

ARTICLE 17

ADVISORY COMMITTEE’S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on Article 17, as amended by the Advisory Committee, by a vote of 15-1-7

Executive Summary:	<p>Article 17 proposes two changes to the Town By-Laws regulating Marijuana:</p> <ul style="list-style-type: none"> • Amend Section 8.37.4 to allow the Select Board to issue 2 additional Storefront Cannabis Retailer licenses for Equity Applicants as defined by the Select Board Cannabis Equity Policy • Amend Section 8.37.2 (Definitions) to include a definition for cannabis and, in Section 8.37.4, change references to marijuana to cannabis
Voting Yes will...	<ul style="list-style-type: none"> • Grant the Select Board the authority to issue up to 2 additional Storefront Cannabis Retailer licenses to equity applicants • Change marijuana to cannabis in Section 8.37.4 of the Town By-law and insert a definition for cannabis in Section 8.37.2
Voting No will...	<p>Retain the existing number of retail storefront licenses and limit equity applicants to the available licenses for marijuana delivery operators or marijuana couriers.</p>
Financial impact	<p>If Brookline were found to be out of compliance with the state Cannabis Equity law, the Town could be fined the annual total community impact fees received. In FY22, the total amount collected was \$1.86M.</p>
Legal implications	<p>Per Town Counsel, Brookline’s obligation under the new state law is for the Town to establish policies and procedures to promote and encourage full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and to adhere to regulations promulgated by the state. The state has not yet promulgated the regulations describing the full extent of this obligation.</p> <p>However, Town Counsel believes there is a risk that the current storefront marijuana retailer license distribution – wherein only 4 such licenses are allowed and all have already been issued – will be ruled a failure to meet this obligation even though the Town has a social equity policy in place. Failing to meet this obligation could subject the Town to monetary penalties equal to the annual total of community impact fees received from all the Town’s marijuana establishments.</p>

Introduction

Warrant Article 17 seeks to diversify the local cannabis industry by increasing the cap of available Cannabis Retail licenses by 2 for equity applicants as defined by the Select Board’s Cannabis Equity Policy. WA 17 also seeks to insert a definition for cannabis into the By-law and replace marijuana with cannabis in Section 8.37.4 of the Town’s By-laws.

In August 2022, Massachusetts became the first state to mandate full participation in the legal cannabis industry by communities that have been disproportionately harmed by marijuana prohibition and enforcement. The state established a Social Equity Program to provide technical assistance and training and a Cannabis Equity Trust Fund. The Trust Fund is financed with 15% of recreational marijuana tax revenues and provides funding to Social Equity Program Participants. To comply with the new state law, the Select Board adopted a Cannabis Equity Policy to provide opportunities to local and diverse applicants for Marijuana Establishment licenses within Brookline. Specifically, the policy states the Select Board will exclusively accept and consider applications for Marijuana Establishment licenses from equity applicants for the next 3 years. An equity applicant is defined as an individual or entity that has received either Economic Empowerment Status or Social Equity Status from the state’s Cannabis Control Commission.

	Proposed or Adopted Language	Time in Effect
Article 17	The Select Board may increase the foregoing limitation in (a) by two (2) as to Storefront Cannabis Retailers in the event it is granting the additional license(s) to an Equity Applicant as defined in a Select Board Cannabis policy or regulation then in effect.	In perpetuity or until by-law is modified by Town Meeting
Select Board Cannabis Equity Policy	For any available Marijuana Establishment license in any category, the Town will exclusively accept and consider applications for Host Community Agreements from Equity Applicants for the 3 years following the adoption of this policy.	Three years from adoption of policy or April 4, 2026
Ballot Question 3	Limit the number of Storefront Marijuana Retailer licenses to no more than four	In perpetuity or until by-law is modified by Town Meeting

Under the Select Board’s policy, any type of license – Storefront Retailers, Delivery Operators, Couriers and Social Consumption Retailers – would be available to equity applicants exclusively for 3 years. Before the passage of Ballot Question 3, Brookline had 4 Storefront Cannabis Retailer licenses and had awarded licenses to 4 applicants –

NETA, Mission Massachusetts, Sanctuary and Comm Ave Canna. Because of the increase in off-premise liquor licenses, a 5th retail license would have become later this year, but for the passage of Question 3.

Thus, Brookline has only Marijuana Couriers and Delivery Operators licenses available for equity applicants through April 2026. It should be noted that the state (via the Cannabis Control Commission) has also limited Marijuana Courier and Marijuana Delivery Operator licenses to Social Equity Program Participants and Certified Economic Empowerment Priority Applicants for 36 months, starting May 28, 2021, and, per the regulations, “the Commission may vote to extend that period following a determination that the goal of the exclusivity period to promote and encourage full participation in the regulated Marijuana industry by people from communities that have previously been disproportionately harmed by Marijuana prohibition and enforcement of the law has not been met; and the Commission may vote to expand eligibility for Delivery Licenses during the exclusivity period pursuant to 935 CMR 500.050(10)(b)4.” So, until May 28, 2024, any Marijuana Courier or Marijuana Delivery Operator granted a license by the state will be an equity applicant regardless of Brookline’s Select Board policy.

Discussion

Article 17 was created to ensure equity applicants have access to all categories of Marijuana Establishment licenses in Brookline. The petitioner believes that “full participation”, as mandated by state law, includes Storefront Cannabis Retailers and the remaining options - Marijuana Courier and Delivery Operators - do not constitute full participation in Brookline’s cannabis industry.

There are four pieces of legislation or policy that are relevant to the discussion of Article 17:

- Cannabis Equity legislation that establishes a Social Equity Program and the Cannabis Social Equity Trust Fund.
- Subsection f of Section 3 of Chapter 94G which regulates local control of the distribution of recreational marijuana and requires host communities to establish regulations that promote the full participation in the marijuana industry by people who have been disproportionately harmed by marijuana prohibition and enforcement.
- The Select Board’s Cannabis Equity Policy
- Ballot Question 3 which caps Retail Storefront Marijuana Licenses at 4

The Advisory Committee focused its discussion on the legal requirements, financial impacts and potential legal issues related to Article 17 as well as how other towns and cities have approached equity in the cannabis industry. Boston has established an Equity Program and Cannabis Board in its efforts to foster racial equity and inclusion in its local cannabis industry. Boston’s regulations also stipulate the city maintain an “equal or greater number of equity applicant licensees to licensees who do not qualify as equity applicants.” In early 2019, Newton created a process for reviewing marijuana

establishment applicants that includes review by an Advisory Group that considers equity as part of the initial review.

Town Meeting has taken up the issue of equity in Brookline’s cannabis industry several times before. In November 2021, the Select Board filed a warrant article to increase the number of available retail licenses specifically for equity applicants. The subject matter of that article was referred to a Moderator’s Committee.

Since then, the state has passed the Cannabis Equity law that requires host communities to establish policies and procedures that promote the full participation of communities that have been disproportionately harmed by marijuana prohibition and enforcement. To comply with state law, the Select Board recently approved a Cannabis Social Equity Policy that states: “the Town will exclusively accept and consider applications for Host Community Agreements from Equity Applicants for the 3 years following the adoption of this policy.” Under the policy, an equity applicant is defined as an individual or entity that has received Economic Empowerment Status or Social Equity Status by the Cannabis Control Commission. (See the Cannabis Control Commission’s Overview of the Social Equity Program at <https://masscannabiscontrol.com/equity/eea/> for details on eligibility.)

Questions were raised about the legality of authorizing additional licenses after the passage of Question 3 and Town Counsel confirmed Town Meeting has the authority to increase the number of Storefront Retail Cannabis licenses. Reducing the number of licenses to below 20% of the number of liquor licenses for off-premise consumption requires approval of the voters, but an increase does not.

Although the Town has policies and procedures that promote participation from disproportionately affected communities, Town Counsel does believe there is a risk that the current storefront marijuana retailer license distribution – wherein only 4 such licenses are allowed and all have already been issued – will be ruled a failure to meet this obligation even though the Town has a social equity policy in place. Failing to meet this obligation could subject the Town to monetary penalties equal to the annual total of community impact fees received from all the Town’s marijuana establishments. In FY22, those fees totaled \$1.86M. Fees are expected to decline in future years due to the new limits on community impact fees.

Advisory Committee members support increasing equity and diversity in the local cannabis industry, but, given the vote in favor of capping Retail Storefront Cannabis licenses at 4 and the limited legal and financial impact to the Town, the Advisory Committee amended Article 17 to remove the 2 additional Retail Storefront Cannabis licenses for equity applicants only and retain the language changes that replaced Marijuana with Cannabis.

Evaluation Methodology/Research

- Massachusetts General Laws establishing Cannabis Social Equity Trust Fund and Social Equity Program

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94G/Section14A>)

- Massachusetts General Laws establishing requirement for host communities to establish policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and enforcement
(<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94G/Section3>)
- Select Board Cannabis Equity Policy as voted April 4, 2023 ([https://meetings.brooklinema.gov/OnBaseAgendaOnline/Documents/Downloadfile/4.4.23 Select Board Meeting 1540 Agenda Packet 4 4 2023 5 00 00 PM.pdf?documentType=5&meetingId=1540&isAttachment=True](https://meetings.brooklinema.gov/OnBaseAgendaOnline/Documents/Downloadfile/4.4.23%20Select%20Board%20Meeting%201540%20Agenda%20Packet%204%204%202023%205%2000%20PM.pdf?documentType=5&meetingId=1540&isAttachment=True))
- Massachusetts Cannabis Control Commission Social Equity Program (<https://masscannabiscontrol.com/equity/social-equity-program/>)
- CCC Social Equity Program eligibility requirements (<https://masscannabiscontrol.com/equity/getting-started/>)
- CCC Economic Empowerment Applicants (<https://masscannabiscontrol.com/equity/eea/>)
- Ordinance Establishing Equitable Regulation of the Cannabis Industry in Boston (<https://www.boston.gov/sites/default/files/file/2019/12/Cannabis%20Ordinance%20with%20Criteria.pdf>)
- Newton Host Community Agreement Policy
(<https://www.newtonma.gov/home/showpublisheddocument/40054/637369070957900000>)
- Brookline Annual Town Election Ballot May 2, 2023
(<https://www.brooklinema.gov/DocumentCenter/View/40894/Sample-Ballots-May-2-2023>)
- Annual Town Election Official Results
(<https://www.brooklinema.gov/DocumentCenter/View/41390/Official-Annual-Town-Election-Results-May-2-2023-PDF>)

Meeting Recording:

<https://brooklinema.zoomgov.com/rec/play/SsVbBFWbbqzvHo2qioQcexU3OPvxly8CzG8Qd2YXmGI0R9D9J59cbbSJK7jypcRfLoPTRd1BDXRzJHCG.J1u2XIPzVDRpzknS>

Recommendation: By a vote of 15-1-7, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 17, as amended by the committee.

VOTED:

SECTION ONE

Section 8.37.2 of article 8.37, Marijuana Establishments, is hereby amended in the following ways (additions are in bold, underlined text, and deletions are in bold, stricken text):

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

The Select Board shall **not** issue more **Marijuana Cannabis** Establishment licenses in each of the following categories of **Marijuana Cannabis** 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 Cannabis** Retailers, b) **Marijuana Cannabis** Delivery Operators, c) Social Consumption **Marijuana Cannabis** Retailers, and d) **Marijuana Cannabis** Couriers. ~~The Select Board may increase the foregoing limitation in (a) by two (2) as to Storefront Cannabis Retailers in the event it is granting the additional license(s) to an Equity Applicant as defined in a Select Board Cannabis policy or regulation then in effect.~~

SECTION TWO

Section 8.37.2 of article 8.37, Marijuana Establishments, is hereby amended by inserting after the last paragraph the following new paragraph:

r. Cannabis - Marijuana as defined by this article, Massachusetts General Laws, chapters 94G and 94I, and the regulations promulgated thereunder, as they may be amended.

ARTICLE 17 ADVISORY COMMITTEE VOTES

Article Description	Increase storefront cannabis retail licenses for equity applicants
AC recommendation (Favorable Action unless indicated)	15-1-7
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	N
David-Marc Goldstein	Y

Neil Gordon	Y
Susan Granoff	
Kelly Hardebeck	Y
Amy Hummel	A
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Pam Lodish	Y
Joslin Murphy	
Donelle O’Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	A
Carlos Ridruejo	A
Lee Selwyn	A
Alok Somani	A
Carolyn Thall	A
Christine Westphal	A
Dennis Doughty *	
* Chairperson does not vote except to break a tie	