Acts of 2000 for Article 7. In a certification received April 30, 2021, the Town Clerk affirmed that the notice was posted and published in accordance with the provisions of Chapter 299, and that no claims were filed with the Office of the Town Clerk within 21 days of publication. For this reason, the Attorney General is authorized by Chapter 299 to waive (and does so waive) the defects.

CMR 501.00, as these sections have superseded 105 CMR 725.00. Specifically, as a result of Chapter 55 of the Acts of 2017 (“An Act to Ensure Safe Access to Marijuana”), in December of 2018, the administration and oversight of medical marijuana use was transferred from the Massachusetts Department of Public Health to the CCC. The CCC regulations (935 CMR 500.002, and 935 CMR 501.002) no longer define a “Medical Marijuana Treatment Center (MTC) formerly known as a Registered Marijuana Dispensary (RMD)” as a “not-for-profit” entity. Instead, the CCC regulations now provide in relevant part that a MTC mean “an entity licensed under 935 CMR 501.101.”²

The Town must ensure that Section 4662 is applied consistent with the CCC regulations, as updated effective January 8, 2021. The Town should consult with Town Counsel with any questions on this issue. In addition, the Town may wish to consult with Town Counsel regarding potential future by-law amendments in light of the recently updated CCC regulations.

2. Section 4663 – Applicability

Section 4663 provides in relevant part that if a marijuana establishment has “applied for and/or received a special permit or building permit prior to the effective date of this bylaw” then it will not be subject to any requirement under the by-law that is more stringent or restrictive than a requirement that was “in effect on the date of such special permit or building permit application.” In applying Section 4663, the Town should be mindful of G.L. c 40A, § 6 that addresses certain protections of existing uses and structures that were lawfully in existence prior to the first publication of notice of the public hearing for zoning by-law changes. General Laws Chapter 40A, Section 6 provides that a zoning by-law “shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing” for the by-law change, in pertinent part as follows:

Except as hereinafter provided, a zoning...by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such...by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.
(emphasis added)

The protections provided by G.L. c. 40A, § 6 apply to a “building or special permit issued before the first publication of notice of the public hearing.” However, the by-law’s protections apply to marijuana establishments that have “applied for and/or received a special permit or building permit prior to the effective date of this bylaw.” The Town should consult with Town

² See CCC Guidance, October 2017, “Guidance for Registered Marijuana Dispensaries Regarding Corporate Conversion” at: <https://www.mass.gov/doc/guidance-for-registered-marijuana-dispensaries-regarding-corporate-conversion/download> and CCC Guidance, January 2018, “Guidance for Registered Marijuana Dispensaries Regarding Non-Profit Compliance” at: <https://www.mass.gov/doc/guidance-for-rmds-regarding-non-profit-compliance-0/download>.

Counsel with any questions on the proper application of the by-law in light of the provisions in G.L. c. 40A, § 6.

3. Section 4666 – Additional Requirements/Conditions

Section 4666 (a)(ii) provides that a marijuana establishment shall not be located on a parcel within 500 feet of a parcel occupied by a preexisting public or private school or licensed day care center (in existence at the time of the applicant’s application is received by the CCC) and provides that such distance shall be measured as follows:

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 Marijuana Establishment is or will be located.

The CCC has recently issued updated regulations to establish how buffer zones are measured. Specifically, 935 CMR 500.110 (3)(a), “Buffer Zones,” now provides:

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.

The Town should ensure that Section 4666 (a)(ii) is applied consistent with the CCC regulations, as updated effective January 8, 2021. The Town should consult with Town Counsel with any questions on this issue. In addition, the Town may wish to consult with Town Counsel to determine if an amendment to Section 4666 is needed at a future Town Meeting in light of the recently updated CCC regulations.

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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cc: Town Counsel Lisa Mead