

Article 8: Round Down when Calculating Allowed # of Marijuana Establishments

Recommendation: No recommendation (4-4-0 split vote)

Executive Summary:	The petitioners would like to reduce by 1 the number of Marijuana Establishment licenses in Town by replacing language which “rounds up” to “round down”. State law (MGL 94G s.3 (a)(2)(ii)) would likely require a Town-wide vote to ratify this change for Storefront Marijuana Retailers. The subcommittee reviewed the legal issues involved and whether the change proposed was likely to be impactful. The committee’s vote was split, and so it made no recommendation on the article.
Voting Yes will...	Decrease the cap on Marijuana Retailer Licenses from 4 to 3 (although the 4 current license holders would keep their licenses) after a Town-wide vote to approve the change. If Warrant Article 7 were also to pass, it would cause the effective cap to be 5 (rather than 6) and a Town-wide vote would not be required.
Voting No will...	Make no change in the existing caps on Marijuana Establishment licenses
Financial impact	Reducing the number of Marijuana Establishment licenses would be expected to reduce Town revenue but also reduce Town staff and enforcement expenditures; this effect would however be delayed until one of the current Storefront Marijuana Retailer licensees were to give up their license.
Legal implications	State law requires a town-wide vote to ratify this change under certain circumstances.

Introduction

Town of Brookline Bylaw 8.37.3 caps the number of Marijuana Establishment 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 Storefront Retailer licenses (bylaw category (a)) is capped at 4. This bylaw proposes to *round down* instead, which would cap the number of licenses at 3. Existing licensees would keep their licenses, however,¹ so the number of Storefront Marijuana Retailers in Town would remain at 4.

The Town is authorized by the State to issue up to 24 off-premises liquor licenses. If 2 or more additional off-premises liquor licenses are issued, this article would keep the number of Storefront Marijuana Retailer licenses at 4, instead of having it increase to 5.

Due to the provisions of state law, a Town-wide vote would likely be required to approve this change.

Evaluation Methodology/Research

¹ Town Counsel opined that attempting to rescind granted licenses would likely result in legal challenge.

- Monique Baldwin, the Town’s Cannabis Licensing and Mitigation Coordinator provided responses to subcommittee questions.
- [MGL chapter 94G section 3 \(a\)\(2\)\(ii\)](#) require a bylaw to be submitted to the Town voters for approval if it would “limit the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138”. Rounding down would cause the limit to be fewer than 20% in some cases, and thus would in the opinion of Town Counsel require a Town-wide vote (unless Warrant Article 7 were also passed).
- There are four categories of Marijuana Establishment Licenses; this change would affect all of them. The Town has granted [XX] licenses in the Marijuana Delivery Operator category and (as discussed) 4 licenses in the Storefront Marijuana Retailer category, but has not yet granted licenses in any of the other categories.

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. Parents of Brookline High School students relayed that marijuana use was “astounding”, “incredibly disturbing”, “alarming”, and “out of control” and that the Town’s message was “let’s get high together as a community”.

The subcommittee discussed the legal requirements which may mandate a Town-wide vote to approve this bylaw change. The committee felt that the modest change enacted by this article (reducing the cap but not the current number of Storefront Marijuana Retailer licenses) was potentially not worth the trouble and expense of a Town-wide election. The petitioner and some subcommittee members felt the expense would be modest if it were combined with the annual Town election, and that the reduction in the cap was “worth it”.

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, and a town-wide vote would not be required to implement the provisions of this article.

Recommendation

On a motion for favorable action on the petitioner’s amended language for WA 8 (see appendix) the vote was 4-4-0:

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

The split vote meant the motion was not passed, and therefore there is no recommendation.

Petitioner’s language for 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.

See the report on WA7 for a combined text illustrating the result if both WA7 and WA8 are passed.