

Article 7: Increase the Cap on Marijuana Retailers by Two for Equity Applicants

Recommendation: No Action by a vote of 1-7 with no abstentions

Executive Summary:	The Select Board would like to diversify the local cannabis industry and proposed this expansion of the current cap on retailers to achieve this goal. The subcommittee discussed whether an expansion would be effective in achieving the diversity goal, comparing the Select Board Social Equity Policy with similar provisions in State law which prioritize minority ownership, and whether the Select Board was likely to be effective in allocating new licenses to advance equity goals. The final recommendation was for No Action.
Voting Yes will...	Allow the board to license two new Marijuana Retailers provided that such applications comply with the Board's Equity Applicant policy.
Voting No will...	Leave the current cap on Marijuana Retailer licenses unchanged.
Financial impact	Adding additional Marijuana Retailer licenses would increase Town tax revenue; it would also likely increase staff and enforcement costs.
Legal implications	None.

Introduction

Town of Brookline Bylaw 8.37.3 caps the number of Marijuana Retailer licenses at 20% of the number of liquor licenses for off-premises alcohol consumption, rounded up. Currently the town has issued 19 of off-premises liquor licenses, and so the number of Marijuana Retailer licenses is capped at 4.¹ As affirmed by a member of the subcommittee, who chaired the Select Board at the time, the Town's initial Marijuana Retailer licenses were issued on a first come first serve basis, and the Select Board at the time felt they would put the Town in legal jeopardy if they attempted to issue licenses that allowed other applicants to jump ahead. As a result, there is broad agreement that the current set of Marijuana Retailer licenses do not meet the Town's goals for diversity or social equity.

The current Select Board would like to remedy this lack by raising the cap to allow the issuance of new additional Marijuana Retailer licenses, specifically earmarked to Equity Applicants, as defined by Select Board policy. Much discussion in the subcommittee focused on details of the Social Equity Policy adopted by the Select Board, with subcommittee members opining that the current policy was unlikely to be effective in meeting the Select Board's equity goals. The current Select Board's Equity Policy (See Appendix) does not require that the majority ownership of the entity be made up of individuals who qualify as equity applicants. This means that the current license holders could qualify for an equity license. The committee also raised the concern that the qualification for an equity license was not fixed in the bylaw and could be

¹ The Town is authorized by the State to issue up to 24 off-premises liquor licenses; if 1 or more additional liquor licenses were issued, the cap of Marijuana Retailers would rise from 4 to 5.

changed in unfavorable ways by a future Select Board. A subcommittee member pointed to the provisions in the State Cannabis Control Commission’s “Economic Empowerment Priority Applicant” definition and the “Social Equity Program” eligibility criteria (for both, see Appendix) as preferable to the current Select Board policy, with the added requirement that “Social Equity Program” applicants hold a majority ownership in the entity making the application for an equity license. Monique Baldwin, the Town’s Cannabis Licensing and Mitigation Coordinator, responded that the goal of the Select Board policy was to allow Brookline-specific priorities and goals to be reflected in the policy (for example, preference given to Brookline residents), which wholesale adoption of a State definition would not allow.

Evaluation Methodology/Research

- Monique Baldwin, the Town’s Cannabis Licensing and Mitigation Coordinator provided responses to subcommittee questions.
- If this article passes, the current limit of 4 Marijuana Retailer licenses would be increased to 6, subject to applicants meeting the Equity Applicant policy (attached).
- Minority-ownership of a majority of the business is considered as one of the factors in the State “Economic Empowerment Priority Applicant” definition in 935 CMR 500; this is not included as a factor in the current Select Board Equity Applicant policy.
- Marijuana Retailer licenses are not transferable. The Host Community Agreement for an Equity Applicant would include provisions to ensure their Equity Applicant status is maintained.
- Current Marijuana Retailer licensees are required to submit an annual diversity plan to the Town’s Office of Diversity Inclusion and Community Relations, and follow up with the ODICR 30 days after.
- The subcommittee inquired about possible sites for the proposed additional Marijuana Retailers licenses, but did not get an answer.
- This warrant article affects part (a) Storefront Marijuana Retailers only; the number of Marijuana Delivery Operators, Social Consumption Marijuana Retailers², or Marijuana Couriers would not be affected.
- The Cannabis Control Commission regulations that included established equity programs were issued two months prior to Town Meeting approving Brookline’s Retail Cannabis regulations.

Discussion

Thirteen members of the public contributed comments, universally opposed to increasing the number of Marijuana Retailer licenses in Town. Mary Minott, a social worker at the Brookline High School and Program Coordinator for the Substance Abuse and Violence Prevention for Youth program of the Brookline Health Department, testified that 25% of substance abusers had tried marijuana, with 10% of them “heavy users”. Minott said that Brookline’s vulnerable students are most likely to get into “heavy use”, and that more retailers would create more use by students. Kate Silbaugh asked that new Marijuana Retailer licenses be a “last resort,” not a first resort, when attempting to remedy equity issues. She stated that there is a lot of room for improving the equity opportunities with current license holders. Richard Strock said that Marijuana was presented as a social equity issue, but it has failed to live up to those promises. A

² Not yet approved by Town or State.

number of commenters asked for a “comprehensive study” to come up with an alternative plan to address equity issues with Marijuana Retailers in Town. According to a member of the subcommittee, opposing warrant article 7 was not an objection to social equity, it was saying that issuing two new licenses doesn’t advance that goal, echoing the call for a “comprehensive study” which included a review of the existing Host Community Agreements. Another member of the subcommittee opined that the Marijuana Delivery Operator or Marijuana Courier categories of Marijuana Establishment licenses were a more appropriate place to pursue equity goals.

There was an extensive discussion concerning the Select Board’s policy lacking a requirement for majority ownership of qualified equity-applicants. This lack of majority ownership could allow applicants that are similar to the existing license holders from qualifying for an equity cannabis license.

This article amends the same section of the bylaws as Warrant Article 8, and a combined text for both is given in the appendix to this report. If both are approved, the net effect will be to increase the current number of Marijuana Retailer licenses by 1 (rather than 2), and a town-wide vote would not be required to implement the provisions of Warrant Article 8. Further discussion is in the report for Warrant Article 8.

Recommendation

On a motion for favorable action on Warrant Article 7, the vote was:

Ridruejo	N
Wishinsky	N
Pollak	N
Selwyn	N
Warren	N
Pehlke	N
Ananian	Y
Kanes	N

The subcommittee recommends **NO ACTION** on Warrant Article 7.

Appendices:

1. Select Board Marijuana Retailer Equity Policy



Town of Brookline M A S S A C H U S E T T S

MARIJUANA RETAILER EQUITY POLICY

(Voted: August 31, 2021)

1. Purpose

The Select Board seeks to further the public interest by encouraging diversity in the local cannabis industry. Toward that end, it is seeking approval from the November 2021 Special Town Meeting to raise the Marijuana Retailer Select Board license cap set forth in General By- Law Art. 8.37 to make available two (2) additional Marijuana Retailer licenses for Equity Applicants (as defined below), and adopts this Marijuana Retailer Equity Policy ("Policy") in tandem with that effort.

This Policy is intended to provide opportunities for local and diverse applicants for Select Board Marijuana Retailer licenses who wish to establish a Marijuana Retail Establishment within the Town of Brookline. Further, this Policy establishes the procedures for Equity Applicants to apply for a Host Community Agreement with the Select Board.

2. Definitions

Marijuana Retailer - As defined or amended by 935 CMR 500, an entity licensed by the Massachusetts Cannabis Control Commission to purchase, repackage, white-label, and transport Marijuana or Marijuana Product from Marijuana Establishments and to transfer or otherwise transfer this product to Marijuana Establishments and to sell to consumers.

Equity Applicant - Individuals or entities that have received one of the following:

- CCC Economic Empowerment Status
- CCC Social Equity Status

3. Host Community Agreements and Brookline Resident Prioritization

With respect to the two additional Marijuana Retailer licenses described above, the Town will exclusively accept and consider applications for Host Community Agreements from Equity Applicants. Further, Equity Applicants for Host Community Agreements that are also Brookline residents will receive priority processing (processed ahead of non-Brookline residents).

4. Transfers and Changes in Ownership

An Equity Applicant for a Host Community Agreement under this Policy who undergoes a transfer or change in ownership to a non-Equity Applicant loses eligibility to proceed as an Equity Applicant in the event the transferee/successor company does not qualify for a Host Community Agreement under this Policy.

5. Procedure

Following the posting of an available Marijuana Retailer license on the Town's website, applicants are required to complete and submit the Request for Marijuana Retailer Host Community Agreement for Equity Applicants with the following required supporting documents:

1. Evidence of CCC Social Equity/Economic Empowerment status or Commonwealth of Massachusetts DBE status;
2. Evidence of a zoning-compliant location of the proposed Marijuana Establishment (see the Town's Zoning By-Law) and the applicant's legal control of the premises:
 - a. Lease, or
 - b. Letter of intent signed by a property owner to enter into a lease with the applicant for the location, or
 - c. Title;
3. Required operating policies and procedures
 - a. Traffic Management Plan
 - b. Security Plan
 - c. Diversion Plan
 - d. Diversity Plan
4. Evidence of current Brookline residency (to receive priority processing)
 - a. Lease, or
 - b. Utility bill, or
 - c. Bank Statement
5. Complete supporting documents include site plans and plan sets that are certified by a design professional such as an architect, engineer or land surveyor (and that show compliance regarding required zoning buffer zones) and floor plans that indicate square footage.

2. Cannabis Control Commission policies

935 CMR 500.002

Economic Empowerment Priority Applicant means an applicant who, as an entity or through an individual certified by the Commission in 2018, meets and continues to meet three or more of the following six criteria, at least one of which shall be a majority-equity-ownership criterion:

1. Majority-equity-ownership Criteria:
 - a. A majority (more than 50%) of ownership belongs to people who have lived for five of the preceding ten years in an Area of Disproportionate Impact, as determined by the Commission.
 - b. A majority (more than 50%) of ownership has held one or more previous positions where the primary population served were disproportionately impacted, or where primary responsibilities included economic education, resource provision or empowerment to disproportionately impacted individuals or communities.
 - c. A majority (more than 50%) of the ownership is made up of individuals from Black, African American, Hispanic or Latino descent.
2. Additional Criteria:
 - a. At least 51% of current employees or subcontractors reside in Areas of Disproportionate Impact and by the first day of business, the ratio will meet or exceed 75%.
 - b. At least 51% of employees or subcontractors have drug-related CORI and are otherwise legally employable in Cannabis enterprises.
 - c. Other significant articulable demonstration of past experience in or business practices that promote economic empowerment in Areas of Disproportionate Impact.

This Applicant has priority for the purposes of the review of its license application.

Social Equity Program

(b) Eligibility for the Social Equity Program shall be met if applicants or Licensees satisfy ***one or more*** of the following criteria:

1. Income does not exceed 400% of Area Median Income and Residency in an Area of Disproportionate Impact, as defined by the Commission, for at least five of the preceding ten years, as established by:
 - a. A Massachusetts driver's record or Massachusetts ID card record;
 - b. A signed lease agreement that includes the subject's name;
 - c. Residential property deed that includes the subject's name;
 - d. School records;
 - e. Housing authority records;
 - f. Banking records;
 - g. Utility bills, which identifies energy and water use; or
 - h. Dated notices or correspondence from a local or state government entity that includes the subject's name.

2. Residency in Massachusetts for at least the preceding 12 months and a conviction or continuance without a finding for an offense under M.G.L. c. 94C or an equivalent conviction in Other Jurisdictions; or
3. Residency in Massachusetts for at least the preceding 12 months and proof that the individual was either married to or the child of an individual convicted or continuance without a finding for a M.G.L. c. 94C offense or an equivalent conviction in Other Jurisdictions.
4. Any individual listed as an Owner on the original certification of an Economic Empowerment Priority Applicant who satisfies one or more the following criteria:
 - a. Lived for five of the preceding ten years in an Area of Disproportionate Impact, as determined by the Commission;
 - b. Experience in one or more previous positions where the primary population served were disproportionately impacted, or where primary responsibilities included economic education, resource provision or empowerment to disproportionately impacted individuals or communities;

3. COMBINED BYLAW IF WA7 AND WA8 ARE BOTH APPROVED

Blue is WA7; Red is WA8

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~~ down to the nearest whole number in the event the number is a fraction: a) Storefront Marijuana Retailers, b) Marijuana Delivery Operators, c) Social Consumption Marijuana Retailers, and d) Marijuana Couriers. The foregoing sentence shall not affect the validity of licenses outstanding as of its effective date. **The Select Board may increase the foregoing limitation in (a) by two (2) as to Storefront Marijuana Retailers in the event it is granting the additional license(s) to an Equity Applicant as defined in a Select Board policy or regulation then in effect.**