MEMORANDUM OF LAW

The Doctrine of De Facto Prohibition: Dimensions Cannot Operate as Total Bans

A municipality exercises its zoning authority pursuant to the police power delegated by the state. That power is fundamentally constrained by constitutional due process: zoning regulations must bear a substantial relation to public health, safety, and general welfare, and cannot be enacted or applied arbitrarily to confiscate property rights. Robinson v. Town Council of Narragansett, 60 R.I. 422, 199 A. 308 (1938). In Robinson, the Rhode Island Supreme Court firmly established that zoning restrictions cannot be applied to strip real estate of its only adaptable and suitable commercial uses, holding that a board's refusal to grant relief under such circumstances constitutes a manifest abuse of discretion.

In modern land-use jurisprudence, the weaponization of extreme dimensional buffers to exclude disfavored commercial uses is recognized as an impermissible de facto exclusion or effective prohibition. This doctrine has been articulated across federal and state decisions:

A. The First Circuit Rule: Regulatory Criteria that Preclude Siting (Town of Amherst)

In Town of Amherst v. Omnipoint Communications Enterprises, Inc., 173 F.3d 9 (1st Cir. 1999), the First Circuit addressed a municipal zoning scheme that purported to permit wireless communications facilities subject to severe setback requirements and discretionary approvals. In analyzing whether local dimensional criteria constituted an unlawful effective prohibition, Judge Boudin established the controlling standard:

"If the criteria or their administration effectively preclude towers no matter what the carrier does, they may amount to a ban 'in effect' even though substantial evidence will almost certainly exist for the denial... Suppose, for example, that in denying an individual permit, the town zoning authority announces that no towers will ever be allowed or sets out criteria that no one could meet. The fact that the ban is embodied in an individual decision does not immunize it."

The First Circuit emphasized that when a town crafts criteria so stringent that no applicant can satisfy them in practice, the town cannot defend its action merely by pointing to the literal text of its setbacks. If the spatial reality reveals that the standard cannot be met on buildable commercial parcels, the regulation is an unlawful sham prohibition.

B. The Requirement of Reasonable Alternative Siting Opportunities (Renton & Schad)

The United States Supreme Court has repeatedly affirmed that while municipalities enjoy broad authority to enact reasonable time, place, and manner regulations for sensitive or adult commercial activities, they are constitutionally forbidden from eliminating all practical operating opportunities within the municipality. In City of Renton v. Playtime Theatres, Inc., 475 U.S. 41

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(1986), the Court sustained a 1,000-foot buffer from residential zones and schools only because the record conclusively established that the regulation left open more than 520 acres—approximately five percent of the city's total land area—as viable, commercially usable real estate.

By contrast, in Schad v. Borough of Mount Ephraim, 452 U.S. 61 (1981), the Court struck down a municipal zoning ordinance that operated to exclude an authorized commercial activity from the entire borough. The Court held that a municipality cannot justify an exclusionary restriction by arguing that the use can be accommodated in neighboring towns. Precision of regulation, rather than broad prophylactic exclusion, is required.

C. State Preemption and Frustration of Statewide Legislative Enactments

Municipal authority in Rhode Island is strictly derivative. Under the Home Rule Amendment (R.I. Const. art. XIII, § 1), cities and towns possess the right of self-government in local matters, but local legislation must not be inconsistent with the state constitution or laws enacted by the General Assembly. When a municipal regulation conflicts with state law or invades an area of statewide concern, the local enactment is ultra vires and void. Town of East Greenwich v. O'Neil, 617 A.2d 104, 109 (R.I. 1992); Coastal Recycling, Inc. v. Connors, 854 A.2d 711, 715 (R.I. 2004).

In O'Neil, the Rhode Island Supreme Court identified three critical variables to determine whether an issue is of statewide rather than purely local concern:

1. Necessity for Statewide Uniformity: Matters requiring uniform regulation throughout the state fall exclusively within the state domain.

2. Traditional Domain: Whether the subject matter has historically been regulated by the state legislature.

3. Extraterritorial Impact: Whether the municipal action exerts a significant effect upon persons and economic activity outside the municipal boundaries.

These principles apply directly to commercial cannabis regulation. The General Assembly enacted the Rhode Island Cannabis Act as a comprehensive statewide regulatory system governing the licensing, testing, distribution, and retail sale of cannabis. The statute established an explicit mechanism for municipal participation: cities and towns were authorized to submit the question of local retail operation to their electorates via referendum. Cranston voters affirmatively approved the referendum, and the City Council subsequently enacted ordinances establishing cannabis as a permitted commercial use.

Under the doctrine articulated in O'Neil and recently applied in Narragansett 2100, Inc. v. Town of Narragansett, No. WC-2024-0372 (R.I. Super. Oct. 2, 2024), a municipality cannot enact local restrictions that directly or indirectly frustrate a state regulatory scheme. If Cranston applies a 400-foot buffer from every residential home and zone that blankets 100% of the city's

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commercial parcels, it effectively nullifies the state licensing statute and the voter referendum within its borders. A municipality cannot purport to permit a use on paper while engineering dimensional criteria that make compliance impossible in reality.

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