



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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January 30, 2023

Kandy L. Lavallee, Town Clerk
Town of Grafton
30 Providence Road
Grafton, MA 01519

**Re: Grafton Fall Annual Town Meeting of October 17, 2022 -- Case # 10759
Warrant Article # 6 (Zoning)
Warrant Articles # 14 and 16 (General)**

Dear Ms. Lavallee:

Articles 6 and 16 - We approve Articles 6 and 16 from the October 17, 2022 Grafton Fall Annual Town Meeting. Our comments regarding Articles 6 and 16 are provided below.

Article 14 - Article 14 amends Article 20, the Town's Personnel Bylaw, to add a new Section 4-26, "Employee Contracts," that authorizes the Town Administrator to negotiate and enter into employment contracts with certain town employees. We take no action on Article 14 because it is an amendment to the Town's Personnel by-law and is therefore not subject to Attorney General review and approval.

The Town's Personnel Bylaw, Section 4-1, states that its purpose is to "provid[e], create[e] and supervis[e] personnel policies by the Town Administrator" including the creation and administration of any classification and compensation plan. In G.L. c. 41, § 108A the Legislature authorized towns to adopt by-laws to establish employment classification plans but exempted such by-laws from the Attorney General's review and approval mandated by G.L. c. 40, § 32: "Any by-law adopted under the provisions of this section shall not be subject to section thirty-two of chapter forty." Similarly, in G.L. c. 41, § 108C the Legislature authorized towns to adopt consolidated personnel by-laws, including compensation provisions, but exempted such by-laws from Attorney General review and approval: "[S]uch consolidated by-law shall not be subject to the approval of the attorney general as provided in section thirty-two of chapter forty."

The Legislature has thus determined that personnel by-laws, including employment provisions such as adopted here under Article 14, are not the type of by-laws that are subject to Attorney General review and approval. Therefore, we take no action on Article 14. The Town should consult with Town Counsel with any questions on this issue.

Article 6 - Under Article 6 the Town amended several sections of the zoning by-laws regarding medical marijuana and marijuana establishments. The Town must ensure that it applies these by-law amendments 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.

As part of the amendments adopted under Article 6, the Town adopted new definitions for “Marijuana Courier” and “Marijuana Delivery Operator” and amended the Table of Uses to: (1) allow marijuana couriers in the Neighborhood Business (NB), Community Business (CB), Industrial (I) and Office/Light Industry (OLI) districts by special permit and prohibit the use in all other districts; and (2) allow marijuana delivery operators in the I and OLI districts by special permit and prohibit the use in all other districts. In addition, the Town amended several existing definitions, including the definitions for marijuana retailer and off-site medical marijuana dispensary (OMMD). We offer comments on certain of these amended definitions for the Town’s consideration.

1. Section 5.10.2 – Definition of Marijuana Retailer

Under Article 6 the Town amended the definition of “Marijuana Retailer” to delete certain text (shown below in strikethrough) as follows:

Marijuana Retailer (MR): ~~Marijuana Retailer (MR): 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; and from offering cannabis or marijuana products for the purpose of on-site social consumption on the premises of a Marijuana Establishment.~~

We approve the amendment to this definition. However, we note that the Town’s definition of Marijuana Retailer differs from the CCC regulations definition that defines a Marijuana Retailer as follows:

[A]n 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” is not as broad as the CCC regulation 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. The by-law must be applied consistent with the CCC regulations. The Town

should consult with Town Counsel to determine if a future by-law amendment is needed to address this issue.

2. Section 5.10.2 – Definition of Off-Site Medical Marijuana Dispensary (OMMD)

Under Article 6 the Town amended the definition of Off-Site Medical Marijuana Dispensary (OMMD) to change the citation reference for the CCC regulations as follows (deleted text in strikethrough and new text in underline):

Off-Site Medical Marijuana Dispensary (OMMD) – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved not-for-profit entity which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and education materials to registered qualifying patients or their person care givers in accordance with the provisions of ~~105-CMR-725.00~~ 935 CMR 501.000.

We approve this amendment. However, the Town should consult with Town Counsel to determine whether the existing definition of OMMD should be further amended to delete the reference to a “not-for-profit entity” because 935 CMR 500.002 and 935 CMR 501.002 no longer require a Medical Marijuana Treatment Center (formerly known as a Registered Marijuana Dispensary) to be a not-for-profit entity. See West Street Associates LLC, 488 Mass. at 319 (invalidating town by-law that required MTC to be non-profit because of conflict with CCC regulations).

Article 16 - Under Article 16 the Town voted to amend Article 40, “Revolving Funds,” to establish a new revolving fund, “18-22 School to Work Program Revolving Fund.” The motion at Town Meeting states that the revolving fund is “pursuant to M.G.L. c. 71B, § 9 (603 CMR 28.06 (4) – Programs for Older Students).” General Laws Chapter 71B, Section 9 requires the Department of Education (Department) to define the circumstances in which school committees may be required to provide special classes, instruction periods or other special education programs for school age children with a disability; and 603 CMR 28.06 (4) is one of the regulations promulgated by the Department related to special education regarding placement for older students for continuing education.

The revenue source for this revolving fund is “[f]ees from programs for older students.” See 603 CMR 28.06 (4) (“The school district shall ensure that [special education] options are available for older students, particularly those eligible students of ages 18 through 21 years”). The School Department is authorized to expend from this fund for “tuition payments and program expenses.” The by-law does not provide any additional information regarding the “fees” to be deposited into or the “tuition payments and program expenses” to be spent from the revolving fund.

According to the Department of Revenue/Division of Local Services (DOR/DLS), receipts reserved by law, or as authorized by law, for expenditure for a particular purpose (such as statutorily-required special education services) may not be used in a revolving fund. However, fees related to a program or activity offered on a discretionary basis are appropriate for a

revolving fund. See Informational Guideline Release (IGR) 21-23, “Departmental Revolving Funds,” September 2021.

We have confirmed with Town Counsel that this revolving fund is not being used for tuition related to special education services that Grafton is required to provide for town residents. Town Counsel informs us that the revolving fund will instead be used for a discretionary program that would allow “older students,” including students ages 18 through 21 years, from neighboring districts to attend special education programming in Grafton. Town Counsel states that the purpose of the fund is to collect out of district tuition payments received from “older students” from neighboring districts who, under school choice, choose to attend Grafton’s special education program and to pay expenses for the Grafton special education program including lease payments for the building and payments to instructors.

Based on this information we approve the new revolving fund adopted under Article 16. However, the Town should consult with Town Counsel about a future amendment to the revolving fund by-law to accurately state what funds are being deposited into and paid out of the fund; and additional information to specify the purpose of the payments. See G.L. c. 44, §53E ½ (“The by-law...shall specify for each fund...the programs or activities for which the revolving fund may be expended [and]...receipts in connection with those programs or activities that shall be credited to the revolving fund.”) The Town should consult with Town Counsel with any questions on 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,

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cc: Town Counsel Ginny Sinkel Kremer