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March 13, 2013

Via Electronic Mail

Amy E. Warfield, Town Clerk
Town of Burlington
29 Center Street
Burlington, MA 01803

**RE: Burlington Annual Town Meeting of January 28, 2013 - Case # 6619
Warrant Articles # 1, 2, 3, 4 and 5 (Zoning)**

Dear Ms. Warfield:

Articles 1, 2, 3, 4 and 5 - We approve the amendments to the Burlington by-laws adopted under these Articles on the warrant for the Burlington Annual Town Meeting that convened on January 28, 2013. Our comments on Article 5 are detailed below.

Article 5 – The amendments adopted under Article 5 amend the Town’s zoning by-laws to add a new Section 10.6, “Temporary Moratorium on Medical Marijuana Treatments Centers.” The new Section 10.6 institutes a temporary moratorium, through June 30, 2014, on the use of land or structures for a medical marijuana treatment center (as defined in Section 10.6). The stated purpose of the temporary moratorium is:

By vote at the State election on November 6, 2012, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes. The law provides that it is effective on January 1, 2013 and the State Department of Public Health is required to issue regulations regarding implementation within 120 days of the law’s effective date. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town and any regulations promulgated by the State Department of Public Health are expected to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers. The regulation of medical marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Medical Marijuana Treatment Centers and address such novel and complex issues, as well as to address the potential impact of the State regulations on

local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Medical Marijuana Treatment Centers and other uses related to the regulation of medical marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Medical Marijuana Treatment Centers so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use planning goals and objectives.

We approve this temporary moratorium because it 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 medical marijuana treatment centers, and there is a stated 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 Burlington has selected for its temporary moratorium (through June 30, 2014) appears to be reasonable in these circumstances, where the Department of Public Health regulations have not yet been issued and those regulations “are expected to provide guidance” to the Town. Section 10.6.1. The moratorium is limited in time period and scope (to the use of land and structures for medical marijuana treatment centers), and thus does not present the problem of a rate-of-development bylaw of unlimited duration which 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 5 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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