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Planning Board
Town of Carlisle
66 Westford Street
Carlisle, MA 01741

Re: Considerations for Adopting Zoning Regulations of Marijuana

Dear Planning Board Members,

We were asked to review the Town of Carlisle’s Zoning Bylaws in the context of the State’s adult-use marijuana laws, to provide an assessment of the applicability of the current Zoning Bylaws to potential adult-use marijuana establishments, and to identify any risks presented by the current form of the Zoning Bylaws. Our response specifically addresses adult-use marijuana retailers, adult-use marijuana cultivators, and emerging adult-use delivery services.

In November 2016 with the passage Question 4, recreational adult-use marijuana became legal in the Commonwealth. During the subsequent years the relevant statute *M.G.L. c. 94G*, and regulations promulgated by the Cannabis Control Commission, 935 C.M.R. 500.0001 et seq., have governed the expansion of the adult-use marijuana industry including local retailers, cultivators, and most recently delivery operators.

I. Adult Use Marijuana Establishments in Carlisle

M.G.L. c. 94G, §3, provides generally that a “city or town may adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with this chapter or with regulations made pursuant to this chapter.” *Id.* at §3(a). Such bylaws may (1) “govern the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories;” and (2) may “limit the number of marijuana establishments in the city or town;” but may not “prohibit the operation of 1 or more types of marijuana establishments” or place certain other limits on the number of establishments without approval by Town Meeting¹ and the majority vote on a ballot question. *Id.* at §§3(a)(2); 3(e).

¹ The recent amendments to the *Zoning Act*, have reduced the required Town Meeting approval for zoning bylaws to a simple-majority vote, but only for those housing related amendments specifically listed in *M.G.L. c. 40A*, §5, as amended by Chapter 358 of the Acts of 2020. Zoning bylaw amendments affecting marijuana establishments will still require a two-thirds vote of Town Meeting.

The effect of *M.G.L. c. 94G, §3*, is such that unless a town affirmatively adopts a prohibition on adult-use marijuana establishments by the procedure outlined in §3(e), the sale of adult-use marijuana is an allowed use subject to the towns existing zoning regime. The absence of zoning regulations which expressly define the locations in which adult-use marijuana establishments may be located will not ensure that they may not be sited anywhere in the town. In such a situation the sale of adult-use marijuana would *likely* be controlled by the most analogous use regulations in the local zoning bylaw.

In the case of Carlisle, the Town has not adopted zoning regulations that prescribe the siting of adult-use marijuana establishments. The Town did adopt a temporary moratorium, Section 5.11 of the Zoning Bylaws, which expired at the end of 2018. The Commission currently licenses the following types of Marijuana Establishments: Marijuana Cultivator, Craft Cooperative, Marijuana Product Manufacturer, Marijuana Microbusiness, Independent Testing Laboratory and Standards Laboratory, Marijuana Retailer, Marijuana Transporter, Marijuana Research Facility, and Marijuana Delivery Licensee. In the absence regulations, if pressed by a prospective marijuana establishment, the Town would likely be required to permit them in the most analogous zoning district.

For an adult-use marijuana retailer, this would be within the Town's Business Districts. This is not to say that there is a location which would be likely to attract an adult-use marijuana retailer, however, it remains a possibility, nonetheless.

Similar to retailers, the siting of adult-use marijuana cultivators and processors would be controlled by the most analogous use regulations in the Zoning Bylaws. As you are likely familiar, *M.G.L. c. 40A, §3*, exempts most agricultural uses from local zoning regulations, however, expressly does not exempt the "growing, cultivation, distribution or dispensation of marijuana." While adult-use marijuana cultivation and related processing may not be eligible for the zoning exemptions found in *M.G.L. c. 40A, §3*, it is not unreasonable to characterize such activities as agricultural as that word is commonly understood. See e.g. *Valley Green Grow v. Town of Charlton, Land Ct., No. 19 MISC 000226* (Aug. 14, 2019) ("the growth or cultivation of marijuana is, within the plain meaning of the word, an agricultural use. Thus, where the bylaw does not offer a definition of agriculture, the growth or cultivation of marijuana fits into the bylaw's subset of agricultural uses of either the raising of crops or indoor commercial horticulture/floriculture, depending on the nature of the particular proposed use"). As a result, unless agriculture is specifically defined to exclude the growing or cultivation of marijuana, it is arguable that adult-use marijuana cultivation could be allowed in any zoning district where agriculture is permitted.

The Zoning Bylaws presently do not define agriculture and permit agricultural uses in each of the Town's zoning districts. Under the current set of regulations, it is possible that the Town would be required to permit an adult-use marijuana cultivator on any site which the proposed use meets the generally applicable dimensional zoning requirements. This ambiguity could be resolved, for example, by adopting a definition of agriculture that excepts marijuana uses, in concert with provisions that expressly define the permitted locations for such a use.

II. Marijuana Delivery

The Cannabis Control Commission (“CCC”) has promulgated and revised regulations for the delivery of adult-use marijuana. Recent revisions to the CCC’s regulations may have the effect of expanding the number of adult-use marijuana establishments that offer delivery services, either in the community which they serve or elsewhere.² A Marijuana Establishment with a Delivery Endorsement or a Delivery Licensee may only deliver marijuana in the following geographic areas:

- a. The municipality identified as the Marijuana Establishment Licensee’s place of business;
- b. Any municipality which allows for retail sales of marijuana within its borders whether or not one is operational; or
- c. Any municipality that has notified the Commission that delivery may operate within its borders. (emphasis added)

As discussed above, because the Town has not adopted a ban on the sale of adult-use marijuana it will be treated as one which allows retail marijuana sales. For the Town, this means that even if an adult-use marijuana retailer is not licensed within the Town’s borders, other operators may still make deliveries in the Town.

935 C.M.R. §500.145(i) provides that deliveries must comply with municipal bylaws in the Town where the delivery is to be made:

- (i) Limitations on the time for delivery shall comply with all municipal bylaws and ordinances, provided however, that all deliveries of Marijuana or Marijuana Products must be completed before 9:00 P.M. local time or the time determined by municipal bylaw or ordinance, whichever occurs first, and deliveries of Marijuana or Marijuana Products shall not occur between the hours of 9:00 P.M. and 8:00 A.M., unless otherwise explicitly authorized by municipal bylaw or ordinance.³

As with adult-use use marijuana generally, the adoption of bylaws which address delivery specifically would provide greater clarity and control over marijuana retailers operations within the Town.

² The CCC’s press release is available here: <https://mass-cannabis-control.com/cc-approves-final-adult-use-medical-use-of-marijuana-regulations-rescinds-colocated-regulations/>.

³ Note that the first phrase of this paragraph conflicts with the second phrase. The first part states that communities may alter the hours of delivery, but that in no case shall deliveries extend past 9pm. The second part asserts that deliveries may occur after 9pm, if the Town expressly authorizes the later delivery. The Massachusetts Municipal Lawyers Association and the Massachusetts Municipal Association are in the process of seeking clarification on this provision. While there may be ambiguity on the Town’s ability to extend the hours of delivery past 9pm, the Town can require all deliveries to be completed before 9pm through a general bylaw, if it so desires.

III. Conclusions

As the CCC expands the scope of licensing available to marijuana establishments, retail, cultivation, and delivery operations will have a commensurate ability to expand their business throughout Massachusetts. The Town of Carlisle is presently without local regulations which specifically regulate adult-use marijuana, and, as discussed, could be required to accommodate all types of Marijuana Establishments, including brick and mortar retailers, cultivators, or delivery operations, as a result. We would advise the Town to pursue regulation in some form to create a clear regulatory environment to avoid potential conflicts resulting from the current ambiguity. If the Town does proceed with a complete ban of Marijuana Establishments, it would not be necessary to specifically define agriculture or place time restrictions on marijuana delivery as discussed above. Whether the Town pursues a ban on adult-use marijuana establishments or adopts a bylaw which limits the time, place, and manner, of those sales is ultimately policy question. In our view, some specific regulation—in either direction—that assists the Town's boards in predictably administering the General and Zoning Bylaws would be valuable.

We are of course happy to assist with additional guidance and document preparation to advance any of the Planning Board's goals with respect to the issues discussed above.

Please let me know if you have any questions.

Sincerely,



Thomas J. Harrington