

ARTICLE 17

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

Recommendation: The Advisory Committee recommends FAVORABLE ACTION on the Silbaugh Amendment to the Vogt Referral Motion by a vote of 13-4-5

| | |
|----------------------------------|--|
| <p>Executive Summary:</p> | <p>The Advisory Committee met on May 31, 2023 to consider the Silbaugh Amendment which would:</p> <ul style="list-style-type: none"> ● Maintain the cap on Retail Storefront licenses at four in accordance with the Ballot Question 3 results ● Leverage an existing committee whose scope is to “consider and recommend measures to ensure that licensing of Marijuana Establishments in Brookline genuinely provides disadvantaged racial, ethnic, or other minority equity applicants and employees with ongoing access to economic opportunity” to continue looking for ways to make retail licensing responsive to equity applicants given the cap. ● Sets the timing of an initial report from the committee to Spring 2024 to allow the committee time for a full review of and response to the Cannabis Control Commission (“CCC”) regulations which are due to be issued in November 2023 <p>The Advisory Committee's recommendation (13-4-5) for FAVORABLE ACTION on the Silbaugh Amendment is based on the following:</p> <ul style="list-style-type: none"> ● Adding Retail Storefront licenses does not guarantee equity in the local Marijuana industry because of other barriers, including existing zoning and regulations. ● Chapter 180 and the (anticipated) new CCC regulations provide a framework and foundation for providing social equity, but-the AC agrees that more may be needed to create the desired equity outcomes in Brookline. ● Referral to an existing committee that is already charged with studying measures that will provide equity applicants with economic opportunity allows for a more comprehensive approach to considering what, if anything, is needed to ensure equity in Brookline’s local Marijuana industry. |
| <p>Voting Yes will...</p> | <ul style="list-style-type: none"> ● Refer the subject matter of Article 17 to the Moderator’s Committee on Recreational Marijuana (“WA 7 Moderator’s Committee”) and set the deadline for a progress report as before the Spring 2024 Annual Town Meeting. ● Maintain the cap on Retail Storefront Marijuana licenses at four |
| <p>Voting No will...</p> | <p>Not refer the subject matter of Article 17 to the Moderator’s Committee on Recreational Marijuana</p> |

| | |
|---|---|
| <p>Legal implications [if any]</p> | <p><i>The perceived legal risk is not affected by the referral motion as it stems from the unavailability of retail licenses</i></p> <p>Under new legislation (Chapter 180 of the Acts of 2022), host communities must (a) establish policies and procedures before July 1, 2023 to promote and encourage full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and (b) adhere to regulations promulgated by the state.</p> <p>To comply with the law, the Select Board has adopted a Cannabis Equity Policy which provides for exclusive access to equity applicants for any available marijuana establishment license for three years.</p> <p>The additional regulations for host communities are being drafted by the Cannabis Control Commission and are due to be finalized in November 2023. Until the regulations are finalized, it is unlikely any host community could be found out of compliance and subject to penalties.</p> <p>Town Counsel believes Brookline could potentially be at risk of being found non-compliant, after the regulations are promulgated, stemming from the unavailability of retail licenses. (See the Discussion section for details)</p> |
| <p>Financial impact [if any]</p> | <p><i>The perceived financial impact is not affected by the referral motion</i></p> <p>The new law subjects host communities to a penalty equal to the annual total of community impact fees received if found out of compliance with the CCC regulations. Because the regulations will not be finalized until November 2023, any financial impact to the Town would not occur until FY24 or after.</p> <p>Chapter 180 also placed limits on host community impact fees and Brookline is renegotiating its Host Community Agreements, so the projected annual fees for FY24 is, as yet, unknown, but estimated to be significantly less than the total collected in FY23 (approx. \$748K)</p> |

Introduction

Warrant Article 17, as amended by the petitioner, seeks to increase the number of licenses available for retail cannabis in Brookline by one and to grant the additional license to an equity applicant as defined in the Select Board Cannabis Social Equity Policy. It also seeks to both insert a definition for cannabis and replace the word “marijuana” with the word “cannabis” in Article 8.37 of the Town’s By-laws.

The Vogt Referral Motion seeks to refer the subject matter of Article 17 to the Select Board “in order to consider other approaches that would be consistent with WA 17’s equity goals” and report its progress to Town Meeting in November 2023.

The Silbaugh Amendment to the Vogt Referral Motion seeks to refer the topic of equity to the existing Moderator’s Committee on Recreational Marijuana (“WA 7 Moderator’s Committee”), maintains the cap on Retail Storefront licenses at 4 and sets a deadline of the Spring 2024 Annual Town Meeting for an initial progress report.

Background

At the time of the Fall 2021 Town Meeting, the Town’s By-Law capped the number of retail cannabis licenses the Town could award at 20% of the number of off-premise liquor licenses. This proportional approach yielded four retail cannabis licenses which, by 2019, had all been awarded to: NETA, Mission Massachusetts, Sanctuary and Comm Ave Canna.

Warrant Articles 7, 8 and 9 submitted to the Fall 2021 Town Meeting were debated together and all pertained to retail marijuana licensing. Warrant Article 7, submitted by the Select Board sought to increase the number of retail cannabis licenses by two for award to social equity applicants. Warrant Article 7 was referred to a moderator’s committee by a vote of 157-yes, 69-no and 7-abstain. Warrant Article 8 sought to “round down” in the event that the proportional calculation resulted in a fractional license. Article 8 failed to pass with a vote of 106-yes, 116-no and 13-abstain. Warrant Article 9 sought to pause licensing until the health and other effects of the legalization of recreational marijuana were better understood. Warrant Article 9 was referred to the Advisory Council on Public Health (ACPH) by a vote of 153-yes, 73-no and 8-abstain.

In Fall 2022, Warrant Article 15 was submitted to Town Meeting and sought to amend Article 8.37.4 of the Town’s General By-Laws to cap the number of retail cannabis licenses to the existing four. Warrant Article 15 was approved by Town Meeting with a vote of 137-Yes, 105-No and 7 abstentions. The Town Meeting vote to cap the number of licenses had the effect of triggering a ballot question requesting voters to either ratify and accept the cap on licenses or reject and invalidate the amendment to the Town’s by-law as approved by Town Meeting.

Ballot Question 3 was included in the May 2023 ballot. Voters ratified the Town Meeting decision to cap the number of retail cannabis licenses to four by a vote of 7,558 for and 4,754 against, or 61.5%-yes, 38.4%-no.

Also in November 2022, Chapter 180 of the Acts of 2022 was signed into law. The intent of this new law was to both promote social equity and to address concerns that host communities were abusing the local community impact fee in their Host Community Agreements (HCA), an agreement into which each retailer must enter in order to be awarded a license. This law establishes incentives and penalties for host communities to promote social equity. The primary incentive is that communities hosting a social equity business receive 1% of the 10.75% excise tax collected by the State (the State keeps the balance of 9.75%) on the gross sales of the social equity business licensed by the host community. Host communities not complying with the regulations are subject to a penalty “... equal to the annual total of the community impact fee.”

To comply with the new law, in April 2023, the Select Board adopted a Cannabis Equity Policy. This policy states that the Select Board will exclusively accept and consider applications for “...any available Marijuana Establishment license in any category from Equity Applicants for the next 3 years.”

A Marijuana Establishment is defined as any type of licensed marijuana related business including but not limited to storefront marijuana retailers, couriers, delivery operators, etc as

defined in 935 CMR 500, as amended. 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](#) for details on eligibility)

Absent the cap instituted by the passage of Ballot Question 3, a 5th retail license is likely to have become available in late 2023. Brookline still has five Marijuana Couriers and five Delivery Operators licenses available and set aside exclusively for equity applicants through April 2026.

Discussion

The petitioner of Article 17 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.

The Chapter 180 of the Acts of 2022, Article 8.37 of the Town’s by-law as ratified by the voters in May 2023 and the Select Board Cannabis Equity Policy are relevant to the understanding and discussion of Warrant Article 17. 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.

What about Ballot Question 3 in May 2023?

Ballot Question 3 was triggered by the Fall 2022 Town Meeting vote to cap the number of retail cannabis licenses at the existing four and was included in the May 2023 ballot. Voters ratified the Town Meeting decision to cap the number of retail cannabis licenses to four by a vote of 7,558 for and 4,754 against, or 61.5%-yes, 38.4%-no.

Town Counsel confirmed that despite the voters ratifying the Town Meeting vote to cap the number of retail cannabis licenses to four, subsequent Town Meetings have the authority - without triggering a ballot question - to increase the number of retail licenses. Only a cap or reduction in licenses below the 20% threshold requires approval by the voters.

| | Proposed or Adopted Language | Time in Effect |
|-------------------------------------|--|---|
| Article 17, Petitioner’s language | 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 | Limits the number of Storefront Marijuana Retailer licenses to no more than four | In perpetuity or until by-law is modified by Town Meeting |

What are other Host Communities doing?

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.” Boston has one Retail Cannabis Storefront owned by a Social Equity program participant and Newton has awarded one delivery operator license to a Social Equity applicant. Newton’s process for reviewing all marijuana establishment applicants includes a review by an Advisory Group that considers equity as part of the initial review.

What is the risk that Brookline will be non-compliant with the new law promoting social equity?

Chapter 180 calls for host communities to (a) establish policies and procedures by July 1, 2023 to promote and encourage full participation in the regulated marijuana industry by people from communities that have been disproportionately harmed by marijuana prohibition and (b) adhere to regulations promulgated by the state.

By adopting a Cannabis Equity Policy, the Select Board has already complied with the requirement for host communities to establish policies and procedures that promote social equity in the local cannabis economy. This policy can be amended, as needed, to comply with additional regulations and requirements. Currently, the policy provides for exclusive access to the licensing process to equity applicants for any available marijuana establishment license, not just storefront retail, for three years.

The Cannabis Control Commission (CCC) has been tasked with creating and promulgating regulations by November 9, 2023. The regulations will provide a more robust framework that clarifies what host communities must do to comply with Chapter 180. Because the regulations will not be finalized until November 2023, Brookline or any host community could not be found out of compliance with the regulations and no penalties could reasonably be imposed until after the regulations are promulgated.

Although Brookline has set aside five courier and five delivery operator licenses for social equity applicants, Town Counsel believes that Brookline could potentially be at risk of non-compliance stemming from the unavailability of retail licenses. The State has mandated courier and delivery operator category of licenses be preferentially awarded to social equity applicants for a period of three years. Therefore, this category of license would not be considered when determining compliance. The result is that Brookline, having issued all four available retail cannabis licenses and with only courier and delivery operator category of licenses available to award, could be found to be non-compliant.

Failing to adhere to the regulations could subject the Town to monetary penalties equal to the “annual total of community impact fees received from all the Town’s marijuana establishments.” As noted above, it is unlikely that any penalties would be imposed until the regulations are finalized. Chapter 180 also placed limits on host community impact fees and Brookline is renegotiating its Host Community Agreements, so the projected annual fees for FY24 is, as yet, unknown, but estimated to be under significantly less than the total collected in FY23 (approx. \$748K).

Advisory Committee Action

The Advisory Committee supports increasing equity and diversity in the local cannabis industry, respects the vote on Ballot Question 3 and believes referring Article 17 to the existing Moderator’s Committee on Recreational Marijuana is the best way to ensure Brookline develops a comprehensive approach to equity, and complies with Ch. 180 and upcoming CCC regulations. It leverages the work the Moderator’s Committee has already done to understand the economics, barriers to entry and best practices in the marijuana industry and reinforces the vote of the November 2021 Town Meeting which charged the committee with developing recommendations on creating greater equity and opportunity in the local Marijuana industry.

The AC also believes the timing of the initial progress report as set by the amendment - Spring 2024 Annual Town Meeting - ensures the Moderator’s Committee has time to fully review the CCC’s regulations and consider approaches to creating greater opportunity for social equity applicants that align with those regulations and incorporate best practices developed by other host communities.

The Advisory Committee revisited the legal risk and financial impacts and believes it unlikely that Brookline could be found non-compliant with penalties before the CCC’s regulations are finalized in November 2023.

Recommendation: By a vote of 13-4-5, the Advisory Committee recommends FAVORABLE ACTION on the Silbaugh Amendment to the Vogt Referral Motion

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%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>)