

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROWN BUDDA NEW YORK, LLC,

Plaintiff,

v.

TOWN OF SOUTHAMPTON and NEW YORK
STATE OFFICE OF CANNABIS
MANAGEMENT (OCM), as a “necessary
party”,

Defendants.

Docket No.: 2:25-cv-05053

**NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT’S REPLY TO
DEFENDANT’S RESPONSE TO ORDER TO SHOW CAUSE**

The New York State Office of Cannabis Management (“OCM”) submits this reply to Defendant Town of Southampton’s (“Town”) response concerning *Mottz Only Authentic N.Y. Style LLC dba Mottz Green Grocer v. Town of Southampton et al.*, Index (No. 623638/2025) (“*Mottz*”).

First, contrary to the Town’s claim, Town Code § 303-162.26(K) was rendered invalid by *Mottz*, as the court there held the entire special exception use permitting process for non-medical cannabis dispensaries (“dispensaries”) to be preempted, in addition to 11 of 17 individual special conditions listed in Town Code § 303-162.26.¹ The New York State Office of Cannabis Management (“CCB”) similarly held the special exception use permitting process and individual special conditions for dispensaries to be invalid.² ECF 13-4.

¹ Section 3 and Section 5 of Local Law 15-2023 that were declared invalid by *Mottz* were codified at Town Code §§ 330-33 and 330-162.26 respectively. The Town Code is available online at <https://ecode360.com/8701671#42265140>; None of the other 63 commercial uses subject to special-exception review in the Town Code (*see* Town Code §§ 330-124-330-162.26.), are expressly preempted by state law. *See* Cannabis Law § 131(2); 9 N.Y.C.R.R. §§ 119.1, 119.5.

² The CCB’s “unreasonably impracticable” determination is a final action of a state agency and, as such is properly the subject of judicial notice, *see* C.P.L.R. 4511. It is also properly considered as part of this Court’s analysis because it reflects the agency’s exercise of its statutory power to implement and enforce the Cannabis Law.

Second, though the Town correctly notes that *Mottz* did not abrogate N.Y. General Municipal Law (“GML”) § 239-m, the requirement to construct a sidewalk fronting County 39 is invalid to the extent this condition stems from the special exception use permitting process declared invalid by *Mottz*. Similarly, to the extent the Town recommended construction of the sidewalk in its GML § 239-m referral to the Suffolk County Planning Board (“County”) and chose to not reject the County’s recommendation (*see* GML 239-m(5)), such a requirement is invalid.

On April 11, 2023, the Town adopted Local Law 15-2023, which limited the zoning districts where a cannabis dispensary may be located, and established special requirements and additional fees and costs for any dispensary within the Town.³ Section 3 of Local Law 15-2023 restricts the locations of dispensaries to only two zoning districts and provides that dispensaries are not permitted as-of-right in these zones. In all cases, a dispensary must obtain special exception use approval from the Town before opening and operating in such zones. Section 5 of Local Law 15-2023 also required dispensaries to obtain special exception use approval from the Town. Business that are deemed special exception uses are subject to additional conditions set by the Town Planning Board (*see* Town Code §330-120), must undergo a special review process (*see* Town Code §330-121), pay a special fee (*see* Town Code §330-121(H), and meet all general special conditions (*see* Town Code §330-122, and individual special conditions (*see e.g.* Town Code § 330-162.26) before a building permit is granted (*see* Town Code §330-123).

Town General Special Exception Use Permitting and Individual Special Conditions

In recognizing that the power of the Town to enact local laws is subject to the fundamental limitations of the preemption doctrine, and that they may not adopt laws that are inconsistent with the general law of the state, the court in *Mottz* ordered and declared that:

³ Local Law 15 of 2023 is available on the Town’s website at https://southamptonny.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=8717&MediaPosition=&ID=42923&CssClass=

Section 3 of Local Law 15-2023 requiring a Special Exception from the Town Planning Board prior to operation violates Cannabis Law § 131(2) and NYCRR §§ 119.1, 119.2 and 119.5 and is therefore null and void.

Section 5 of Local Law 15-2023 was established in violation of Cannabis Law § 131(2) and NYCRR §§ 119.1, 119.2 and 119.5 and is therefore null and void.

Contrary to the Town’s claim, the result of *Mottz* is not that it “struck down a number of provisions of Town Code § 330-162.26,” while leaving Town Code § 330-162.26(K) intact. The court there stated that “municipalities may not... establish a local law that violates the Cannabis Law, or discriminates against or frustrates the registrant, licensee, or permittee’s ability to carry out the operations of such registration, license or permit as issued by the Board (9 NYCRR § 119.5[a].” A central argument by OCM in that case was the discriminatory treatment towards dispensaries compared to similar businesses that were not being subject to the Town’s special exception use regime. Unlike as-of-right commercial uses, such as liquor and tobacco stores in Southampton (*see* Town Law § 330-33), dispensaries in Southampton were impermissibly being forced to navigate the numerous general and individual special requirements for special use permits.⁴

The express language of the *Mottz* decision declared the invalidity of Section 3 and 5 of Local Law 15-2023, which are the only local laws that subject dispensaries to the Town’s special exception use permitting process. As stated herein, business that are deemed special exception uses are subject to additional conditions set by the Town Planning Board (*see* Town Code §330-120), must undergo a special review process (*see* Town Code §330-121), pay a special fee (*see* Town Code §330-121(H)), and meet all general special conditions (*see* Town Code §330-122). In addition, dispensaries must meet 17 individual special conditions (*see* Town Code § 330-162.26)

⁴ *See* NY Town Law § 274-b; *Save Audubon Coal v. City of New York*, 586 N.Y.S.2d 569, 576 (1st Dept. 1992) (It is well settled that requests for special permits for uses not permitted as of right, as well as other discretionary acts, require further environmental review).

before a building permit is granted (*see* Town Code §330-123). *Mottz* held the general special exception use conditions for dispensaries to be invalid, and also held that “Likewise, to the extent that Section 5 of Local Law 15-2023 added Section 330-162.26 of the Town of Southampton Zoning Code Section A, B, C, D, F, G, H, L, M, N, and O are preempted....”

Similar to *Mottz*, the CCB in its Advisory Opinion 2025-02 held the Town’s entire special exception use permitting process, which includes Town Code § 330-162.26(K) and other individual special conditions in Town Code § 330-162.26, made the operation of dispensaries “unreasonably impracticable.” ECF 13-4. Cannabis Law § 131(2) gives the CCB exclusive authority to make this determination, and the Town has not challenged the validity of the CCB’s determination.

Though the Town focuses on Town Code § 330-162.26(K), that section refers to the Town requiring a “pedestrian circulation plan.” Neither Town Code § 330-162.26(K) nor any other section of Town Code § 330-162.26, allows or requires dispensaries to construct a sidewalk. To the extent the sidewalk requirement stems from any aspect of the Town’s special exception use permitting process for dispensaries, such a condition is preempted for the reasons stated in *Mottz* and CCB Advisory Opinion 2025-02.

Sidewalk Construction Requirement and GML § 239-m

Though *Mottz* did not abrogate GML § 239-m, any referral to the County made pursuant to the special exception use permitting process is invalid under *Mottz* and CCB Advisory Opinion 2025-02 for the reasons stated above. Both the Town’s response to the Order to Show Cause and Plaintiff’s reply acknowledge that the referral for recommendation to the County under GML § 239-m occurred pursuant to the special exception use permitting process.⁵ Moreover, the

⁵ *See* ECF 37, Defendant’s Memorandum of Law (“In particular, the statute requires referral of applications for “special use permits” (§ 239-m(3)(iii) when the application is on real property within 500 feet of a county road....”;

requirement to establish a sidewalk fronting County Road 39 was initially recommended to the County by the town, and the Town was free to reject the subsequent County recommendation.

The County is not a required party to the action under Fed. R. Civil. Proc. 19(a)(1) as the Court can grant meaningful relief in holding the special exception use permitting process, through which the Town made the GML § 239-m referral to the County, to be invalid on the same grounds as *Mottz* and CCB Advisory Opinion 2025-02.

For the reasons set forth above, the *Mottz* decision weighs in favor of the Court granting Plaintiff's motion for declaratory judgement.

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See ECF 39, Plaintiff's Reply to Town's response to Order to Show Cause ("Indeed, absent such a foundational designation, there would actually be no referral to the County under GML § 239(m) in the first place.")