



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECTMEN
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

**SECOND SPECIAL TOWN
MEETING**

I hereby certify that the actions as indicated on the within pages were taken at the Special Town Meeting called for Tuesday, November 13, 2018, at 7:30 P.M. and dissolved at 8:19 P.M.

ATTEST.

Patrick Joseph Ward

Town Clerk



(Please retain this copy for use at the Town Meeting)

Town of Brookline
BOARD OF SELECTMEN

Neil A. Wishinsky, Chairman

Benjamin J. Franco

Nancy S. Heller

Bernard W. Greene

Heather Hamilton

Melvin A. Kleckner, Town Administrator

"The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operation of its programs, services or activities. Persons with disabilities who need auxiliary aids and services for effective communication in programs, services and activities of the Town of Brookline are invited to make their needs and preferences known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445, 730-2328 Voice, 730-2327 TDD, or email at lgellineau@brooklinema.gov."

MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Sean M. Lynn-Jones, Chair, 53 Monmouth Street.....	738-6228
Carla Benka, Vice-Chair, 26 Circuit Road	277-6102
Benjamin Birnbaum, 15 Feneno Terrace,	276-5944
Clifford M. Brown, 9 Hyslop Road	232-5626
Carol Caro, 1264 Beacon Street, #2.....	739-9228
John Doggett, 8 Penniman Place	739-7266
Dennis Doughty, 57 Perry Street.....	566-5474
Harry Friedman, 27 Clafin Road	BE2-0122
Janet Gelbart 216 St. Paul Street #601.....	566-5616
David-Marc Goldstein, 22 Osborne Road	232-1943
Neil Gordon, 87 Ivy Street.....	(508)265-1362
Susan Granoff, 52 Vernon Street #1	731-0822
Kelly Hardebeck, 18 Littell Road	277-2685
Amy Hummel, 226 Clark Road	731-0549
Alisa G. Jonas, 333 Russett Road	469-3927
Janice Kahn, 63 Craftsland Road.....	739-0606
Steve Kanes, 89 Carlton Street	232-2202
Bobbie M. Knable, 243 Mason Terrace.....	731-2096
David Lescohier, 50 Winchester Street	383-5935
Carol Levin, 61 Blake Road.....	731-0166
Fred Levitan, 1731 Beacon Street.....	734-1986
Pamela Lodish, 195 Fisher Avenue	566-5533
Mariah Nobrega, 33 Bowker Street	935-4985
Michael Sandman, 115 Sewall Ave., No. 4.....	232-7125
Lee L. Selwyn, 285 Reservoir Road	277-3388
Kim Smith, 22 Brington Road	277-1606
Stanley Spiegel, 39 Stetson Street	739-0448
Claire Stampfer, 50 Sargent Crswy.	448-4201
Charles Swartz, 69 Centre Street	731-4399
Christine M. Westphal, 31 Hurd Road.....	738-7981
Lisa Portscher, Executive Assistant, Town Hall.....	730-2115

NOVEMBER 13, 2018
SECOND SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

ARTICLE
NUMBER

TITLE

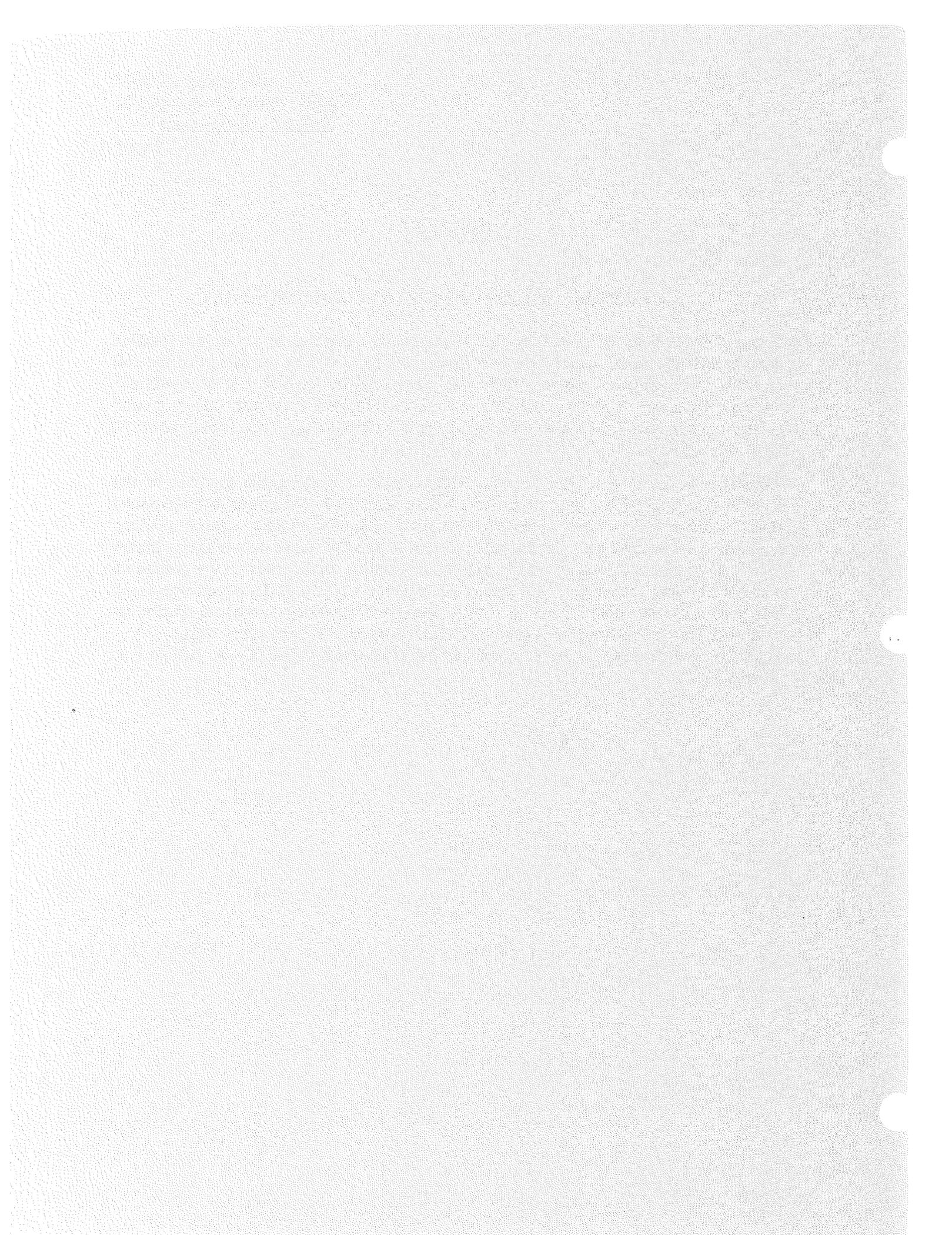
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|----|---|
| 1. | Amend Article 4.13 of the Town's Zoning By-laws to modify density requirements for marijuana establishments. (Select Board) |
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ARTICLE 1

PLANNING BOARD REPORT AND RECOMMENDATION

This warrant article, submitted by the Select Board, proposes to revise the location requirements for marijuana retailers established in Spring 2018 by requiring that the 200 foot distance minimum between retailers at street level be applicable to all marijuana retailers, regardless of where in a building a retailer is located. Previously, above ground or below-ground locations could be exempt from this 200 foot separation requirement.

Although this past spring the Planning Board voted to recommend approval of the marijuana zoning articles, after additional consideration the Board agrees with the Select Board that it would be better if the 200 foot distance applied to all marijuana retailers, regardless of whether the establishment is located at street level, or on a lower or higher floor. Any impacts caused by traffic, parking or queuing on the sidewalk by customers could be the same regardless of the retailer's location in a building. This amendment will help protect the integrity of Brookline's streetscapes and encourage marijuana retailers to be spread throughout Brookline's commercial areas, rather than in the same area. Therefore, the Planning Board recommends **FAVORABLE ACTION** on Article I as proposed.



ARTICLE 1

FIRST ARTICLE

Submitted by: Select Board

To see if the Town will amend §4.13 of the Town's Zoning By-law (Marijuana Establishments) by deleting §4.13.5.E.5 and replacing it with the following (language to be deleted ~~struck out~~, language to be added underlined and bolded):

E. Additional Location Requirements for Marijuana Establishments

~~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.~~

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. (applicable to uses 29A and 29B)**
- b. Measured from lot boundary to lot boundary.**

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

At the Annual Town Meeting in spring 2018, Town Meeting approved Article 17 allowing recreational marijuana retailers and a variety of other related marijuana uses. Under the section of the Zoning By-Law that relates to the allowed locations of marijuana retailers (both storefront and social consumption retailers, if the latter are allowed in the future), retail establishments are required to be located at least 200 feet apart as the crow flies. An exception to the 200-foot rule was made for retailers who were not located on the street level based on the premise that the vibrancy of the streetscape would not be negatively impacted if a storefront were located below or above street level. After further consideration, some members of the Select Board believe that it would be better for the 200-foot minimum to be applicable for all marijuana retail establishments regardless of what floor the establishment is located. This approach is consistent with our overriding goals of minimizing the concentration of marijuana retailers in any one block, reducing traffic and queueing impacts to pedestrians and the surrounding neighborhood, and distributing marijuana retailers more broadly throughout the town.

SELECT BOARD'S RECOMMENDATION

Article 1 of the November 13, 2018 Special Town Meeting seeks to modify the zoning by-law regulating the location of marijuana establishments. Last spring, the Town concluded its zoning moratorium when Town Meeting adopted a series of articles that regulated the location and other aspects of marijuana establishments. In addition to establishing the areas of town where marijuana establishments could locate by special permit, the by-law precluded retail establishments from being 200 feet from one another "if any portion of the establishment is located at street-level". The Town has been approached by two marijuana establishments that have secured retail space along Commonwealth Avenue. The location of these establishments are within two hundred feet of one another, but one of the establishments is located on the second floor (not at street-level). Therefore, the 200 foot provision does not apply. Select Board Member Neil Wishinsky proposed that an article be submitted to Town Meeting to close this "loophole" so that no retail marijuana store may be located within 200 feet of each other, regardless of whether one is at street level or not. A majority of the Board believes that increased traffic and demand for parking is not within the Town's control, even with licensing provisions and that these increased traffic and parking demands can more effectively be lessened by licensing one retailer in an area. This approach is consistent with the Town's goals of minimizing the concentration of marijuana retailers in any one block and distributing marijuana retailers more broadly throughout the town.

By a vote of 3-2, the Select Board recommends favorable action on this article.

Members opposed to this article felt that the regulatory process required for receipt of a special permit and the licensing process, also adopted by Town Meeting in May, provides

the Town with the tools necessary to respond to the traffic, congestion, and access concerns that typically accompany new retailers' applications to do business in Brookline. The minority of the Board also expressed concern about making changes to a zoning article that is one component of a complex and multi-layered system designed to regulate this new industry – zoning, security, testing, and licensing regulations exist in town and state law. The two Board Members worry that making what is today perceived as a small change could have unintended consequences in the future.

It should be disclosed that, regardless of how this article is voted, the owners of the properties on Commonwealth Avenue have taken legal action necessary to insulate them from any prospective zoning change. As a result, these properties are “grandfathered” from a zoning change that would prevent them from being located 200 feet from one another. The majority of the Board believes that irrespective of the “grandfathered” status of these owners, the Town should take action to prevent a similar situation from occurring in the future.

On October 23, 2018, the Select Board voted FAVORABLE ACTION on the following motion:

VOTED: That the Town amend §4.13 of the Town's Zoning By-law (Marijuana Establishments) by deleting §4.13 5.E.5 and replacing it with the following (language to be deleted ~~struck out~~, language to be added underlined and bolded):

E. Additional Location Requirements for Marijuana Establishments

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

- d. ~~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.~~
- e. ~~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).~~
- f. ~~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:

November 13, 2018 Special Town Meeting

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- c. A minimum of 200 feet from another Social Consumption Marijuana Retailer issued a primary use license or Storefront Marijuana Retailer. (applicable to uses 29A and 29B)
- d. Measured from lot boundary to lot boundary.

ROLL CALL VOTE:

<u>Aye:</u>	<u>No:</u>
Wishinsky	Franco
Heller	Hamilton
Greene	

*Passed by an Electronic Recorded
Vote of 134 In Favor, 58 Oppose
and 13 Abstentions*

ADVISORY COMMITTEE'S RECOMMENDATION

SUMMARY:

Article 1 of the Second Special Town Meeting proposes to amend §4.13 of the Town's Zoning By-Law (Marijuana Establishments) to remove the exclusion of establishments above or below street level from the requirement that establishments be 200 feet apart. By a vote of 14-4-0, the Advisory Committee recommends Favorable Action.

BACKGROUND:

Article 1 was submitted by the Select Board. It proposes to amend the Zoning By-Law to further discourage the concentration of Marijuana Establishments in a single block or area of Brookline.

The May 2018 Annual Town Meeting approved Article 17 allowing recreational marijuana retailers and a variety of other related marijuana uses. Under the section of the Zoning By-Law that relates to the allowed locations of marijuana retailers (both storefront and social consumption retailers, if the latter are allowed in the future), retail establishments are required to be located at least 200 feet apart. An exception to the 200-foot rule was made for retailers who were not located on the street level based on the premise that the vibrancy of the streetscape would not be negatively impacted if a storefront were located below or above street level.

DISCUSSION:

The Select Board now believes that it would be better for the 200-foot minimum to be applicable for all marijuana retail establishments regardless of what floor the establishment is located on. This approach is consistent with the goals of minimizing the

concentration of marijuana retailers in any one block, and in distributing marijuana retailers more broadly throughout the town.

The reconsideration of this issue was prompted in part by the location of two Marijuana Retail applicants on the same block of Commonwealth Avenue, one of which would be located on the second floor of 1030 Commonwealth Avenue. This Warrant Article will not impact these current applicants, since they filed site plans prior to the filing of this Warrant Article, and the zoning is frozen as of the date of those filings.

Members of the Committee discussed the intent of the Zoning By-Law: to preserve the street-level character of retail areas and avoid the development of a marijuana "district." It was thought that removing the above and below street level exemption from the distance restrictions for Marijuana Establishments will encourage the distribution of these establishments more broadly throughout the town.

RECOMMENDATION:

By a vote of 14-4-0, the Advisory Committee recommends FAVORABLE ACTION on the motion offered by the Select Board under Article 1 of the Second Special Town Meeting.

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BOARD OF SELECTMEN

Neil A. Wishinsky, Chair
Benjamin J. Franco
Nancy S. Heller
Bernard W. Greene
Heather Hamilton

ADVISORY COMMITTEE

Sean Lynn-Jones, Chairman

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