

**Joint Public Hearing Licensing Review Committee and Planning Board
January 24, 2018**

A meeting of the Licensing Review Committee was held on Thursday, January 18, 2018 at 8:30 a.m. The meeting followed all the guidelines of the Open Meeting Law.

In attendance:

Licensing Review Committee: Ben Franco (Co-Chair); Bernard Greene (Co-Chair); Lea Cohen; Anne Meyers; Tom Gallitano

Planning Board: Steve Heikin (Chair); Robert Cook; Linda Hamlin; Mark Zarrillo

Absent:

Licensing Review Committee: Peg Senturia

Planning Board: James Carr; Blair Hines; Matthew Oudens

Also present: Tracey Michienzi (Paralegal); Patty Correa (First Assistant Town Counsel); Pat Maloney (Health); Dr. Swannie Jett (Health); Francisco Torres (Planning); Ashley Clark (Planning); Paul Cullinane (Police); Daniel Carroll (Fire); Jennifer Dopazo Gilbert (Attorney for NETA); Amanda Rossitano (NETA); Norton Arbalaez (NETA); Donelle O'Neil, Sr. (Interested Party); Kaylee (Interested Party); Sharleigh O'Hale (Brookline Interactive Group); Rita Baker (Interested Person); Lynda Roseman (Interested Person); Kim Smith (Interested Person); Erica Woloszynski (Interested Person); Chris Post (Interested Person); Jonathan Lau (Interested Person); Janice Kahn (Interested Person); M. G. Murphy (Interested Person); Sean Chang (Interested Person); Kea van der Ziel (Interested Person); Regina Frawley (Interested Person); Westley Chin (Interested Person); Jonathan Tinker (Interested Person); Linda Olson Pehlke (Interested Person); Barbara Scotto (Interested Person); Beth Kates (Interested Person); Micky Simpson (Interested Person)

The public hearing began with the Chairs of both the Licensing Review Committee and the Planning Board introducing the members in attendance. They explained to the public that the purpose of this meeting is to explain the proposed warrant articles and take public comments prior to filing them.

First Assistant Patty Correa began by discussing the legal and regulatory framework. She informed the attendees that there is a comprehensive recreational marijuana page that is located in the Planning Department section of the Town website. This webpage has links to the new recreational marijuana law and a link to the site of the Massachusetts Cannabis Control Commission (known as the CNB; the CNB explained that the "CCC" acronym is used by Cape Cod Community College). The Massachusetts Cannabis Control Commission is the new State agency that will be licensing and regulating at the state level the various categories of marijuana businesses established by

the referendum. She reviewed the background for the issues, beginning with medical marijuana, which was approved by the voters of the state in 2012 with local regulations approved in 2014.

First Assistant Correa then discussed the background of recreational marijuana. In 2016, sixty percent of Brookline residents voted in favor of legalizing recreational marijuana. The law that was approved by the voters created the CNB and allowed the licensing of four distinct types of licensed businesses (cultivation, manufacturing, testing and retail). Subject to any restrictions established by the State scheme, municipalities can adopt local by-laws that regulate recreational marijuana on the local level. This includes by-laws that impose reasonable safeguards on the operation of marijuana establishments and that govern the time, place or manner of marijuana establishments. Other potential by-laws, banning a type of use and placing a lower limit on the number of retailers below 20% of package store liquor licenses, are allowed subject to approval by both town meeting and a town-wide vote. An amendment to the ballot initiative passed by the legislature in 2017 grandfathered local restrictions or limitations on medical or recreational marijuana establishments that were in effect prior to July 1, 2017. This amendment also extended the timeline for the CNB to issue regulations and licenses. The CNB's due date for its final regulations is now March 15, 2018, although it has announced that it intends to file them a bit earlier. The CNB will begin accepting applications for licenses on April 1, 2018. It can begin issuing licenses as early as June 1, 2018. She said that the regulations provide for priority application review by the CNB for existing medical marijuana dispensaries, which would include NETA.

First Assistant Correa then discussed the CNB's draft regulations. She said that the CNB will be holding public hearings on them during the first full week of February. She advised that those wishing to attend them should go to the CNB website for more information. She anticipates that the Town's deadline to file its warrant articles is prior to when the CNB will post its final regulations. First Assistant Correa said that the draft regulations include two significant provisions relevant to local regulation. The first is language copied from the Department of Public Health's medical marijuana regulations stating that nothing in the state regulations prohibits local regulation that does not interfere with the state regulatory scheme. This should permit the Town to establish a local licensing scheme for marijuana establishments. The second is language providing for a sixty-day window from when the CNB notifies a municipality of an application to conduct business there for the municipality to inform the CNB of any local by-laws in effect that render a license application non-compliant with local law.

First Assistant Correa then turned to the three proposed by-laws that are the focus of the tonight's public hearing. She explained that to in order to have measures in place by the time the CNB may begin issuing licenses, Town Meeting must decide on measures at the May Annual Town Meeting. She explained with regard to the presentations that evening that the Planning Department will review its outreach efforts and the zoning by-law proposal, and she will review the other proposals that are not related to zoning. First Assistant Correa explained the reasons for proposing both zoning and general by-law measures. When the Town was preparing for medical marijuana, the Town took a similar

approach by adopting a “boots and suspenders” approach that included both a zoning by-law with a special permit scheme and a general by-law with a Select Board local licensing scheme. She said that the regulatory-type provisions included in the drafts that are for comment tonight were largely drawn from the NETA Select Board license conditions, with a few minor deletions and additions, which she reviewed. She stated that the goal is to make special permitting and licensing subject to the business’s compliance with the regulatory provisions in order to provide a local oversight mechanism in addition to state oversight, consistent with the approach taken by the Town with regard to medical marijuana.

First Assistant Correa explained the language on the cap on marijuana retailers proposed by the draft warrant articles. The proposed cap is 20% of the number of the Town’s package store licenses, which is the minimum the Town could set without needing approval in a Town-wide vote under the law. This would mean 4 or 5 marijuana retailer licenses, depending on the number of package store licenses outstanding. The Town Moderator has determined that a motion at Town Meeting to raise or eliminate the cap would be within the scope of the original article. However, a motion to decrease the cap or establish a ban would not be within the scope of the original article. Therefore, the Licensing Review Committee, in conjunction with Town Counsel’s Office and the Planning Department, has worked on drafting a separate warrant article proposing a motion to decrease the cap, in order to afford Town Meeting options without running into scope issues. If the motion to set a lower cap passes at Town Meeting, the new cap language would still have to be put to a town-wide vote. First Assistant Correa said that there are two pieces pertinent to the cap in the drafts. The first is that the zoning by-law draft cap language proposes a ceiling on the number of retailers of 20% of package store licenses. That cap would go into effect immediately upon favorable action in May pursuant to Massachusetts General Laws Chapter 40A, Section 5, in time for the beginning of CNB licensing as early as June 1. In addition, the special permit section of the proposed zoning by-law says that issuance of special permits is subject to any cap set by the general by-laws. That number will be debated at Town Meeting.

First Assistant Correa then explained the warrant article proposing a general by-law that would establish a Select Board local licensing scheme for marijuana establishments. This by-law would create licensing rules and procedures similar to what the Town established for medical marijuana dispensaries and what exists under State law for liquor licensing.

In addition, the materials include a proposed general by-law that would establish regulation of personal cultivation, manufacture and use consistent with State law. The goal of this proposed by-law is to supply a local enforcement mechanism addressing personal activity that could have a public health or safety impact. First Assistant Correa explained that it treats public consumption and open containers of marijuana consistently with how the existing Town By-Laws treat alcohol, using language drawn from the new recreational marijuana law. It also includes smoking restrictions consistent with the Town’s Tobacco Control By-Law. The inclusion of a new section on residential cultivation and manufacture prohibits potentially unsafe methods of personal cultivation

and manufacturing, use of flammable, combustible materials that have caused home fires and explosions in Colorado. There is also a restriction on the use of supplemental carbon dioxide and ozone in the personal cultivation process, as this can be toxic to the residents of the property and any immediate neighbors.

First Assistant Correa then handed the presentation over to Francisco Torres and Ashley Clark from the Planning Department to discuss the zoning by-law and the permitting process. Mr. Torres directed those in attendance to the best way to find the meeting materials and other documents related to recreational marijuana. Mr. Torres also informed the audience that written comments should be sent to him. He told everyone that there has been an extensive public outreach process. This has included meetings with the Planning Board, Licensing Review Committee and relevant staff. There have been six public meetings since November. There has also been neighborhood outreach that has included the Brookline Neighborhood Alliance Board members, the Senior Center, the Chamber of Commerce and the Coolidge Corner Merchants Association. Mr. Torres and Ms. Clark have also recently visited the NETA Dispensary, the NETA cultivation facility, and two lab testing facilities (MRC Labs and CDX Analytics). They did this to see what the facilities look like and to get a better understanding of what they do for purposes of determining Planning approaches.

The most wide-reaching piece of public outreach has been the public poll that Mr. Torres prepared and posted for the month of December. There were 788 responses. On Question 1, which was regarding whether or not to restrict types of marijuana establishments (cultivators, retailers, testers, etc.), 62.93% of people who took the poll wished not to restrict a use. On Question 2, which was about whether or not to have a cap, 55.67% of the people who took the poll wished for a cap. However, when it came to the follow up question about what the cap should be, the responses varied greatly. The most frequent response was for a cap of 20% of package store licenses (39.6% of the people who took the survey stated that this was their desired cap). With regard to Question 3, which was regarding the buffer zone, the most common answer was in favor of a 500' buffer from K-12 schools. He laid out the poll feedback regarding the positives and negatives of marijuana for the Town. The positives included following the will of the people as shown in the vote on the ballot initiative, the tax revenue these businesses would contribute to the community, and a feeling that the businesses should be allowed in all our commercial areas. The stated negatives include increased car and pedestrian traffic, public consumption (including loitering), storefront saturation in commercial areas and concern about proximity to schools, parks and daycares.

Mr. Torres said that the Town has learned many lessons from its research. He said that the marijuana industry is new and well-funded. There is an increased need to replicate effective systems and planning smart practices. There is also possible emerging technology, such as the OUI testing technology coming out of California. He said that Colorado's experience remains a model to review and learn from when creating new by-laws regarding adult-use marijuana. In Denver, there has been an influx of establishments (over 600) since 2014. Localities are starting to create stricter regulations including new

restrictions on density and retail size. Colorado collected \$200,000,000 in taxes since 2016.

Mr. Torres then discussed the layers of State regulation and the proposed local regulation. He stressed the need to create additional restrictions to address community concerns, preserve the quality of life for the residents and visitors and protect the vibrancy of our commercial areas.

He then discussed the difference between what the State allows and what the Town is proposing and why it the Town's proposed measures are merited. The State does not cap marijuana establishments; therefore, the Town is proposing a cap of 20% of the number of package store licenses to control for the proliferation experienced in Colorado and protect our commercial areas from over-saturation by one particular market. Both the State regulations and the proposed Town regulations would prohibit establishments from opening in the same building as daycares, consistent with the medical marijuana scheme. The default State buffer is 500 feet from public or private schools, daycares or any facility in which children commonly congregate if no local requirement exists. The Town has determined that adding a 500' buffer from daycare facilities greatly restricts available location sites. The State regulations do not speak to the districts where such establishments can be sited. The Town is proposing to limit siting to the L, G, O, and I districts and prohibit them in residential zones. As far as the size of the establishments is concerned, the only restriction for limiting size in the State scheme pertains to micro-businesses (5,000 square feet). The Town is proposing restricting gross retail store size to a size consistent with the typical size of other businesses in our commercial areas. This number is still to be determined. There are no density restrictions in the State scheme; the Town is proposing a 500 feet buffer zone between establishments that are on the same street or a 200-foot radius between them if not on the same street.

Ms. Clark then explained the proposed two-part special permit scheme review process. The first step will be a pre-application meeting with the applicant, Planning and Building Departments. The purpose of this meeting is to discuss the applicant's plans and the process. Second, the applicant will meet with Health, Fire and Police, as applicable and provide information needed for departmental reports. A department may, within its discretion, decide to hold a public hearing before issuing a report. The third step is that the applicant applies for a building permit and goes through the zoning process.

Ms. Clark and Mr. Torres then reminded those in attendance that the Select Board will still set the hours of operation. Each department can write a report and, at its own discretion, hold a public meeting to have public input to inform its report. Each department will develop its own metrics for reviewing special permit applications. The special permit application process will be akin to the existing process utilized in the context of common victualler licensing.

There was discussion of the upcoming public meetings regarding recreational marijuana and the potential warrant articles.

The Chairs then turned the floor over to public comment.

Jordan Tishler, Loveland Road: Mr. Tishler identified himself as a physician registered to work with patients seeking medical marijuana. He said the presentation was so detailed that he didn't know what to add. He applauded the Town for its work to make a complicated issue uncomplicated. He believes that the proposed cap is a good compromise. He believes that the buffer zone may be a little too big at the 500 ft. He went on to say that because it is statutorily mandated there is not much that can be done. He said that he believes that because the voters voted to decriminalize recreational marijuana, the Town should endeavor to make it available while still protecting the public health and safety. He offered to come back and meet with the Committee or any Committee taking up this issue if he can be of any assistance.

Linda Olson Pehlke, Browne St.: She mentioned that she had sent in detailed written comments and that she would not go into those. She expressed concern that a 4,000 square foot limit for retailers as proposed is too small because of the other spatial requirements triggered by other regulations, such as the need to check ID at the door. She also doesn't like the proposal for a time-limited special permit and requests that if the licensing scheme is approved the special permit be made permanent. She feels that temporary special permits will not only tax those applying for a permit, but also Town departments. She also feels that sending a warrant article to Town Meeting with a motion to decrease the cap on marijuana establishments is a mistake. The results of the election showed what the residents in Town want. She is very concerned that a vocal minority will try to ignore the will of the voters. She believes that if the cap includes all uses, then the cap should be a larger number. She stated that she believes that the other types of businesses are really good for the second floors of buildings. She explained that the buffer zone should be smaller around the schools because there is hardly any room to site otherwise.

Barbara Scotto, Crowninshield Rd.: Ms. Scotto's concern has to do with the map. She expressed concern that there is an area on Commonwealth Avenue that would be available for a marijuana establishment right across from Boston University. She said that even though the age to purchase marijuana is 21, and she believes that underage people can get marijuana by having their older friends get it.

Beth Kates, 105 Centre St.: Ms. Kates expressed concern about the buffer zone. She said that businesses that are not retail establishments should be considered on a case by case basis. She said that there are medical buildings that would be perfect for labs but they are just inside that buffer zone.

Mickey Simpson, Longwood: Mr. Simpson introduced himself and explained his activist past. He also expressed his desire that marijuana should be treated the same as alcohol and cigarettes. He requests that those discussing this issue respect all sides of the conversation.

Donelle O’Neal, Sr., Village Way: Mr. O’Neal applauded the efforts of the Licensing Review Committee and Planning Board. He told the audience that he believes the efforts will help and that there may be no need for an override due to the tax revenue that will accrue to the Town from marijuana sales.

The Chairs then invited any additional persons who would also like to speak or to ask a question to come to the microphone.

Neil Wishinsky, Chair of the Select Board: Mr. Wishinsky wished for clarification of who has the final say for retailers, the Select Board of the ZBA. First Assistant Correa said that the proposed scheme is the same as the Town’s scheme for medical marijuana. There would be the special permit process and then the licensing process with the Select Board with a license renewal process.

Mei Way Wong: Mr. Wong requests that those considering these warrant articles think of those who live in condominiums and have children who would be inhaling the smoke. First Assistant Correa informed Mr. Wong that the Town has limited authority over conduct within private residences and referred him to the Health Department.

Suzie Roberts: Ms. Roberts questioned a uniform set of requirements for all establishments. She explained that labs are a different use from a retail store and may not need as large of a buffer as a retail establishment. She asks whether it would be better to treat them separately from the retail use, which may allow for different buffer zones. Mr. Torres said that when they went to visit a lab, they noticed certain considerations that make labs more of an industrial use that perhaps the Town is looking to attract. They are continuing to research this.

Christopher Post: Mr. Post urges the Planning Board to consider creating a resolution, much like the sanctuary city resolution, that would prevent the Department of Justice from obtaining a list of those who apply for a marijuana establishment license. First Assistant Correa informed Mr. Post that the Town is bound by the Freedom of Information act to provide documents requested within a time frame if they are asked for them. These can be redacted to remove sensitive information.

Josh Shapiro: Mr. Shapiro told those assembled that this is not a positive thing for the Town. He asked the Licensing Review Committee and the Planning Boards to think of the children of Brookline.

Regina Frawley, South Brookline: Ms. Frawley corrected the amount of Brookline voters who voted for decriminalizing it from 60% to 59.9 %. She also commented that the survey is not a scientific survey. She also questioned why the Town was not doing a referendum first. She believes the referendum should come first.

Alan Price, White Place: Mr. Price is concerned with the nature and vibrancy of storefronts in Town. He expressed extreme concern that the cap and the buffer zone would create a small number of large retailers. He would like smaller stores that integrate

better within the Community. Steve Heikin, Chair of the Planning Board, explained that the sign by-law would ensure that the storefronts would not take away from the community aesthetic because they would have to conform to that by-law.

After Mr. Price's comments, the Chairs of the Licensing Review Committee and Planning Board explained the next steps regarding these warrant articles, including the dates of the next meetings to discuss them. They thanked the community for attending the meeting and for making comments about the drafts and presentations. The Licensing Review Committee and the Planning Board will keep these in mind as they do their work.

Materials List
(Items distributed at the 1/24/18 Joint Public Hearing of the Licensing Review Committee and Planning Board)

Item 1: Informational Packet for January 24, 2018 Joint Public Hearing (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)

Item 2: Planning Maps (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)

Item 3: Written Comments from Linda Olson Pehlke (Available through Town Counsel's Office and included within the Minutes Binder of the License Review Committee)