

Supreme Judicial Court Upholds General Bylaw Prohibiting Marijuana Establishments

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On July 28, 2022, the Massachusetts Supreme Judicial Court issued its decision in The Haven Center, Inc. v. Town of Bourne, finding in favor of the Town. In this case, The Haven Center, Inc. a medical marijuana treatment facility, challenged a general bylaw prohibiting commercial recreational marijuana establishments in Bourne. The plaintiff argued that the general bylaw was in fact a zoning bylaw and was not adopted in a manner consistent with G.L. c.40A, §5 and, further, that G.L. c.94G, §3 prohibited a municipality, through zoning, from preventing conversion of a medical marijuana treatment facility to a recreational marijuana establishment. Of significance, the Court held that pursuant to G.L. c.94G, §3(a), municipalities may regulate or prohibit recreational marijuana establishments through both zoning and general bylaws and ordinances.

General Laws c.94G, §3 (a)(2), permits cities and towns to exercise their police power through the adoption of ordinances and by-laws that “impose reasonable safeguards on the operation of marijuana establishments.” The law does not, however, expressly specify whether such a local law must be a general or zoning bylaw or ordinance. The Haven Center court concluded that the Bourne bylaw was a general bylaw, and, further, that regulation of land use, and particularly marijuana establishments, may be accomplished through adoption or amendment of general or zoning bylaws or ordinances. Moreover, the Court found that the general bylaw did not impermissibly ban the conversion of medical marijuana treatment centers to recreational marijuana establishment, as G. L. c.94G, §3 (a)(1) only prohibits zoning bylaws or ordinances from preventing conversion or limiting the number of recreational marijuana establishments below the minimum set by state law.

The Haven Center court cautioned, however, that care should be taken when adopting or amending a general bylaw or ordinance regulating land use, specifically marijuana establishments. The Court indicated that regardless of whether a local law is titled as a “general” bylaw or ordinance, if challenged, the law may nevertheless be deemed to be a zoning regulation subject to the procedural requirements of G.L. c.40A, §5. The Haven Center court set forth the following for courts to consider when making such a determination: 1) how other cities and towns are regulating the matter; 2) whether the municipality has previously regulated the particular topic at issue through comprehensive zoning; 3) whether the bylaw or ordinance is intended to prohibit or permit any particular listed uses of land; and 4) whether the dominant purpose of bylaw or ordinance pertains to interests typically addressed by zoning process such as, for example, the character of community and compatibility of nearby land uses.

Municipalities are encouraged to review their general bylaws and ordinances under the considerations outlined by the court in Haven Center. For further information on this topic, please call your KP Law attorney at 617.556.0007 or e-mail Attorney Nicole Costanzo at ncostanzo@k-plaw.com.

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