



THE COMMONWEALTH OF MASSACHUSETTS
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May 19, 2022

Catherine McClenaghan, Town Clerk
Town of Rowley
139 Main Street
P.O. Box 351
Rowley, MA 01969

**Re: Rowley Special Town Meeting of May 3, 2021 -- Case # 10181
Warrant Articles # 23 and 24 (Zoning)**

Dear Ms. McClenaghan:

Articles 23 and 24 - We approve Articles 23 and 24, and the map amendment related to Article 23, from the May 3, 2021 Rowley Special Town Meeting.¹ We will return the approved map to you by regular mail. Our comments regarding Article 24 are provided below.

Article 24 - Under Article 24 the Town voted to amend two sections of the zoning by-laws related to marijuana cultivation. First, the Town amended Section 2.0, "Definitions," to add new definitions for "Canopy (Marijuana)" and "Outdoor Marijuana Cultivation." We approve the amendments to Section 2.0 because the new definitions are consistent with the Cannabis Control Commission's (CCC) updated regulations, effective January 8, 2021, including the CCC's definition of the terms "Canopy" and "Outdoor Cultivation."

Second, the Town amended Section 4.4.3, regarding uses permitted in the Outlying District by special permit to add a new sub-section (d) that allows the outdoor cultivation of marijuana in the Outlying District subject to specific requirements, as follows:

Outdoor cultivation of marijuana on parcels four (4) acres or greater, subject to special permit/site plan review approval by the Planning Board, and provided that the proposed canopy area to be cultivated is no larger than 5,000 square feet, at least 300 feet from an abutting residential structure, at least 400 feet from a public right-of-way,

¹ On September 3, 2021, by agreement with Town Counsel, we extended our deadline for review of Articles 23 and 24 for an additional 30 days until October 6, 2021. On October 6, 2021, we placed Articles 23 and 24 on "hold" until such time as we received from the Town all of the documents necessary to conduct our review pursuant to G.L. c. 40, § 32 and G.L. c. 40A, § 5. On January 19, 2022, we received a completed by-law submission from the Town resulting in a new 90-day deadline of April 19, 2022. On April 19, 2022, by agreement with Town Counsel, we extended our deadline for review of Articles 23 and 24 for an additional 30 days until May 19, 2022.

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not located within two hundred (200) feet of a day care facility, elementary or secondary school, or church or religious assembly, and complies with all State regulations for outdoor marijuana cultivation. The Planning Board shall also have the discretion to require vegetational screening to ensure that cultivation areas or facilities are not visible from the public right of way or from an abutting residential use. Marijuana or marijuana products associated with outdoor cultivation of marijuana specified under this bylaw shall be delivered only to other licensed retail marijuana establishments or dispensaries, and nothing in this bylaw shall be construed to authorize or permit delivery of marijuana or marijuana products to consumers.

During the course of our review of Article 24, we received an opposition from a Town resident urging us to disapprove Article 24 for several reasons, including because it is a commercial use in a residential zone. We appreciate this correspondence as it has aided our review. However, this opposition does not provide us with grounds to disapprove Article 24. Article 24 amends the provisions related to the Outlying District that is described in the by-law as “intended as an area of low-density residence, recreation, conservation, agriculture, and similar uses compatible with a rural area.” Section 4.4.1. The zoning by-law regulates certain uses that are allowed as of right or by special permit in the Outlying District. Sections 4.4.2 and 4.4.3. Although the opposition alleges that outdoor marijuana cultivation is “not a permitted use” in Section 4.4.2, the Town voted unanimously under Article 24 to amend Section 4.4.3 (d) to allow the use by special permit in the Outlying District. We accord deference to this legislative decision just as a court does. See W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). Because the vote under Article 24 poses no conflict with state law, we approve it. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

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,

MAURA HEALEY
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cc: Town Counsel Thomas A. Mullen