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TOWN OF WHATELY MASSACHUSETTS

OFFICE OF THE TOWN CLERK

TOWN BULLETIN

Town of Whately
Zoning and General Bylaw Approvals

On October 7, 2022, the Attorney General of Massachusetts approved the following attached changes to the General and Zoning Bylaws voted at the May 24, 2022 Annual Town Meeting under Warrant Articles #24 and #25 (Zoning) and Warrant Article #23 (General).

Each of the newly approved zoning and general bylaws is attached as well as the Attorney General's letter of approval is attached.

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 the 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 Town Meeting, unless a later effective date is prescribed in the by-law.

Amy M. Schrader
Town Clerk of Whately

Posted by October 13, 2022 at the Whately Town Offices, Post Office, Library and Transfer Station as well as on the town website www.whately.org.



THE COMMONWEALTH OF MASSACHUSETTS
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October 7, 2022

Amy M. Schrader, Town Clerk
Town of Whately
4 Sandy Lane
Whately, MA 01373

Re: Whately Annual Town Meeting of May 24, 2022 -- Case # 10700
Warrant Articles # 24 and 25 (Zoning)
Warrant Article # 23 (General)

Dear Ms. Schrader:

Articles 23, 24 and 25 - We approve Articles 23, 24 and 25 from the May 24, 2022 Whately Annual Town Meeting. Our comments regarding Article 24 are provided below.

Article 24 - Under Article 24 the Town amended the zoning by-laws, Section 171-28.6, "Adult Use Recreational and Medical Marijuana Establishments," Sub-section B, "Definitions," to add new definitions for "marijuana courier" and "marijuana delivery." These uses are allowed by special permit in the Commercial, Commercial/Industrial and Industrial Districts and prohibited in the Agriculture/Residential 1 and Agriculture/Residential 2 districts.¹

The Cannabis Control Commission (CCC) updated its regulations, 935 CMR 500.000, "Adult Use of Marijuana," effective January 8, 2021, to amend definitions and establish new requirements for the delivery of marijuana. Towns are preempted from adopting by-law definitions that impose different requirements on marijuana establishments than those requirements imposed by the CCC. West Street Associates LLC v. Planning Board of Mansfield, 488 Mass. 319 (2021). We offer comments on the by-law amendments for the Town's consideration.

1. Definition of Marijuana Courier

Under Article 24, the Town added a new definition for "Marijuana Courier" as follows: "[A]n entity licensed to deliver finished marijuana products, marijuana accessories and branded goods directly to consumers, registered qualifying patients or caregivers but not to sell, wholesale, process, repackaging or label such items."

¹ Under Article 25 the Town amended Section 171-8, "Table of Uses Regulations" to insert these two uses.

This definition differs slightly from the CCC's definition of "Marijuana Courier" that provides as follows:

Marijuana Courier means an entity licensed to deliver Finished Marijuana Products, Marijuana Accessories and Branded Goods directly to Consumers from a Marijuana Retailer, or directly to Registered Qualifying Patients or Caregivers from an MTC, but is not authorized to sell Marijuana or Marijuana Products directly to Consumers, Registered Qualifying Patients or Caregivers and is not authorized to Wholesale, Warehouse, Process, Repackage, or White Label. A Marijuana Courier is 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).

The Town must ensure that the by-law is applied consistent with the CCC regulations related to marijuana couriers. The Town should consult with Town Counsel with any questions on this issue.

2. Definition of Marijuana Delivery

Under Article 24 the Town also added a definition for the term "Marijuana Delivery" as follows: "[A]n entity licensed to purchase at wholesale and warehouse finished marijuana products and label, sell and deliver these products directly to consumers, but is not authorized to repackaging marijuana or marijuana products or operate a storefront."

The CCC does not define "marijuana delivery" but does define "Marijuana Delivery Operator" or "Delivery Operator" as follows:

Marijuana Delivery Operator or Delivery Operator means an entity licensed to purchase at Wholesale and Warehouse Finished Marijuana Products acquired from a Marijuana Cultivator, Marijuana Product Manufacturer, Microbusiness or Craft Marijuana Cooperative, and White Label, sell and deliver Finished Marijuana Products, Marijuana Accessories and Marijuana Branded Goods directly to Consumers, but is not authorized to Repackage Marijuana or Marijuana Products or operate a storefront under this license. A Delivery Operator is 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).

The Town's definition of "Marijuana Delivery" appears similar to the CCC definition of "Marijuana Delivery Operator." The Town must ensure that the by-law is applied consistent with the CCC regulations related to marijuana delivery operators. 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,

MAURA HEALEY
ATTORNEY GENERAL

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cc: Town Counsel David J. Doneski