MARIJUANA-RELATED WARRANT ARTICLES

MAY 2018 ANNUAL TOWN MEETING

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Warrant Article 17

Amendment to Section 2.13 and addition of new Section 4.13 to the Town's Zoning By-law pertaining to Marijuana Establishments (Planning and Community Development)

ARTICLE 17

Submitted by: Department of Planning and Community Development

To see if the Town will amend the Brookline Zoning By-law as follows:

By amending §2.13, "M" Definitions, as follows (additions are denoted in **bold,** ***italicized text,*** deletions are denoted in ~~stricken~~ text):

~~1. MEDICAL MARIJUANA TREATMENT CENTER — Any medical marijuana treatment center, to be known as a Registered Marijuana Dispensary (RMD), as defined under state law as a Massachusetts not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supposes, or educational materials to qualifying patients or their personal caregivers, which is properly licenses and registered by the Massachusetts Department of Public Health pursuant to all applicable state laws and regulations.~~

1. ***MARIJUANA — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.***

    a. ***Marijuana, Hemp — As defined or amended by State regulations, the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.***

2. ***MARIJUANA ESTABLISHMENT – As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.***

a. *Marijuana Establishment, Craft Marijuana Cultivator Cooperative — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.*

b. *Marijuana Establishment, Marijuana Cultivator – As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.*

c. *Marijuana Establishment, Delivery-Only Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission as a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business.*

d. *Marijuana Establishment, Marijuana Independent Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.*

e. *Marijuana Establishment, Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to act as a co-located licensed Marijuana Cultivator in an area less than 5,000 square feet, a licensed Marijuana Product Manufacturer, and a licensed Marijuana Delivery Service, in compliance with operating*

procedures for each such license and siting requirements for each type of licensee.

f. Marijuana Establishment, Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

g. Marijuana Establishment, Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may be academic institutions, non-profit corporations and domestic corporations or entities authorized to do business in Massachusetts. A Marijuana Research Facility may hold a Cannabis Control Commission Marijuana Retailer License to sell Marijuana and Marijuana Products other than Marijuana cultivated under its research license. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

h. Marijuana Establishment, Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.

i. Marijuana Establishment, Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

j. Marijuana Establishment, Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers. This

definition includes the foregoing uses described in this definition when conducted by Marijuana Establishments.

k. *Marijuana Establishment, Medical Marijuana Treatment Center — As defined of amended by State regulations, an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use, as otherwise defined by State law. This definition includes the foregoing uses described in this definition when conducted by other types of Marijuana Establishments.*

l. *Marijuana Establishment, Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.*

m. *Marijuana Establishment, Storefront Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.*

3. *MARIJUANA ESTABLISHMENT AGENT — As defined or amended by State regulations, a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, dispensing, or any other analogous uses of Marijuana.*

4. *MARIJUANA PRODUCTS — As defined or amended by State regulations, products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.*

5. *MARIJUANA, MANUFACTURE — As defined or amended by State regulations, to compound, blend, extract, infuse or otherwise make or prepare a Marijuana product.*

6. *MARIJUANA, MARIJUANA MANUFACTURER RESIDENTIAL USE: Residential Marijuana Extraction by Non-licensed Establishments or Individuals utilizing extraction processes that pose an explosive or flammable danger, including solvent-based extraction and any method utilizing liquefied petroleum gas ("LPG", as may be*

defined by NFPA1, including propylene, propane, butane, butylenes, and mixtures thereof).

And further, by amending §4.07, Table of Use Regulations, as follows (all uses are new):

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
20B. *Medical Marijuana Treatment Centers (see Section 4.13 for applicable definition), and uses analogous to Marijuana Retailer Uses Only* ~~Registered Marijuana Dispensary (RMD)*~~ * To be eligible for a special permit under Use 20B, the requirements under Sec. 4.12, Registered Marijuana Dispensary, *and Sec. 4.13, Marijuana Establishments,* shall be met, *as each may be applicable.*	No	No	No	No	No	No	SP*[2]	SP*[2]	SP*
20C. Delivery-Only Marijuana Retailers and Marijuana Transporters **To be eligible for a special permit under Use 20C, the requirements under Sec. 4.13, Marijuana Establishments, shall be met.*	*No*	*No*	*No*	*No*	*No*	*SP*[1]*	*SP*[1]*	*SP*[1]*	*SP*[1]*
29A. Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment ** Permitted by special*	*No*	*No*	*No*	*No*	*No*	*SP*[1, 2]*	*SP*[1, 2]*	*No*	*SP*[1]*

permit pursuant to Section 4.13, Marijuana Establishments									
29B. Social Consumption Marijuana Retailers ** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments, only in the event of a Town-wide vote approving on-site consumption pursuant to M.G.L c.94G,* § 3(b).	*No*	*No*	*No*	*No*	*No*	*SP*[1, 2]*	*SP*[1, 2]*	*No*	*SP*[1]*
36C. Marijuana Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research Facilities ** To be eligible for a special permit under Use 36C, the requirements under Sec. 4.13, Marijuana Establishments, and Use 36A. and 36B., restrictions on Marijuana Research Laboratories, shall be met.*	*No*	*No*	*No*	*No*	*No*	*No*	*SP*[1, 2]*	*SP*[1, 2]*	*SP*[1]*
38D. Marijuana Cultivators ** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments*	*No*	*No*	*No*	*No*	*No*	*SP*[1, 2]*	*SP*[1, 2]*	*SP*[1, 2]*	*SP*[1]*
46B. Marijuana Product Manufacturers ** Permitted by special permit pursuant to Section 4.13, Marijuana Establishments*	*No*	*No*	*No*	*No*	*No*	*No*	*No*	*No*	*SP*[1]*
Accessory Uses	**Residence**					**Business**			**Ind.**
	S	**SC**	**T**	**F**	**M**	**L**	**G**	**O**	**I**

65A. Marijuana Manufacturer Residential Uses	*No*	*No*	*No*	*No*	*No*	*No*	*No*	*No*	*No*

FOOTNOTES:

1. **Allowed use by Special Permit unless a Town-wide vote bans this use.**
2. **No manufacturing of Marijuana is permitted in these districts.**

And further, by creating a new §4.13, Marijuana Establishments with the following requirements:

§4.13 -Marijuana Establishments

1. *Purpose*

   The intent of this section is to permit Marijuana Establishments to operate in locations and pursuant to local requirements that ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

   If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

2. *Definitions*

   See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended, as well as Section 2, Definitions, of the Zoning By-Law for further definitions of applicable terms.

3. *Medical Marijuana Treatment Centers*

   Medical Marijuana Treatment Centers licensed prior to July 1, 2017 shall be subject to §2.13(1) ("Medical Marijuana Treatment Center"), §4.07, Use 20B, and §4.12 ("Registered Marijuana Dispensary (RMD)") of the Zoning By-Laws and not this section, subject to the following: In the event that the medical Marijuana licensing process by the Select Board pursuant to Article 8.34 of the General By-Laws is discontinued in whole or in part, a medical Marijuana treatment center not subject to Select Board licensing pursuant to Article 8.34 shall then be subject to the requirements established for Storefront Marijuana Retailers.

4. *Cap on the Number of Special Permits for Marijuana Retailers*

   The Zoning Board of Appeals shall not grant a special permit if doing so would result in a total number of outstanding special permits granted to Marijuana Retailers that exceeds any cap set by a General By-Law on the number of Select Board Marijuana Establishment licenses that can be issued to Marijuana Retailers.

If no such General By-Law is in effect at the time of a vote by the Zoning Board of Appeals on a special permit application, the Zoning Board of Appeals shall not issue a special permit if doing so would result in a total number of outstanding special permits that exceeds the following limitations: The Zoning Board of Appeals shall not issue more special permits in each of the following categories of Marijuana Establishment licenses than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction: a) Storefront Marijuana Retailers; b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

5. *General Requirements for Marijuana Establishments*

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit), and agreements between the Marijuana Establishment and the Town, including host community agreements.

2. Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any laws voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the special permit pending hearing or the opportunity therefore afforded to the Marijuana Establishment and pending further determination by the Zoning Board of Appeals.

3. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. The hours of operation of Marijuana Establishments shall be those that are set by the Marijuana Establishment's host community agreement with the Town or a Select Board-issued license.

5. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

6. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

7. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

10. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

11. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

12. Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

13. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. Security-Specific Requirements

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plans as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing the storage of Marijuana products are restricted to employees and others permitted by the Marijuana Establishment to access the area and to Cannabis Control Commission or state and local law enforcement officers, agents and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Building Commissioner or designee, including an agent from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Building Commissioner or designee, including agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration.

E. Additional Location Requirements for Marijuana Establishments

1. Marijuana Establishments shall not be located in a building that contains a pre-existing daycare center.

2. Marijuana manufacturing or extraction shall not be done in any building containing assembly, educational, health care, ambulatory health care, residential board and care, residential, or detention and correctional facilities.

3. Delivery-Only Marijuana Retailers and Marijuana Transporters shall not occupy street-level space in Local or General Business districts.

4. The required distance from schools that serve Kindergarten through 12th grade, public or private, shall be:

    a. 500 feet for i) Social Consumption Marijuana Retailers issued a primary use license; and ii) Storefront Marijuana Retailers.

    b. No distance requirement applicable to i) Marijuana Research Facilities that do not hold a Marijuana Retailer license; ii) Marijuana Independent Testing Laboratories; and iii) Marijuana Standards Laboratories.

    c. 200 feet for all other Marijuana Establishments.

    d. Measured from lot boundary to lot boundary.

5. Density requirements for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall be:

    a. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer if any portion of the establishment is located at street-level.

    b. Allowed within 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer above or below street-level as long as the Zoning Board of Appeals determines that doing so will not have a detrimental impact on the vibrancy of the streetscape and all other applicable requirements are satisfied (applicable to uses 29A and 29B).

    c. Measured from lot boundary to lot boundary.

6. Store Size Limitations for Social Consumption Marijuana Retailers issued a primary use license and Storefront Marijuana Retailers shall:

    a. Not exceed a total gross floor area of 5,000 square feet per establishment.

    b. Not exceed a gross floor area of 3,500 square feet and no more than 5,000 square feet total gross floor area per establishment if any portion of the establishment is located at street-level.

    c. Not apply to Medical Marijuana Treatment Centers licensed to operate prior to July 1, 2017, who receive a State Storefront Marijuana Retailer license or Delivery-Only Marijuana Retailer license pursuant to M.G.L. c. 94G and the

regulations promulgated thereunder, unless a licensed Medical Marijuana Treatment Center expands the licensed premises or building.

6. *Site Plan Review for Marijuana Establishments*

The following describes requirements for a Marijuana Establishment site plan review process to precede the Marijuana Establishment's application for a building permit and a special permit:

A. Prior to applying for a building permit, the Marijuana Establishment shall have an initial informal meeting with the Planning Director and the Building Commissioner or designees to discuss development plans and relevant Zoning By-Law requirements.

B. The appropriate site plan review process shall be determined at the initial meeting consistent with the Zoning By-Laws, which may include, but is not limited to, the process for Major Impact Projects and Design Advisory Teams.

C. In addition, at the discretion of the Planning Director or designee, the Marijuana Establishment Site Plan Review process may entail submission of reports from all relevant departments and divisions, which may include the Health Department, the Police Departments, the Fire Department, the Building Department, the Department of Public Works (*e.g.*, the Transportation Division in the event that a Transportation Demand Management Plan may be contemplated, the Water Division, the Highway and Sanitation Division, as applicable), and/or any other Department that the Planning Director or designee determines to be appropriate to the project.

D. The applicant is responsible for obtaining any Department report deemed necessary by the Planning Director or designee in connection with Marijuana Establishment Site Plan Review process and submitting the report to the Planning Department. The Planning Department will assist with identifying to the applicant information and documents that Departments may require in connection with issuing their reports. Departments responsible for reports may identify other needed information and documents needed from the applicant.

E. Each Department designated by the Planning Department to issue a report will make its report available to the applicant no later than forty-five (45) calendar days from the date the applicant has completed submission to the Department of all requested information and documents.

F. In the event a Department designated by the Planning Department to issue a report does not do so within 45 days of when the applicant submitted all requested information and documents to the Department, the applicant may submit to the Planning Department, in lieu of the report, a letter showing evidence of the applicant's submission of requested information and documents to the Department or stating that no documents or information was requested, as the case may be.

G. The Marijuana Establishment shall cooperate with requests for information or meetings by the Planning Director and/or by any of the Departments designated by the Planning Director to issue reports as part of the Marijuana Establishment Site Plan Review process, which information may include the Marijuana Establishment's application for a license from the Cannabis Control Commission or relevant State agency.

H. Marijuana Establishments may not apply for a building permit until the Planning Director and Building Commissioner have issued a written Notice of Completion of Marijuana Establishment Site Plan Review.

7. *Special Permits*

The following apply to special permits to operate a Marijuana Establishment, in addition to the requirements set forth in §9 of the Zoning By-Laws.

A. Application requirements: Marijuana Establishments shall include with their special permit application:

1. Copies of any required licenses and permits relating to the operation of the Marijuana Establishment, or, if an application for a required license or permit is pending, a copy of the application.

2. Evidence of the Marijuana Establishment's right to use the proposed site as a Marijuana Establishment, such as a deed or lease.

3. A copy of the Notice of Completion of Marijuana Establishment Site Plan Review Process for Marijuana Establishments.

4. Any other materials requested by the Special Permit application form, as well as any other additional materials the Planning Department determines is necessary for review, such as Department reports or transportation studies or a license application.

B. Special permit criteria: The Board of Appeals shall not approve any application for a special permit unless it finds that in its judgment all of the following conditions are met:

1. Issuance of the special permit would not contravene the cap on the number of special permits that may be granted (*see* subsection 4, *Cap on the Number of Special Permits for Storefront Marijuana Retailers* of this section) and any applicable density restrictions (*see* subsection 5, *General Requirements for Marijuana Establishments*, of this section). Issuance of a special permit must also comply with applicable State and local laws.

2. The location is compliant with Section 4.13 in its entirety.

3. The Board of Appeals is otherwise satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable.

8. *Submittal Requirements prior to issuance of a Certificate of Occupancy*

The following information shall be provided to the Building Department:

A. Proof that the Brookline Police Department has been provided with the name, phone numbers and email addresses of all management staff, and with access to the facility when it is closed, to enable contact if operating problems should arise.

B. Proof that all security measures required by the special permit have been installed or implemented.

C. Proof that the applicant is compliant with implementing any required transportation mitigation measures.

9. *Enforcement*

This section of the Zoning By-Law shall be enforced by the Building Commissioner or the Building Commissioner's designee, as may be consistent with law. This Section, 9. Enforcement, shall supersede any conflicting provision of the Zoning By-Laws that would otherwise be applicable to the enforcement of this section.

10. *Implementation*

This section shall not be implemented in a manner that conflicts or interferes with the operation of M.G.L. c. 94G, 94I or the regulations promulgated thereunder, including 935 CMR 500 or act on anything relative thereto.

Explanation

1. Executive Summary/Background

In November 2016, Brookline residents voted (59.98% in favor) to legalize recreational Marijuana uses proposed by Question 4, including retail (sales to the ultimate consumer), manufacturing, cultivation, and lab testing uses. The new law as amended by the legislature in July 2017 is codified at Massachusetts General Laws Chapter 94G and 94I. It establishes a new State agency called the Cannabis Control Commission that is responsible for issuing State regulations and providing State oversight of Marijuana Establishments. The State law does not provide any cap on the number or type of Marijuana Establishments the Cannabis Control Commission may license in a particular community. In addition, it sets a strict timeline (90 days) for Cannabis Control Commission decision-making on applications, and it provides limited bases for Cannabis Control Commission application denials (a conflict with a local by-law being one such basis). The new law prohibits State licensing of operations within 500 feet of K-12 schools

unless a local law reduces that distance. The Cannabis Control Commission's draft regulations propose a default buffer zone (in the event no local one is established) of 500 feet from public or private schools, daycare centers, or any facility in which children commonly congregate. The new law permits communities to create their own caps and siting measures, and to otherwise regulate the time, place and manner of Marijuana Establishment operations, with some restrictions.

In November 2013, after the State legalized medical Marijuana, the Town enacted a General By-Law Select Board local licensing scheme for medical Marijuana treatment centers (known as "RMDs") modeled after local licensing schemes for liquor, restaurants, hotels, etc. Town Meeting also passed at that time a Zoning By-Law governing the siting of RMDs and allowing them by special permit. Under the medical Marijuana law, as with the new recreational Marijuana law, the State (in that case, the Department of Public Health) licensed the facilities and provided State oversight. The State medical Marijuana law created certain caps on the numbers of such facilities around the State. The purpose of creating a medical Marijuana local licensing scheme in addition to the existing medical Marijuana State licensing scheme was to provide for a degree of local oversight over such business operations, analogous to that inherent in the liquor licensing process (which entails dual State and local licensing and oversight). With regard to implementation of the Town's medical Marijuana local licensing scheme, in late 2015, the Select Board, after a public process and public hearing, issued a license to the New England Treatment Access, Inc. ("NETA") that contained license conditions recommended by Town Departments that included Health, Police, and Transportation. It appears that the local licensing model established for medical Marijuana and implemented in the case of NETA has been successful and has possibly provided some initially concerned community members with a degree of confidence in the operation by virtue of a measure of local in addition to State oversight.

The Town currently has in effect a Table of Uses that provides for a moratorium on recreational Marijuana Establishments that ends the earlier of December 2018 or when the AGO approves amendments to the Table of Uses. However, the AGO has stated publicly that there may be a question as to whether the Cannabis Control Commission will honor moratoria in its applications decision-making. Moreover, it can take up to three (3) months or more for the AGO to issue a decision on whether or not to approve a by-law. The Cannabis Control Commission license applications period opens on April 1, 2018, and the Cannabis Control Commission could begin issuing licenses as early as June 1, 2018. The applications of existing RMDs (Brookline has 1, NETA) that wish to also sell recreational Marijuana receive priority Cannabis Control Commission review. Due to the above timeline, Town Meeting should pass measures at the 2018 Annual Town Meeting if it wishes to have Town measures in place that will shape the Cannabis Control Commission's license decision-making before the moratorium period concludes and the Cannabis Control Commission begins issuing licenses. Notably, Zoning By-Laws take effect on the date of Town Meeting's vote, pursuant to M.G.L. c. 40A, § 5. General By-Laws do not take effect until satisfaction of the requirements of M.G.L. c. 40, § 32, including AGO approval.

The Select Board's Licensing Review Committee (LRC), with input from the Planning Board (through Planning Department staff who attended the LRC meetings), Town residents who attended the LRC's publicly noticed meetings, NETA (through its representatives in

attendance at some of the LRC's meetings), and Town Departments that included Planning, Building, Police, Fire, Health and Town Counsel's Office, has worked to advance a number of proposals for this Town Meeting to provide for local regulation and oversight of Marijuana uses in time for the beginning of Cannabis Control Commission licensing. A detailed description of the LRC's and Town Department's process is set forth in Section 2 below. Section 3 below contains a more detailed description of the foregoing Warrant Article. Please refer to the Explanations to the other Warrant Articles that came out of the process (described below) for more detailed information about them.

The **first** proposal that came out of the process is this Warrant Article 17. It is proposed with goals similar to the RMD licensing scheme and related Zoning By-Law. It proposes to exercise a measure of local control over the siting, density, and number of Marijuana Establishments within the Town (analogously, the State liquor law, Chapter 138, provides for caps on the number of liquor licenses in the Town based on the census; the medical Marijuana law also had provided for certain caps). The proposed Zoning By-Law also proposes regulatory measures modeled after those contained in the NETA Select Board license conditions which are similarly the result of input from various Town Departments such as Health, Police, Fire, and Building. The zoning proposal contains regulatory measures for Marijuana Establishments such as a prohibition on sale of Marijuana to minors, compliance with requirements for use of hazardous materials in the extraction process, and other measures targeted toward the promotion of the public health and safety. It provides for a flexible special permit application process providing for Department input. It proposes a cap on the number of special permits issued to Storefront Marijuana Retailers that corresponds to the cap on the number of Select Board Marijuana Retailer licenses established by a General By-Law in effect (see the **second** item described below). It proposes "default" caps that roughly mirror the caps proposed in Warrant Article 18 (see the paragraph below) in the event a General By-Law cap is not in effect at the time of a special permit application (*e.g.,* because the AGO has not yet approved the proposed General By-Law), since Zoning By-Laws take effect on the date of Town Meeting's vote, and Cannabis Control Commission licensing could begin on June 1.

A **second** Marijuana-related Warrant Article 18 proposes a new Article to the Town's General By-Laws entitled "Marijuana Establishments," proposing a Select Board licensing scheme similar to that the Town established for RMDs in 2013 and to that which the State legislature wrote into the State liquor laws. To date, the AGO has not considered a by-law proposal for a local licensing scheme under the new recreational Marijuana law, and has publicly stated that it has not yet determined whether or not it will be approving such proposals. On the other hand, the AGO has already approved special permit schemes established in other communities. Therefore, the above proposes a Zoning By-Law providing for siting by special permit (along the lines of what the AGO already approved in another community) as well as a general by-law providing for a Select Board local licensing process. It is contemplated that the Select Board Marijuana Establishment license will entail an annual renewal (unless the license states a different term, *e.g.,* in the event the Cannabis Control Commission creates on-day licenses), while the special permit is not proposed to be time-limited (based on recent guidance from the State suggesting that local licensing schemes will be approved). The two contain much the same regulatory provisions in contemplation of the possibility that a majority less than 2/3 (the super-majority required to pass Zoning By-Laws) may be in favor of some or all of the

language. In addition, there may be gray areas pertaining to whether certain types of regulatory measures are more appropriate for a Zoning By-Law versus a general by-law. Finally, having both a regulatory special permit scheme and a Select Board licensing scheme will assure strong local oversight over these businesses in partnership with the State. Therefore, a "boots and suspenders" approach is proposed, and the language is generally included in both.

With regard to the proposed caps set forth in this Warrant Article and in Warrant Article 18 pertaining to the various types of Marijuana Retailers, the Town Moderator has determined that he would consider motions at Town Meeting to increase or eliminate caps to be within the scope of the original article. He would not consider motions to decrease caps to be within the scope. Therefore, a **third** Warrant Article 19 for this Town Meeting proposes a Town Meeting motion to set lower caps for Marijuana Retailers than proposed by Warrant Article 18 (again, a ban is not proposed, given that 60% of Town voters approved Question 4 in November 2016).

A **fourth** Marijuana-related Warrant Article 20 for this Town Meeting proposes a new Article to the General By-Laws pertaining to general Marijuana- and Hemp-related conduct within the Town and on Town property that is entitled "Marijuana and Hemp, and Marijuana and Hemp Products."

A **fifth** Marijuana-related Warrant Article 21 for this Town Meeting proposes amendments to certain sections of Article 10 of the Town's By-Laws designating the Town Departments responsible for enforcement of the proposed new Marijuana-related Articles to the General By-Laws.

The **sixth** and final Marijuana-related Warrant Article 22 for this Town Meeting proposes to adopt the local option tax on recreational Marijuana sales.

2. Work by Town Departments and the Select Board's Licensing Review Committee (LRC) to Devise Proposed Local Regulatory Measures for the May 2018 Annual Town Meeting

In the Fall/Winter of 2017-2018, the LRC (given its experience with the local regulation of medical Marijuana) worked with the various Town Departments (including Planning, Health, Police, Fire, Building and Legal) to propose a multi-pronged approach to local regulation of Marijuana regulations to be put before the May 2018 Annual Town Meeting, which approach is summarized in Section 1 above. There were few templates for the work that were available from other Massachusetts communities. It appears that to date, most local communities that have passed by-laws under the new law have passed bans rather than regulatory by-laws. The few regulatory-type Zoning By-Laws that have been passed were more limited in nature than what the Town adopted with regard to medical Marijuana. No other community, to date, has implemented a recreational Marijuana local licensing scheme.

Research during this development period, beyond attempting to identify measures passed by other communities in Massachusetts, included a number of steps. For example, staff consulted the 2018 NFPA 1's Chapter 38, which is guidance from the National Fire Prevention Association ("NFPA") pertaining to Marijuana uses (a new NFPA 1 is issued every several years and is a

basis for an updated 527 CMR by the Massachusetts Department of Fire Services). In addition, the conditions to NETA's Town RMD license were viewed as templates.

On a different tack, in December 2017, the Planning Department conducted a limited on-line survey to preliminarily gauge community sensibilities pertaining to a number of policy decisions to be proposed by the drafts, including with regard to numerical caps on retailers and other questions. In total, 788 responses to the survey were received. A majority, 62.93%, of responses indicated a wish to not ban specific types of Marijuana Establishments from the Town; in addition, 55.67% of respondents indicated they would like to implement a cap on the number of Marijuana licenses issued by the town, with the most frequent response being a cap at the number that is 20% of package store licenses. Further, responses indicated a general consensus on establishing a 500' buffer zone between Marijuana Establishments and K-12 schools (although subsequent comments received indicated interest in relaxing the buffer zone distance in the case of Marijuana Establishments other than Marijuana Retailers).

In addition to the online survey, members of the Planning Department conducted outreach with various community groups, including board members from the Brookline Neighborhood Association, visitors of the Senior Center, Economic Development Advisory Board members, Coolidge Corner Merchants Association members, and Brookline Chamber of Commerce Board members.

Guided site-visits were conducted with varying staff departments and committee board members to gain a better understanding of business and operational practices of businesses engaged in the Marijuana industry across the different processing, cultivation, lab testing, manufacturing, and retail aspects of Marijuana Establishments.

Office Hours were instituted beginning the month of February through the commencement of Town Meeting to field questions regarding the various proposed General and Zoning Bylaws. To promote the availability of Office Hours, postcards were sent to every Town Meeting Member and Advisory Committee Member as well as promoted on the Recreational Marijuana Website and shared verbally during other outreach events. As of March 1, 2018, Office Hours were utilized by a total of six individuals (both residents and business owners) during every session (four sessions were utilized out of four Mondays offered through then).

Feedback from the various outreach sessions were presented to various boards, including to the Licensing Review Committee, Planning Board, Economic Development Advisory Board, and Zoning By-Law Committee, after which action was taken by the Licensing Review Committee to either include or exclude the feedback based on discussion amongst Committee members and the public during the Licensing Review Committee meetings.

Drafts of the first four (4) Warrant Articles described in Section 1 above were the subject of a joint public hearing by the LRC and the Planning Board on January 24, 2018, and by a public hearing by the Advisory Council on Public Health on January 25, 2018. Written public comment was repeatedly invited in various ways, and some was received. Subsequent drafts created based in part on public input were vetted by the Town's Zoning By-Law Committee and further vetted by the LRC and Planning Board.

3. Proposed Zoning By-Law Amendments Pertaining to Marijuana Establishments

Below is a more detailed description of the foregoing Marijuana-related Zoning By-Law amendment proposal for this Town Meeting.

A. Table of Uses

i. *20B. Medical Marijuana Treatment Centers.* The amendments in the language regarding this use are proposed to conform to the new regulatory language contained in the Cannabis Control Commission's draft regulations.

ii. *20C. Delivery-Only Marijuana Retailer or Marijuana Transporter.* These establishments, as defined by the Cannabis Control Commission, exclude the ability to provide a retail location accessible to the public. To protect the vibrancy of our commercial areas for use by businesses open to the public, this use type is proposed to be included in the Office and Industrial Districts only.

iii. *29A. Storefront Marijuana Retailers and 29B. Social Consumption Marijuana Retailers.* It is proposed that the retail use table for recreational Marijuana remain consistent with the size of other retail business in Brookline and along with the uses included in the Zoning Bylaw Use Table (Section 4.07), thereby designating these use-types to be included in the Local, General, and Industrial districts only. Marijuana Retailers are excluded from the Office District due to that District's designation for medical offices, veterinarians, fitness and health clubs and other professional services. Manufacturing of Marijuana or Marijuana Products is excluded from any local or general business district in order to protect the vibrancy of Brookline's commercial retail areas and in light of certain hazardous processes utilized in Marijuana manufacturing.

Section 4.07 Table of Use Regulations places a limit on store size as a strategy to create cohesive, intimate commercial districts. When considering any proposal in placing a limit on retail store size, the Planning Department analyzed the operational requirements by Fire, Police, Building, Planning, or other Town departments, as well as additional operational requirements imposed by the State through the Cannabis Control Commission. Combined, these restrictions will limit the available store size with which consumers will interact. For example, in order to enter the establishment, an employee of that establishment must check your ID to certify age compliance. We recommend considering what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, planning would suggest creating a queue system inside the building, which will take space from the available gross floor area. Other options are possible.

Taking the additional operational requirements into consideration, the Planning Department continues to recommend a gross and total floor size restriction for Storefront Marijuana Retailers and Social Consumption Marijuana Retailers issued a primary use license in order to promote a diverse mix of retail establishments and protect our existing commercial areas, while simultaneously integrating this new industry use-type. After an analysis of the average and gross size of existing retail businesses within our commercial districts (1,648 square feet town-wide, 1,813 in Coolidge Corner, 1,658 square feet in Brookline Village, and 1,825 in Washington Square), the Planning Department proposes a maximum size of 5,000 square feet of total gross floor area. Further, a maximum store size for street-level marijuana retailers is limited to 3,500 square feet. The Town Moderator has determined that motions to increase the square footage limit for Marijuana Storefront Retailers and Social Consumption Marijuana Retailers issued a primary use license up to 5,000 (the limit for general retail uses in L Districts) would be permitted as within the scope of the original article, and that motions to decrease the square footage limit will be considered outside the scope.

ii. *36C. Marijuana Independent Testing Laboratory.* To encourage this use type for the purpose of testing and research and development, independent testing laboratory uses is proposed to be allowed in all Districts.

iii. *38D. Marijuana Cultivators, including Craft Marijuana Cultivator Cooperatives engaged in the cultivation of Marijuana.* As farming technology continues to improve and become more efficient, the industry can better adapt to constraints on large-scale available land. For example, vertical farming requires less land than standard farming, as is currently practiced in Coolidge Corner with Brookline Growers. This type of farming will allow the cultivation industry to integrate more seamlessly into our commercial areas. Therefore, it is proposed that this use be allowed in Local Business, General Business, Office, and Industrial Districts. This allowance excludes the manufacture of Marijuana or Marijuana Products.

iv. *46B. Marijuana Product Manufacturers.* Given certain hazardous processes utilized in Marijuana manufacturing and extraction, manufacturing and extraction uses are designated for the Industrial District only.

v. *65A. Marijuana Manufacture Residential Use.* The extraction of Marijuana oil from Marijuana plants may require certain hazardous processes that have been known to cause explosions in residential neighborhoods across the country when done by individuals in their homes. Brookline's neighborhoods are dense and often mixed-use. Therefore, it is proposed to eliminate hazardous methods of extraction from residential and business districts.

B. Grandfathering of Scheme for Medical Marijuana Treatment Centers **(Section 3).** The new law contains certain grandfathering language stating, in relevant part, that "nothing in this

act shall affect any restrictions or limitations of medical Marijuana treatment centers ... imposed by a municipality pursuant to chapter 39 of the acts of 2012 ... as of July 1, 2017". The language seems to permit the Town to maintain its local licensing scheme for medical Marijuana treatment centers. Therefore, Section 3 directs these businesses to the Zoning By-Law measures adopted under the 2012 law. Section 3 states that in the event that the Select Board discontinues RMD licensing (*e.g.,* because the Select Board licensing scheme proposed by Warrant Article 18 is approved by both Town Meeting and the AGO, and RMD licensing is folded in), the scheme proposed by the warrant article will then apply. The language is included to leave the Town's options open, in contemplation of a possible AGO disapproval of both the special permit scheme and the Select Board licensing scheme.

C. Cap on the Number of Marijuana Retailer Special Permits (**Section 4**). The section proposes that a cap on the number of special permits to be issued to Marijuana Retailers be set at the cap level established by a General By-Law in effect (*see* Warrant Article 18) on the number of Select Board Marijuana Establishment licenses issued to Marijuana Retailers; or, if there is no such General By-Law in effect (*e.g.,* because Warrant Article 18 has not yet received AGO approval, or because of a challenge to the General By-Law formulation), then the section proposes "default" caps on Marijuana Retailers consisting of the number that is 20% of the number of package store licenses (the minimum permitted without triggering the Town-wide vote requirement) as to each category of Marijuana Retailer. The caps language voted by Town Meeting for the Zoning By-Law will take effect on the date of Town Meeting's vote in the event the moratorium is not honored (*see* Mass. Gen. Laws Chapter 40A, Section 5), in time for Cannabis Control Commission licensing. The Planning rationales for including a cap are the same as those discussed in Section D below with regard to density guidelines, having to do with Colorado's experience with rapid proliferation of retailers (due to the profitability of the business) and the crowding out of other retail uses, with deleterious impacts on the diversity of businesses within a community. Please see the Explanation to Warrant Article 18 for a more complete description of the rationales behind the caps, including public health-related rationales that seem pertinent at least initially.

Please refer to the Explanation following the accompanying Warrant Article 19 proposing lower Marijuana Retailer caps for a more detailed explanation of the following and of the contemplated order of votes and timing of submission of the articles to the Attorney General's Office for approval.

D. General Requirements for Marijuana Establishments (**Section 5**). Standards of conduct are included in the Zoning By-Law (which are also included in the proposed General By-Law pertaining to Marijuana Establishments) to provide the Zoning Board of Appeals with criteria for decision-making pertaining to the issuance of special permits and to permit local enforcement of public safety-related measures. These provisions largely consist of the general performance standard-type provisions included in the NETA Select Board RMD License conditions, certain language from the Town's Tobacco Control Bylaw (Article 8.23 of the General By-Laws), certain language from the Town's lodging house regulations (*e.g.,* pertaining to inspections), and certain language drawn directly from the new law and the Cannabis Control Commission's draft regulations (935 CMR 500) posted on the Cannabis Control Commission's website. Other provisions include a requirement that operations be conducted in a building or fixed structure

(*see* **Section 6(B)(1)**), as the new law (unlike the medical Marijuana law) does not require vertical integration of the seed-to-sale process (a capital-intensive undertaking), and small outfits engaging in discrete components of the process (just cultivation, just extraction, etc.) could seek to do business in Brookline. A requirement that operations be in a building and fixed structure also facilitate the implementation of adequate security measures in this dense community.

The Planning Department recommends different standards for adopting the State's default statutory buffer zone of 500 feet of a K-12 school based on the business and license type (*see* **Section 5(E)(4)**). The buffer zone standards included in this proposal are based on feedback gained during public outreach sessions in which members voiced concern in protecting our children from interacting with the businesses. Therefore, businesses that do not interact with the public (i.e., cultivators and standard research facilities) should not subject to the 500 foot buffer. The facility-related requirements in this Section adopt the State's default statutory buffer zone prohibiting the siting of Marijuana Establishments issued a Storefront Marijuana Retailer license or Social Consumption Marijuana Retailers issued a primary use license within 500 feet of a K-12 school (*see* **Section 6(E)(a)**); provide that other Marijuana Establishments shall be located more than 200 feet from any school that serves any of the grades Kindergarten through 12th grade, public or private; and exempts Independent Testing Laboratories, Marijuana Standards Laboratories, and Marijuana Research facilities that do not hold a Marijuana Retailer license. The statute and Cannabis Control Commission regulations state that the Cannabis Control Commission will honor a municipality's reduction of this amount; the Town's medical Marijuana Zoning By-Law's prohibition on siting in a building that contains a daycare center (*see* **Section 5(E)(1)**); and the 2018 National Fire Prevention Association's NFPA 1's recommendation that Marijuana extraction not occur in buildings containing certain uses including residential, educational and certain other sensitive uses (*see* **Section 5(E)(2)**). The Town Moderator has determined that motions to decrease or eliminate the buffer zone will be deemed within the scope of the original article; motions to increase the size of the buffer zone will be deemed outside the scope.

In addition to the buffer zones, the Planning Department proposal provides for a 200 foot distance between ground floor retail establishments as a siting guidance (in addition to the Table of Uses) to regulate density (*see* **Section 5(E)(5)**). The proposal is made to support and protect vibrant streetscapes in Brookline's retail and commercial districts by preserving and encouraging a diversity of businesses. Research in other communities (including in Colorado) has shown density guidelines have been put in place where previously excluded due to the quick proliferation of Marijuana Establishments (due to their profitability) and their impact on commercial areas, including increased rent and scarcity of retail space. The diversity of our commercial areas is what attracts people from outside of Brookline to shop or dine in our local restaurants and generate additional meals tax revenue. A recent report from the Planning Departments supports the importance of maintaining vibrant commercial areas for three key reasons: 1) the independent retail nature of these commercial areas defines the character of the Town as a whole; 2) the vacancy rates and economic health of commercial properties have a direct impact on surrounding property values; and 3) the stores and services in a close proximity to residents provide residents with a high quality of life (Vibrancy Study, 2014). The ground floor density guideline applies only to those Marijuana Establishments issued a Storefront Marijuana Retailers and Social Consumption Marijuana Retailer issued a primary use license.

Based on an analysis of the average store size in Brookline's commercial areas (in square feet: 1,648 town-wide average; 1,813 in Coolidge Corner; 1,658 in Brookline Village; and 1,825 in Washington Square), the Planning Department recommends store size limitations on Marijuana Establishments not exceed a total gross floor area larger than 5,000 square feet and ground-floor of 3,500 square feet (**as applicable in Section 5(E)(6)**). A larger gross floor area is recommended as floor plans will likely include storage, security, and patron verification, as well as several operational requirements in place for Marijuana Establishments which dictate or further restrict the available floor size area. For example, you must have your ID checked at the door in order to enter. The Planning Department recommends being mindful of what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, the Planning Department suggests creating a queue system inside the building, which will take space from the total gross floor area. Other options are possible.

Taking the additional operational requirements into consideration, the Planning Department continues to recommend putting in place a store size limitation in order to protect our commercial areas. Placing a limit on the total gross floor area of a store size can help to sustain the vitality of small-scale, pedestrian-oriented business districts, which in turn nurture local business development. They also prevent the many negative impacts of larger developments, such as increased traffic congestion and over-burdened public infrastructure, and they protect the character of the community by ensuring that new establishments are at a scale in keeping with the traditional existing environment and surrounding landscape. One goal of this proposal is to restrict a Marijuana Establishment from leasing multiple spaces next to one another and merging them to create one large store that does not fit in with our commercial areas because as these smaller, more locally-owned businesses close, residents are left with fewer choices and less competition. Store size limitations are not discriminatory. They do not ban retailers of a larger size. Rather, they require those companies to build stores that are an appropriate size for the community. When faced with a store size limitations ordinance, any retailer that typically builds larger stores will either opt not to build or will design a smaller store footprint that fits within the proposed cap (example: Target along Commonwealth Avenue). Through our land use zoning ordinances, we have long had the power to control the scale of developments by, for example, limiting building heights or setting minimum house lot sizes. Store size limitations are a recent and effective variation on these types of regulations.

With regard to Social Consumption Marijuana Retailers (businesses that sell Marijuana and Marijuana Products for on-site consumption either as a primary use (*e.g.,* businesses operating primarily as a Marijuana Retailer, such as Marijuana cafes) or as a mixed use (e.g., a businesses operating primarily as a yoga studio or massage parlor or for some other purpose), Section 5(B)(13) does not ban on-site consumption. Rather, it makes issuance of a special permit for such establishments contingent on the Town's acceptance of on-premises consumption establishments pursuant to and in the manner specified by M.G.L. c. 94G, § 3(b) (which requires municipal approval in a manner different than by-law adoption by Town Meeting). Section 3(b) states:

> The city council of a city and the board of selectmen of a town shall, upon the filing with the city or town clerk of a petition (i) signed by not fewer than 10 per cent of the number of voters of such city or town voting at the state election preceding the filing of the petition and (ii) conforming to the provisions of the General Laws relating to initiative petitions at the municipal level, request that the question of whether to allow, in such city or town, the sale of Marijuana and Marijuana Products for consumption on the premises where sold be submitted to the voters of such city or town at the next biennial state election. If a majority of the votes cast in the city or town are not in favor of allowing the consumption of Marijuana or Marijuana Products on the premises where sold, such city or town shall be taken to have not authorized the consumption of Marijuana and Marijuana Products on the premises where sold.

This section details that patrons of Storefront Marijuana Retailers and Delivery-Only Marijuana Retailers must present a valid ID proving that they are at least 21 years old prior to entry. This is consistent with language in the draft Cannabis Control Commission regulations.

The same provisions have been included in the warrant articles proposing a General By-Law pertaining to Marijuana Establishments (including a Select Board licensing scheme, see Warrant Article 18) in the event that a majority of Town Meeting that is less than a 2/3 majority is in favor of such provisions, and in order to create standards applicable in the Select Board licensing context. As stated, they were included here as well to provide standards for implementation of the special permit scheme.

E. Site Plan Review for Marijuana Establishments and Special Permit Procedures (**Section 6 and 7, respectively**). The proposal provides for a site plan review process that will provide the opportunity for the Planning Department to seek input from the various relevant departments about a special permit applicant.

F. Submittal requirements prior to issuance of a Certificate of Occupancy (Section 8).

G. Enforcement (**Section 9**). The proposal permits the Building Commissioner to designate a different person or department to assist with enforcement of this section of the Zoning By-Law to the extent consistent with law, in recognition that some types of special permit violations could be outside the traditional scope of the Building Commissioner (*e.g.*, of Health-related provisions, or of Police-related provisions, or of Fire-related provisions, etc.).

Warrant Article 18

Amendment to Town's General By-Laws adding new Section 8.37 pertaining to local licensing of Marijuana Establishments (Select Board)

ARTICLE 18

Petitioner: Select Board

To see if the Town will amend the General By-Laws by adding the following article:

ARTICLE 8.37 MARIJUANA ESTABLISHMENTS

Section 8.37.1 PURPOSE

The intent of this section is to permit Marijuana Establishments to operate pursuant to local requirements to ensure safe and appropriate implementation of Chapter 334 of the Acts of 2016 (Question #4 on the November 8, 2016 ballot), legalizing recreational Marijuana, within the community.

If any provisions of this section shall be held to be invalid, those provisions shall be severable and the remaining sections shall be valid.

Section 8.37.2 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in the foregoing State laws and regulations shall govern.

a. Cannabis Control Commission — the Massachusetts Cannabis Control Commission.

b. Delivery-Only Marijuana Retailer — a Marijuana Retailer that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Marijuana Micro-Business.

c. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

d. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

e. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

f. Marijuana Cultivator — an entity licensed by the Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transfer Marijuana to other Marijuana Establishments, but not to consumers.

g. Marijuana Establishment — a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Marijuana Independent Testing Laboratory, or any other type of Cannabis Control Commission-licensed Marijuana-related business or entity.

h. Marijuana Establishment Agent — a board member, director, employee, executive, manager, or volunteer of a Marijuana Establishment, who is 21 years of age or older. Employee includes a consultant who provides on-site services to a Marijuana Establishment related to the cultivation, harvesting, preparation, packaging, storage, testing, or dispensing of Marijuana.

i. Marijuana Independent Testing Laboratory — an entity licensed by the Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

j. Marijuana Product Manufacturer—an entity licensed by the Cannabis Control Commission to obtain, manufacture, process and package Marijuana and

Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers.

k. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

l. Marijuana Retailer— an entity licensed by the Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana Establishments and to consumers.

m. Medical Marijuana Treatment Center— an entity that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana-infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use.

n. Mixed Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Mixed Use Social Consumption Marijuana Retailer license (as may be further provided by 935 CMR, any commercial enterprise for which 50% or less of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

o. Social Consumption Marijuana Retailer — a Marijuana Retailer licensed by the Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

p. Primary Use Social Consumption Marijuana Retailer — a Marijuana Retailer that is in possession of a Cannabis Control Commission Primary Use Social Consumption Marijuana Retailer license (as may be further provided by935 CMR, any commercial enterprise for which 51% or more of average monthly revenue shall be derived from the sale of marijuana products to be consumed on the premises).

q. Storefront Marijuana Retailer — a Marijuana Retailer providing a retail location accessible to consumers 21 years of age or older or in possession of a

registration card demonstrating that the individual is a registered qualifying patient with the Massachusetts Medical Use of Marijuana Program.

Section 8.37.3 MEDICAL MARIJUANA TREATMENT CENTERS

Medical Marijuana Treatment Centers licensed prior to July 1, 2017 may be licensed pursuant to Section 8.37. 6 below or under Article 8.34 of the General By-Laws, as the Select Board may determine in conformity with applicable State and local laws.

Section 8.37.4 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction: a) Storefront Marijuana Retailers, b) Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers.

Section 8.37.5 GENERAL REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

Marijuana Establishments shall comply with the following requirements:

A. General

1. Marijuana Establishments shall comply with applicable State and local laws, regulations, by-laws, codes, conditions and agreements with the Town, including, but not limited to, M.G.L. c. 94G, M.G.L. c. 94I, 935 CMR 500, the Town of Brookline's General By-Laws, the Town of Brookline's Zoning By-Laws, all applicable Town building, fire prevention, police, and health codes, regulations and standards, any conditions imposed on licenses and permits held by the Marijuana Establishment (including, but not limited to, the Town's Zoning Board of Appeals special permit).

2. Marijuana Establishments shall execute and maintain a Host Community Agreement with the Town which shall include the conditions for having the Marijuana Establishment within the Town in conformity with applicable law.

3. Marijuana Establishments shall maintain all permits and licenses required by State and local laws, including, but not limited to, a valid, current license in good standing from the Cannabis Control Commission. Any voiding of the Cannabis Control Commission's license by operation of law (including due to cessation of operations, failure to become operational within the permitted time, or relocation without Cannabis Control Commission approval), and any

revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license, shall result in an automatic suspension of the Select Board license pending hearing or the opportunity therefore afforded to the Marijuana Establishment.

4. All taxes and charges owed to the Town must be paid on a current basis. The Town may place a lien on the property of any person who has an outstanding balance due the Town from any fee, charge or tax, which balance is at least six (6) months past due.

5. Any Marijuana Establishment licensee wishing to close a place of business or cease operations , whether on a temporary or permanent basis, may do so only if permitted by State law and must submit to the Select Board a written request for the Select Board's permission to do so, stating the reason for and length of such closing or inactivity. Failure to provide such notice and to obtain such permission may, after hearing or reasonable opportunity therefor, result in cancelation of the license.

B. Operational Requirements

1. All Marijuana Establishments' licensed operations shall be conducted within a building or fixed structure.

2. No Marijuana Establishment shall allow cultivation, processing, manufacture, sale or display of Marijuana or Marijuana Products to be visible from a public place without the use of binoculars, aircraft or other optical aids.

3. Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.

4. No Marijuana Establishment shall allow any person under 21 years of age to volunteer or work for the Marijuana Establishment.

5. The hours of operation of Marijuana Establishments shall be set by the Select Board. The licensee shall not change its hours of operation without Board approval.

6. Marijuana Establishments shall ensure that their hours and methods of transportation of product shall not be a detriment to the surrounding area and nearby uses.

7. Marijuana Establishments shall not permit any disorder, disturbance, or illegality under State or local law of any kind on the premises.

8. Marijuana Establishment operations shall not result in illegal redistribution under State or local law of Marijuana obtained from the Marijuana Establishment, or in use of Marijuana in any manner that violates State or local law.

9. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

10. Marijuana Establishments shall equip the premises and otherwise conduct their operations in such a manner that (a) no pesticides or other chemicals or products are dispersed into the outside atmosphere, and (b) no odor of Marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the facility or at any adjoining use or property.

11. A Marijuana Establishment shall be required to remove all Marijuana and Marijuana Products by the earlier of:
    a) prior to surrendering its State-issued license; or
    b) within six (6) months of ceasing operations.

12. Marijuana Establishments shall comply with 527 CMR and with Chapter 38 of the NFPA 1 (2018), as they may be amended, and as applicable.

13. Marijuana Retailers are required to engage in patron age verification using legally-acceptable proof of age as may be further specified by the Select Board license.

14. Marijuana Retailers shall not sell or offer for sale Marijuana or Marijuana Products in a quantity that exceeds the limits established by 935 CMR 500.

15. Marijuana Establishments shall not supply Marijuana or Marijuana Products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product "giveaways", or distribution of Marijuana or Marijuana Products as

an incentive, prize or bonus in a game, contest or tournament involving skill or chance.

16. Marijuana Retailers are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.

17. Consumption of Marijuana in the interior or exterior of the premises is not permitted except as follows. Duly-licensed Social Consumption Marijuana Retailers may permit on-premises consumption of Marijuana and Marijuana Products which they are licensed to sell to customers purchasing their products who are aged 21 years and older in the event that on-premises consumption is approved by the Town pursuant to and in the manner provided by M.G.L. c. 94G, § 3(b). In the event that on-premises consumption is approved by the Town in such manner, Social Consumption Marijuana Retailers must abide by all State and local requirements for Marijuana Establishments. Social Consumption Marijuana Retailers shall comply with all legal requirements pertaining to verification that a patron is at least 21 years of age utilizing acceptable forms of proof of age, including any proof-of-age verification requirements established by the Select Board in connection with the local licensing of Marijuana Establishments. In no event shall Social Consumption Marijuana Retailers permit the smoking of Marijuana or Marijuana Products on the premises. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

C. Security-Specific Requirements

1. Marijuana Establishments shall maintain compliance with any Town Police Department-approved security and public safety plan as the Police Department may require, which plan may include measures relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, specification of video and lighting locations, notifications to the Police Department in the event of any known or suspected violation of criminal law that has taken place on or near the location of the establishment (related or unrelated to the business or the establishments), providing access to and transfer of video footage from the establishment's video surveillance system to the Police Department when the Police Department so requests (which request may be made when the Police Department has a reason to believe that such footage may be of assistance in an ongoing investigation related or non-related to the business of the establishment), a requirement to connect an alarm system to a third party monitoring system and to notify the Town's Chief of Police about said third party monitoring system, and any other

notifications and security-related measures as may be required by the Police Department and the Select Board.

2. Marijuana Establishments shall secure every entrance to the Marijuana Establishment so that access to areas containing Marijuana is restricted to employees and others permitted by the Marijuana Establishment to access the area and to agents of the Cannabis Control Commission or state and local law enforcement officers and emergency personnel.

3. Marijuana Establishments shall secure their inventory and equipment during and after operating hours to deter and prevent theft of Marijuana, Marijuana Products and Marijuana accessories.

4. Marijuana Establishments shall file an emergency response plan with the Town's Fire, Police and Health Departments and share with these Departments their security plan and procedures and any updates to them in the event they are modified.

D. Access to Premises and Information/Reporting/Record-Keeping

1. Marijuana Establishments shall consent to unannounced, unscheduled, periodic inspections of its premises by the Select Board and agents of the Select Board from the Building, Health, Police and Fire Departments (which, when conducted by the Police Department, shall be by a sworn police officer holding the rank of Sergeant or higher) on week-days during normal business hours to determine the Marijuana Establishment's compliance with the requirements of applicable state and local laws, regulations, codes, license and permit conditions, and this section. In addition, routine inspections may be made on week-days during regular Town business hours by authorized inspectional departments to determine compliance with applicable state and local laws, regulations, codes and license and permit conditions. Inspections by the authorized inspectional departments may be made at other times to investigate complaints or suspected non-compliance issues. Inspections may include all areas occupied, used or controlled by the Marijuana Establishment. Facilities requiring re-inspection are subject to applicable re-inspection fees. Inspections shall be conducted in conformity with applicable federal, state and local law.

2. Marijuana Establishments shall cooperate and comply with requests for information made by the Select Board and its agents from the Planning, Building, Health, Police, Fire and Public Works Departments.

3. Within twenty-four (24) hours of receipt of notice of it, a Marijuana Establishment shall file with the Town Administrator, Director of Public Health and the Building Commissioner any summary cease

and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state or federal agency (including, but not limited to, the Cannabis Control Commission and Massachusetts Department of Public Health (DPH)) regarding the Marijuana Establishment, the Cannabis Control Commission license, or the DPH Certificate of Registration.

Section 8.37.6 MARIJUANA ESTABLISHMENT SELECT BOARD LICENSE

a. No person shall operate a Marijuana Establishment or sell Marijuana within the Town unless licensed to do so by the Select Board. Unless the Select Board license states a different duration, a Marijuana Establishment license shall be valid for a term of one year from the first day of January. Each day of operation without a Select Board license shall constitute a separate violation.

b. A Select Board license shall be subject to the Marijuana Establishment's compliance with this Article 8.37 and with any conditions placed on the Marijuana Establishment's license. An applicant's or licensee's violation of this Article 8.37 and applicable State and local law shall be good cause for and may result in the Select Board's denial of an application or sanction of a license to the extent permitted by law, including, but not limited to, the imposition of additional conditions on a license, a reduction or modification of the licensee's approved hours of operations, or a suspension, non-renewal, revocation, forfeiture, or cancellation of a license. No sanction shall be made except after notice and opportunity for hearing.

c. The Select Board may issue regulations for the implementation of this By-Law.

d. The Select Board shall specify the process and forms to be used by applicants for new and renewed licenses.

e. All license applications must contain complete and truthful information. Submission of an application containing material false information may be cause for refusing the application or for suspending, canceling or revoking a license already granted. No application will be accepted for filing by the Select Board until it is fully complete. Annual license fees shall be payable immediately upon approval of the license by the Select Board. License fees shall not be prorated and are not refundable. Application and license fees shall be in an amount established by the Select Board pursuant to M.G.L. c. 40, § 22F.

f. No Select Board licensee may transfer a license to another person or entity, or transfer the license or operations to another location, without Select Board

approval. A Select Board licensee must obtain Select Board approval for a change to or addition of Board Member, Executive, Director and/or Managers, as may be determined by the Select Board. Any transfer shall be subject to the terms and conditions of the original license, unless otherwise stipulated by the Board.

g. A Select Board licensee must apply for and obtain the approval of the Select Board or its designee prior to making any structural change to the premises.

h. The Select Board licensee shall display its license on the premises in a conspicuous place where it can be easily read.

i. The Select Board or its designee may inspect a Marijuana Establishment and affiliated vehicles prior to the issuance of a Marijuana Establishment license or renewal of a license.

j. All areas of a Marijuana Establishment may be subject to inspection consistent with applicable law.

k. The Select Board may, to the extent permitted under applicable law, consider whether an applicant for a license is a suitable and responsible license candidate and other aspects of the application as may be necessary to implement the purposes of this By-Law. An applicant's non-compliance with applicable Massachusetts laws and regulations (including 935 CMR 500), Town by-laws (including this Article and applicable sections of the Town's Zoning By-Law), Town regulations and codes, and any conditions on a license may be cause for denial of an application for a new or renewed Marijuana Establishment license.

Section 8.37.8 FINES

Any person violating this By-Law shall be fined in the amount of $100 for each violation. Each day of a continuing violation shall count as a separate violation.

Section 8.37.8 IMPLEMENTATION

This By-Law shall not be implemented in a manner that conflicts or interferes with the Massachusetts General Laws Chapter 94G or Chapter 94I, or with the regulations promulgated thereunder, including 935 CMR 500.

or act on anything relative thereto.

Explanation

A. **Background.** In 2012, Massachusetts voters approved a referendum to legalize medical Marijuana, including medical Marijuana dispensed by "Medical Marijuana Treatment Centers", in a law codified as Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana". The law established the Massachusetts

Department of Public Health ("DPH") as the licensing and oversight authority. DPH issued regulations permitting any local regulation of Registered Marijuana Dispensaries ("RMDs", the term used by DPH for Medical Marijuana Treatment Centers) that did not conflict with the DPH regulations found at 105 CMR. The November 2013 Special Town Meeting approved Article 8.34 of the General By-Laws, establishing a Select Board local licensing scheme for RMDs. The Attorney General's Office approved Article 8.34 in April 2014. Also passed and approved at that time were Zoning By-Law measures providing for permissible siting of RMDs in certain districts by special permit. Over the ensuing months, the Select Board passed regulations governing RMDs, and the Licensing Review Committee worked with various Town Departments, including Health and Police, to propose license conditions to further regulate the sole applicant for a Town RMD license, New England Treatment Access ("NETA"). The conditions were the subject of robust input by various Departments (including Police, Health, and DPW/Transportation) and by NETA. After multiple public hearings and opportunities for community input, the Select Board approved a final version of the conditions and NETA's Town RMD license in December 2015. NETA continues to operate today at 160 Washington St. (in the former Brookline Bank building) at the corner of Washington St. and Route 9.

In November 2016, Brookline residents voted (60% in favor) to legalize recreational Marijuana uses proposed by Question 4, including retail (sales to the ultimate consumer), manufacturing, cultivation, and lab testing uses. The successful statewide referendum created a new state agency known as the Cannabis Control Commission responsible for licensing and oversight of the various categories of Marijuana Establishments (*e.g.,* retailers, manufacturers, cultivators and lab testers, and such other categories of licensee as the Cannabis Control Commission shall establish by regulation). In July 2017, the legislature made certain amendments to the law, which has been codified at Massachusetts General Laws Chapter 94G. That legislation also created a new Chapter 94I pertaining to medical Marijuana that contemplates transfer of the licensing and oversight of medical Marijuana treatment centers from DPH to the Cannabis Control Commission.

Under the law, the Cannabis Control Commission may begin to issue licenses for the various categories of Marijuana Establishments beginning on June 1, 2018. A basis for the Cannabis Control Commission to reject a license application is notice from a community that the proposed licensee is not in compliance with local law that was properly adopted by the community in the manner set forth in the law. Given the foregoing, there is time-sensitivity for the Town to establish any desired local regulatory scheme of the type and in the manner permitted by the law if it wishes to have measures in place for when the Cannabis Control Commission begins to issue licenses (which, again, could be very shortly after the Town's May 2018 Annual Town Meeting). The Town has in effect a Zoning By-Law Table of Uses that provides for a moratorium on Marijuana Establishments that ends the earlier of December 2018 or when the AGO approves amendments to the Table of uses, and Marijuana-related Zoning By-Law Amendments are also proposed for this Town Meeting (*see* Warrant Article 17). However, the Attorney General's Office has stated publicly that there may be a question

of whether the Cannabis Control Commission will honor moratoria in its applications decision-making.

The Select Board's Licensing Review Committee (LRC), with input from the Planning Board (through Planning Department staff who attended the LRC meetings), Town residents who attended the LRC's publicly-noticed meetings, NETA (through its representatives in attendance at some of the LRC's meetings), and Town Departments that included Planning, Building, Police, Fire, Health and Town Counsel's Office, has worked to advance a number of proposals for this Town Meeting to provide for local regulation and oversight of Marijuana uses in time for the beginning of Cannabis Control Commission licensing. For consideration by this Town Meeting are six Marijuana-related Warrant Articles (1) the foregoing proposed Warrant Article 18 proposing a Select Board local licensing scheme for Marijuana Establishments; (2) proposed amendments to the Town's Zoning-By-Law (*see* Warrant Article 17), (3) a motion proposing a lower cap on the number of Marijuana Retailers than the number proposed by this proposed By-Law (to avoid scope issues, *see* the Explanation that follows Warrant Article 19 and below), (4) a proposed new Article to the Town's General By-Laws entitled "Marijuana and Hemp, and Marijuana and Hemp Products", pertaining to general Marijuana-related conduct within the Town and on Town property (*see* Warrant Article 20; (5) proposed amendments to Article 10 of the Town's By-Laws designating the Town Departments responsible for enforcement of the proposed new Marijuana-related Articles to the General By-Laws (*see* Warrant Article 21); and (6) proposed adoption of the local option tax on recreational Marijuana sales (*see* Warrant Article 22).

Please refer to the Explanation to the proposed amendments to the Zoning By-Law for a more detailed description of the public process that resulted in these proposals and for additional information pertinent to this Warrant Article. Please refer to the Explanations that follow each of the Warrant Articles for more detailed information about each of the proposals.

B. <u>Select Board Licensing Scheme (in addition to Zoning Board of Appeals Special Permit Scheme).</u> As stated in the Explanation section to the proposed Zoning By-Law amendments (Warrant Article 17), the Attorney General's Office to date has approved Zoning By-Laws from communities establishing a special permit scheme. That Office has stated publicly that it has not yet determined whether or not it will approve local licensing schemes under the new recreational Marijuana law.

In light of a level of uncertainty and the Town's successful experience with Select Board licensing and Zoning Board of Appeals special permitting of RMD's, both the foregoing licensing scheme to be administered by the Select Board and a special permit scheme to be administered by the Zoning Board of Appeals (Warrant Article 17) are proposed. The Select Board licensing scheme is a familiar oversight tool used in Select Board licensing for liquor sales, restaurants, food vendors, and others, in addition to the RMD context.

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has authority to issue is set every ten (10) years by the State following a new U.S. Decennial Census. In addition, the number of package store licenses fluctuates as new businesses open and existing businesses close. The use of a percentage in the cap formulations will assure that, given such fluctuations, the Town will not impose a cap that could be deemed invalid due to a lack of Town-wide approval.

In addition, Licensing Review Committee members felt that capping the number of Social Consumption Marijuana Retailers is appropriate in light of, on the one hand, apparent interest within the community in having these types of establishments in operation, and on the other hand, various public health concerns that have been articulated. The public health concerns identified have included concerns about youth consumption and health. They have also concerned the possibility of impaired drivers on the Town's roads who may be driving home from restaurants in Town. There was discussion by the LRC of comments received by the Cannabis Control Commission in connection with its draft regulations to the effect that, at present, there may be limited knowledge and training available for restaurant servers on marijuana "safe service" procedures analogous to the knowledge and training available to alcohol servers to prevent alcohol over-service. There was also discussion of other comments to the Cannabis Control Commission to the effect that at present, there may be limited science and tools available to law enforcement officers for enforcing "operating under the influence" laws in the marijuana context. The LRC felt that it is appropriate for the Town to phase in these types of operations gradually.

See the Explanation to Warrant Article 19 explaining how Town Meeting's votes could be phrased and should be ordered in the event it wishes to decrease the cap.

Warrant Article 19

Amendment to Town's Section 8.37.4 of the Town's General By-Laws – limiting the maximum number of Marijuana Retailers (Select Board)

ARTICLE 19

Petitioner: Select Board

To see if the Town will amend Article 8.37.4 of the General By-Laws to provide for a lower maximum number of marijuana retailers than that provided for in said section in language that follows, subject to Town approval in the manner and in conformity with the procedures specified by Massachusetts General Laws Chapter 94G, Section 3:

Section 8.37.4 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

a) Storefront Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Storefront Marijuana Retailers pursuant to Section 8.37.6 than a number that is, or is between, 1 and 3.

b) Delivery-Only Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Delivery Only Marijuana Retailers pursuant to Section 8.37.6 than a number that is, or is between, 1 and 3.

c) Social Consumption Marijuana Retailers. The Select Board shall not issue more Marijuana Establishment licenses to Social Consumption Marijuana Retailers than a number that is, or is between, 1 and 3.

Explanation

Please see the accompanying Warrant Article 18 proposing a new Article 8.37 to the Town's General By-Laws entitled "Marijuana Establishments" and the Explanation section that follows it. Warrant Article 18 proposes a limitation on the number of various types of marijuana retailers that tracks certain language in the the new Massachusetts recreational marijuana law, codified at Chapter 94G, Section 3. Section 3(a)(2) of the law states that if a Town that voted in favor of Question 4 to the November 2016 ballot (such as Brookline) wishes to reduce the number of marijuana retailers to a number that is below the number that is 20% of its package store licenses or reduce the number of retailers (or any other type of commercial marijuana establishment) to below the number of medical marijuana establishments (the Town has 1, New England Treatment Access, Inc., or "NETA"), it must put the language of the by-law itself to BOTH a Town Meeting vote AND a Town-wide vote utilizing the procedure described in Section 3(e) of the law. The Town currently has 19 package store licenses outstanding (20% is 3.8, or 4 when rounded up) but could issue up to 24 package store licenses (20% is 4.8, or 5 when rounded up) pursuant to Massachusetts state law, based on the most recent U.S. decennial census.

The Town Moderator has determined that motions to amend Section 8.37.4 of Warrant Article 18 to **increase or eliminate caps** are within the scope of the original language of Section 8.37.4, so that any such amendments would be allowable under Warrant Article 18.

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The Town Moderator has determined that motions to amend Section 8.37.4 to **decrease the caps** are not within the scope of Warrant Article 18 and could only be entertained through inclusion in the Warrant of a separate article. Therefore, the reason for including this Warrant Article 19 in the Warrant is simply to provide Town Meeting and the Town at large with the opportunity to lower the caps proposed in Warrant Article 18 if desired.

For example, Town Meeting could approve a motion under this Warrant Article 19 to amend the language of Article 8.37.4 as follows, even setting a separate limitation as to each category of Marijuana Retailer (additions are in bold underlined text, deletions are in bold stricken text):

> The Select Board shall not issue more Marijuana Establishment licenses to [Storefront Marijuana Retailers/Delivery-Only Marijuana Retailers/Social Consumption Marijuana Retailers] pursuant to Section 8.37.6 than ____ ***[1, 2 or 3, to be determined by Town Meeting].*** ~~**a number that is between a) 1 and b) 19% of the number of liquor licenses for off-premises consumption that have been issued by the Select Board pursuant to section 15 of chapter 138, as rounded up to the nearest whole number in the event the number is a fraction**~~.

If Town Meeting wishes to eliminate the cap altogether it should vote language for Section 8.37.4 saying so, since such language will guide the Zoning Board of Appeals in its issuance of special permits pursuant to Section 4 of Warrant Article 17. For example, a motion could propose the following amended language to Section 8.37.4 lifting the cap altogether:

> The Select Board shall not **establish a cap on the number of** ~~**issue more**~~ Marijuana Establishment licenses **issued** to Marijuana Retailers pursuant to Section 8.37.6 below ~~**than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, as rounded up to the nearest whole number in the event the number is a fraction**~~.

It is proposed that Town Meeting take up the question of whether or not to limit the number of marijuana retailer Select Board licenses below thresholds that could trigger a Town-wide vote – which at the earliest could not occur until November 2018 - and not at the Town Meeting *after* a possible November Town-wide vote (*i.e.*, in May 2019) in order to have caps in place for the possible June 1, 2019, start of Massachusetts Cannabis Control Commission licensing. In the event that the moratorium is not honored, the proposed Zoning By-Law Section 4.13 in Warrant Article 17 has a "default" cap consisting of the 20% figure (the minimum that can be set without triggering the Town-wide vote requirement) as to each category of Marijuana Retailer, and the "default" cap would take effect on the date of Town Meeting's vote in any event. *See* M.G.L. c. 40A, § 5. (Note that the moratorium, if honored, sunsets the earlier of the Attorney General's Office's approval of the Zoning By-Law Amendment or December 31, 2018.)

A second reason why Town Meeting should take up the question of lower caps before any November 2018 Town-wide vote is to assure consistency in language between the language voted by Town Meeting after debate and the language put on the ballot in November, given the requirement to have TWO consistent votes (Town Meeting and Town-wide) on actual by-law language in order to set a cap below the 20% number. On January 9, 2018, the Attorney General's Office issued a decision pertaining to a Milford by-law to the effect that the by-law language itself of a type requiring a Town-wide vote must be presented in the same phrasing both to Town Meeting in the Warrant and on the ballot for the Town-wide vote. Milford undertook the Town-wide vote first, and then submitted that language to Town Meeting, which tinkered with it. Because the language put to Milford voters in the Town-wide vote and subsequently voted by the Milford Town Meeting differed, the Attorney General's Office decided that Milford's by-law had no effect unless and until Milford voters approved it in a second Town-wide vote.

It is anticipated that there will be two Town Meeting votes pertaining to the proposed General By-Law retailer caps as follows:

The **first** would be a vote on Warrant Article 18. **Even Town Meeting members favoring lower caps should vote in favor Warrant Article 18 with the proposed cap language so that action under Warrant Article 18 can be immediately sent to the Attorney General's Office for approval without need to await the result of any November Town-wide vote.**

Then there will be a vote on the motion(s) offered under this Warrant Article 19. In the event that Town Meeting votes caps that trigger a Town-wide vote, the new cap language will be placed on the November ballot for Town-wide approval. If there is Town-wide approval in November, the new cap(s) will then be submitted to the Attorney General's Office for approval.

This approach has been vetted by both the Town Moderator and the Attorney General's Office's Municipal Law Division and appears to be an acceptable method for the Town to entertain a range of retailer cap options as expeditiously as possible.

Warrant Article 20

Amendment to Town's General By-Laws adding new Article 8.38 pertaining to the use, cultivation and processing of Marijuana and Hemp (Select Board)

ARTICLE 20

X ARTICLE 20

Submitted by: Select Board

To see if the Town will amend the General By-Laws by adding the following article:

ARTICLE 8.38 **MARIJUANA AND HEMP, AND MARIJUANA AND HEMP PRODUCTS**

SECTION 8.38.1 DEFINITIONS

See also Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the regulations promulgated thereunder, as they may be amended. In the event of a conflict between the following definitions and those contained in the foregoing State laws and regulations, the definitions contained in foregoing State laws and regulations shall govern.

a. Hemp — the plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana Product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

b. Hemp Products — products that have been manufactured and contain Hemp or an extract from Hemp.

c. Manufacture — to compound, blend, extract, infuse or otherwise make or prepare a Marijuana Product.

d. Marijuana — all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that "Marijuana" shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) Hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

e. Marijuana Products — products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

SECTION 8.38.2 GENERAL PROHIBITIONS

No person shall:

(1) smoke, ingest, consume, or otherwise use Marijuana or Marijuana Products while in or upon any public street, sidewalk, footway, passageway, stairs, bridge, park, playground, recreation area, building, school house, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town, or while in or upon any private way to which the public has a right of access as invitees or licensees.

(2) possess an open container of Marijuana or Marijuana Products in the passenger area of any motor vehicle or in any bus or other passenger conveyance operated by a common carrier that is in or upon a public way or a private way to which the public has a right of access as invitees or licensees. For purposes of this section, "open container" shall mean that the package containing Marijuana or Marijuana Products has its seal broken or from which the contents have been partially removed or consumed and "passenger area" shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or passenger while in a seated position; provided however that the passenger area shall not include a motor vehicle's trunk, locked glove compartment or the living quarters of a house coach or house trailer, or if a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not normally occupied by the driver or passenger.

(3) smoke Marijuana or Marijuana Products where smoking tobacco is prohibited by law. Smoking is defined to mean the lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette or other similar device shall be considered smoking.

(4) sell Marijuana or Marijuana Products, or test, Manufacture, or cultivate Marijuana or Marijuana Products to be sold, without being duly licensed in good standing by the Commonwealth of Massachusetts and the Town of Brookline, as applicable, to do so.

(5) cultivate, Manufacture, process, test, or sell Marijuana, Marijuana Products, Hemp or Hemp products in or upon any land or property owned by or under the control of the Town.

SECTION 8.38.3 PERSONAL CULTIVATION AND PROCESSING OF MARIJUANA AND HEMP AND MARIJUANA AND HEMP PRODUCTS

(1) No person shall Manufacture Marijuana or Hemp or engage in Marijuana or Hemp extraction utilizing any process that poses an explosive, combustible or flammable danger,

including solvent-based extraction and extraction utilizing flammable liquids (a liquid with a flash point below 100 degrees Fahrenheit) such as liquefied petroleum gases (*e.g.,* propylene, propane, butane, butylenes and mixtures thereof).

(2) The possession, growing, and processing of Marijuana or Hemp plants shall not be observable from the exterior of a residence, including, but not limited to:

a. Common visual observation;
b. Odors, smells, fragrances, or other olfactory stimulus associated with such activities;
c. Light pollution, glare, or brightness that disturbs others.

(3) Use of supplemental carbon dioxide and/or ozone is prohibited.

(4) The cultivation, manufacturing and testing of Marijuana, Hemp or Marijuana or Hemp Products may not occur outside of a building or structure that is secured with a lock or other security device to prevent unauthorized access.

(5) The possession, growing and processing of Marijuana and Hemp plants shall comply with applicable State and local laws, regulations, by-laws and codes.

SECTION 8.38.4 FINES

Any person violating this By-Law shall be fined in the amount of $100 for each violation, except that a person violating Section 8.38.3(1) of this By-Law shall be fined in the amount of $300. Each day of a continuing violation shall count as a separate violation.

EXPLANATION

This Warrant Article 20 proposes to create a General By-Law pertaining to Marijuana and Hemp uses by persons other than Marijuana Establishments, in order to minimize nuisances and dangers that could be posed to the community by personal cultivation, processing and testing of Marijuana and Hemp and Marijuana and Hemp Products. A goal of the proposal otherwise is to provide a local enforcement mechanism for prohibitions that already exist in the new State law, such as the ban on public consumption of Marijuana and on open containers of Marijuana.

Section 8.38.2 proposes to create prohibitions on the consumption of Marijuana and Marijuana Products in public and on Town property, on open containers of Marijuana and Marijuana Products, and on smoking Marijuana where smoking is otherwise prohibited that are analogous to by-laws the Town has in place pertaining to alcoholic beverages and tobacco, based in part on language drawn from the new recreational Marijuana law and draft Massachusetts Cannabis Control Commission regulations. *See* General By-Laws, Articles 6.2 ("Alcoholic Beverages on Public Property"), 7.1 ("Alcoholic Beverages"), 8.1 ("Alcoholic Beverages"), 8.23 ("Tobacco Control"); M.G.L. c. 94G, §§ 13(a), (c), (d); draft 935 CMR 500 (available at www.mass.gov/service-details/cannabis-control-commission).

Section 8.38.3 proposes to regulate personal Marijuana and Hemp cultivation and manufacturing along lines similar to local regulations found in a number of Colorado ordinances. Section 8.38.3(1) prohibits hazardous methods of Marijuana and Hemp extraction in light of residential explosions reported around the country. According to guidance from Colorado, Hemp extraction may pose similar hazards as Marijuana extraction, and thus the proposal is directed at Hemp extraction as well. *See* Marijuana Facility Guidance, Colorado Fire Marshall's Special Task Group (4/27/2016) ("Colorado Guidance") at 4 (available at https://fmac-co.wildapricot.org/resources/Pictures/Marijuana_Guidance_Document_v.1_2016%2003%2016.pdf). Section 8.38.3(1) does not prohibit personal Marijuana extraction using non-hazardous extraction methods such as water- and food-based methods. *See* Colorado Guidance at 15. Section 8.38.3(2) is modeled after language found in a number of ordinances from Colorado (*e.g.*, Boulder, Breckenridge, Denver). Section 8.38.3(3) prohibits the use of supplemental carbon dioxide and/or ozone (sometimes used to promote plant growth), as they can be toxic. Section 8.38.3(4) requires the inside cultivation, processing and testing of Hemp in addition to Marijuana because the two plants are closely related and can be very difficult or impossible to distinguish from one another.

This General By-Law, if passed, would provide a means of local assessment of civil fines for offenders who willfully violate the by-law. With regard to the prohibitions against public consumption and open containers, the by-law would allow the Police Department the ability to enforce violations in a consistent fashion similar to its enforcement of analogous alcohol use violations. The Police Department states that it will track citations issued in order to ensure officers are adhering to fair and impartial enforcement. The purpose is to provide a local mechanism for the Police Department to address what will hopefully be rare instances of violations that could adversely affect the quality of life in the community.

Warrant Article 21

Amendment to Article 10.2 of the Town's General By-Laws – Prosecutions and Enforcement of By-Laws related to Marijuana Establishments and Marijuana Use
(Select Board)

ARTICLE 21

Petitioner: Select Board

To see if the Town will amend Article 10.2 (Prosecutions and Enforcement) of the General By-Laws as follows (additions are in bold underlining):

ARTICLE 10.2
PROSECUTIONS AND ENFORCEMENT

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following bylaws and articles shall be by the following department head or their designees:

DEPARTMENT HEAD	ARTICLE	
BUILDING COMMISSIONER		
....	.....	
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16, **8.37**
DIRECTOR OF HEALTH & HUMAN SERVICES		
....	....	
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.22, 8.23, 8.32, **8.37, 8.38**
FIRE CHIEF		
Part VIII – Public Health & Safety	**Articles**	**8.37, 8.38**

or act on anything relative thereto.

Explanation

This Warrant Article 21 proposes the Departments that will be responsible for enforcing the new General By-Laws proposed by Warrant Article 18 (proposing an addition to the General By-Laws of a new Article 8.37, "Marijuana Establishments") and Warrant Article 20 (proposing an addition to the General By-Laws of a new Article 8.38, "Marijuana and Hemp, and Marijuana and Hemp Products"). Please see the Explanation sections that follow Warrant Articles 17, 18 and 19 for detailed background information about the Town's proposals for the local regulation of recreational marijuana permitted by favorable action on Question 4 to the 2016 State ballot. As reflected in those Explanation sections, local oversight of marijuana establishments is proposed to be done across multiple code-enforcement Town departments, consistent with oversight over other licensees such as restaurants, lodging houses, and hotels. The Fire Department is added to the list of enforcement authorities in Article 10.2 of the General By-Laws in recognition that the THC extraction process can involve hazardous materials and processes utilizing combustible, explosive materials.

Warrant Article 22

Acceptance of General Laws Chapter 64N, Section 3 – a Local Tax Option pertaining to the sale of marijuana and marijuana products (Select Board)

ARTICLE 22

Petitioner: Select Board

Article _____

To see if the Town will accept the provisions of General Laws Chapter 64N, Section 3, "Local Tax Option," at the maximum rate permitted by law.

or act on anything relative thereto.

Explanation

In November, 2016, voters of the Commonwealth approved a law legalizing and regulating the cultivation, manufacture, processing, distribution, sale, possession, testing and use of recreational marijuana, which was amended by the legislature in July 2017. The referendum as amended added Chapter 64, Section 3, to the Massachusetts General Laws. That provision is a local adoption statute that permits a municipality to impose a sales tax of up to 3% on local sales of marijuana and marijuana products by marijuana retailers operating within the community. Under Brookline's form of government, the statute is adopted by favorable vote of Town Meeting.

The May 2017 Annual Town Meeting approved a moratorium on Recreational Marijuana Establishments pending the Town's efforts to implement a substantive zoning measure to regulate these establishments. The Planning and Community Development Department has filed a substantive zoning proposal for this Town Meeting (*see* Warrant Article 17).[1] The May 2017 moratorium will sunset upon the earlier of the Attorney General's approval of a Recreational Marijuana Establishments zoning by-law or December 31, 2018.

Brookline now has an operating licensed medical marijuana facility, which with the passage of the referendum may seek a license from the State to sell recreational marijuana. With the expectation that there will be at least one recreational marijuana sales outlet in Town, the Selectmen ask Town Meeting to adopt G.L. c. 64N, s. 3 by taking favorable action on this Warrant Article 22.

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[1] Other warrant articles filed for this Town Meeting seek to add certain articles to the Town's general by-laws to assure that Recreational Marijuana Establishments operate responsibly within the community.