



Acting Mayor Terence Murphy

City of Holyoke

Law Department

June 7, 2021

City Council
536 Dwight Street
Holyoke, MA 01040

Dear Councilors:

You requested an opinion from our office which sought the required timelines to act upon an ordinance with specific reference to M.G.L Chapter 40 A Section 5. Specifically, there are three ordinances to be taken up tonight, June 8, 2021, that were originally filed in 2019 and 2020. The orders in question are attached to this legal opinion for reference.

According to M.G.L. Chapter 40 A Section 5, in pertinent part: *“Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen.”*

It is this department’s understanding that the orders in question were forwarded from the City Council to Ordinance committee back in 2019 and 2020. Accordingly, when they were received by City Council action would have needed to be taken within sixty-five days from City Council’s receipt of the submissions. As the sixty-five days have lapsed, it is improper.

It has also recently been brought to this department’s attention that statutory timelines were tolled due to Covid state of emergency that may have bearing on tonight’s public hearings. The items brought to this department’s attention are specifically, Session Laws Act 2020 Chapter 53, Section 17(b)(ii), in pertinent part states:

a requirement of a statute, ordinance, bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020; provided, however, that the applicable period shall resume 45 days after the termination of the state of emergency, or by a date otherwise prescribed by law, whichever is later;



Acting Mayor Terence Murphy

City of Holyoke

Law Department

I also direct your attention to Session Laws Acts 2020 Chapter 201, Section 34, which was brought to this department's attention as well. That specifically states:

Said subsection (b) of said section 17 of said chapter 53 is hereby further amended by striking out paragraph (iv) and inserting in place thereof the following paragraph:-(iv) when a statute, ordinance, bylaw, rule or regulation provides that a permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within a specified time period, the time within which the permit granting authority must act shall be deemed tolled from March 10, 2020 to December 1, 2020 unless relief from the deadline has been granted by the secretary of housing and economic development pursuant to subsection (d).

This departments understanding is that the orders in question were filed in September 2019 and June 2020. Even with accounting for the tolling period as permitted, they are still outside the sixty-five (65) day requirement. Furthermore, it is this department's assessment that the orders brought forth and the public hearings scheduled for tonight are improper as they were not scheduled within the sixty-five (65) date requirement. As a recourse, they should be refiled and resubmitted.

I hope the above addresses your concerns. If you have any questions or need anything further, please feel free to contact me.

Very truly yours,



Lisa Ball,
Acting City Solicitor



Jenna Wellhoff,
Assistant City Solicitor



City of Holyoke

IN CITY COUNCIL

Introduced by Councilor Rebecca Lisi
Ordered, Ordered, that the City of Holyoke remove from its Code of Ordinances, Appendix A, Zoning Ordinance, Section 8.3 "Shopping Center Districts" and any other references to said zone and replace with Retail Center (RC).

Presented to the Mayor	Mayor's Office
For Approval _____, 20	Holyoke, Mass. _____, 20
_____	Approved _____
City Clerk	Mayor

CITY OF HOLYOKE
 BY CITY COUNCIL
 DATE June 2, 20
 REFERRED TO COMMITTEE ON
Ordinance
 BRENNAMURPHY McGEE, CLERK

City of Holyoke

IN CITY COUNCIL



Introduced by Councilor Joseph M. McGiverin, Juan . Anderson-Burgos, Rebecca Lisi

Ordered, Ordered, that the City of Holyoke rezone the following parcels to Retail Center (RC) in an effort to create a cohesive regional destination district of mixed commercial / retail which all property owners will share the same regulations: 117-00-005, 174-00-013, 174-00-013A, 174-00-013B, 174-00-016, 174-00-017, 174-00-018, 174-00-020, 174-00-021, 174-00-022, 174-00-024, 176-00-010B, 176-00-010C, 176-00-013, 176-00-014, 176-00-014.1, 176-00-027, 176-00-028, 176-00-029.

Presented to the Mayor	Mayor's Office
For Approval _____, 20	Holyoke, Mass. _____, 20
_____ City Clerk	Approved _____ Mayor

CITY OF HOLYOKE

BY CITY COUNCIL

DATE Sept 4.19

REFERRED TO COMMITTEE ON

Ordinance

BRENNAMURPHY McGEE, CLERK



City of Holyoke

IN CITY COUNCIL

Introduced by Councilor Rebecca Lisi

Ordered, Ordered, that the City of Holyoke create a Retail Center (RC) zone taking into account both present tenancies and desired future development of such properties, with appropriate criteria to ensure proper cohesive uses and promote continued mixed commercial / retail in Holyoke.

Presented to the Mayor	Mayor's Office
For Approval _____, 20	Holyoke, Mass. _____, 20
_____ City Clerk	_____ Mayor

CITY OF HOLYOKE
 BY CITY COUNCIL
 DATE June 2, 2020
 REFERRED TO COMMITTEE ON
Ordinance
 BRENNAMURPHY MCGEE, CLERK