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February 27, 2014

Michael P. Seery, Town Clerk
Town of Brookfield
6 Central Street
Brookfield, MA 01506

**RE: Brookfield Special Town Meeting of November 22, 2013 - Case # 7038
Warrant Article # 1 (Zoning)**

Dear Mr. Seery:

Article 1 - We approve the amendments to the Brookfield by-laws adopted under Article 1 at the November 22, 2013 Special Town Meeting. Our comments regarding Article 1 are provided below.

Article 1 amends the Town's zoning by-laws to add a new Section 800 "Temporary Moratorium on Medical Marijuana Treatment Centers also known as Registered Marijuana Dispensaries." Section 800C imposes a temporary moratorium on Medical Marijuana Treatment Centers through June 30, 2014. Section 800A establishes the purpose of the moratorium:

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 issued regulations implementing the law effective May 24, 2013. Currently under the Zoning Bylaw, a Medical Marijuana Treatment Center is not a permitted use in the Town of Brookfield and the regulations promulgated by the State Department of Public Health to provide guidance to the Town in regulating medical marijuana, including Medical Marijuana Treatment Centers, which are referred to as Registered Marijuana Dispensaries in the regulations. 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 such uses and to 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 also known as Registered Marijuana Dispensaries 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 Center also known as Registered Marijuana Dispensaries 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.

Further, Section 800C includes the following text regarding the Town's planning process:

During the moratorium period, the Town shall undertake a planning process to address the potential impacts of medical marijuana in the Town, consider the Department of Public Health regulations and shall consider adopting new Zoning Bylaws to address the impact and operation of Medical Marijuana Treatment Centers also known as Registered Marijuana Dispensaries and related uses.

We approve the temporary moratorium because it is 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 a registered marijuana dispensary and related uses, 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 Brookfield has selected for its temporary moratorium (through June 30, 2014) appears to be reasonable in these circumstances, where the final version of the DPH regulations was issued on May 8, 2013, and those regulations are expected to provide guidance to the Town. The moratorium is definite in time period and scope (to the use of land and/or structures for RMDs), and thus does not present the problem of a rate-of-development by-law of unlimited duration which the Zuckerman court determined was ordinarily 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 1 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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