



**TOWN OF BROOKLINE
MASSACHUSETTS**

**REPORTS OF SELECT BOARD
AND ADVISORY COMMITTEE**

on the

Articles in the Warrant

for the

THIRD SPECIAL TOWN MEETING

to be held in the High School Auditorium

Tuesday, November 19, 2019

at

8:00 P.M.

(Please retain this copy for use at the Town Meeting)

Town of Brookline

SELECT BOARD

Bernard W. Greene, Chair

Benjamin J. Franco

Nancy S. Heller

Heather Hamilton

Raul A. Fernandez

Melvin A. Kleckner, Town Administrator

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MODERATOR

Edward N. Gadsby, Jr.

ADVISORY COMMITTEE

Michael Sandman, 115 Sewall Ave., No. 4, Chair, Street.....	232-7125
Carla Benka, Vice-Chair, 26 Circuit Road	277-6102
Benjamin Birnbaum, 15 Feneno Terrace,	276-5944
Harry Bohrs, 27 Toxeth Street.....	566-3556
Clifford M. Brown, 9 Hyslop Road	232-5626
Carol Caro, 1264 Beacon Street, #2.....	739-9228
John Doggett, 8 Penniman Place	566-5474
Dennis Doughty, 57 Perry Street.....	739-7266
Harry Friedman, 27 Clafin Road	BE2-0122
Janet Gelbart 216 St. Paul Street #601.....	566-5616
David-Marc Goldstein, 22 Osborne Road	232-1943
Neil Gordon, 87 Ivy Street.....	(508)265-1362
Susan Granoff, 52 Vernon Street #1	731-0822
Amy Hummel, 226 Clark Road	731-0549
Alisa G. Jonas, 333 Russett Road	469-3927
Janice Kahn, 63 Craftsland Road.....	739-0606
Steve Kanes, 89 Carlton Street	232-2202
Bobbie M. Knable, 243 Mason Terrace.....	731-2096
David Lescohier, 50 Winchester Street	383-5935
Carol Levin, 61 Blake Road.....	731-0166
Pamela Lodish, 195 Fisher Avenue	566-5533
Mariah Nobrega, 33 Bowker Street	935-4985
Carlos Ridruejo, 16 Holland Road.....	
Michael Sandman, 115 Sewall Ave., No. 4	232-7125
Lee L. Selwyn, 285 Reservoir Road	277-3388
Kim Smith, 22 Brington Road	277-1606
Stanley Spiegel, 39 Stetson Street	739-0448
Claire Stampfer, 50 Sargent Crswy.	448-4201
Charles Swartz, 69 Centre Street	731-4399
John VanScoyoc, 307 Reservoir Road.....	731-3584
Christine M. Westphal, 31 Hurd Road.....	738-7981
Neil Wishinsky, 20 Henry Street, No.2	739-0181
Lisa Portscher, Executive Assistant, Town Hall.....	730-2115

NOVEMBER 19, 2019
THIRD SPECIAL TOWN MEETING
INDEX OF WARRANT ARTICLES

ARTICLE
NUMBER

TITLE

1. Amend the General By-Laws by amending Section 8.37.5 to modify the hours of operation of Marijuana Establishments. (Citizen petition)
2. Amend the General By-Laws by amending Section 8.37.5 to add a new subsection 18 to limit purchases by customers on a reserve ahead basis. (Citizen petition)
3. Resolution requesting the Select Board create a study committee to assess the effectiveness of Brookline's marijuana by-laws and policies. (Citizen petition)

2019 THIRD SPECIAL TOWN MEETING WARRANT REPORT

The Select Board and Advisory Committee respectfully submit the following report on Articles in the Warrant to be acted upon at the 2019 Third Special Town Meeting to be held on Tuesday, November 19, 2019 at 8:00 pm.

Note: The following pages of this report are numbered consecutively under each article.

ARTICLE 1

FIRST ARTICLE

Submitted by: Citizen petition

To see if the Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B.5 as follows (additions are denoted **in bold, italicized** text, deletions are denoted in ~~stricken~~ text):

5. The hours of operation of Marijuana Establishments shall be set by the SelectBoard ***with the maximum range of hours for Marijuana Retailers being 10 a.m. to 7 p.m. on Mondays through Saturdays, and 12 p.m. to 6 p.m. on Sundays.*** The Licensee shall not change its hours of operation without Board approval.

Or take any other action relative thereto

PETITIONER’S ARTICLE DESCRIPTION

These Warrant Articles are being submitted to address an unacceptable situation involving the implementation of retail sales of adult use marijuana in Brookline.

These Warrant Articles are not intended to and do not address the sale of medical marijuana or delivery-only marijuana in Brookline.

Brookline’s existing regulations were developed before the implementation of the adult use of marijuana and did not fully contemplate the effects that such sales have shown to have on the surrounding neighborhoods, such as Brookline Village.

The two by-law amendments are intended to address the issues that are principally contributing to unacceptable conditions that are overwhelming the Brookline Village neighborhood from a nuisance and quality of life perspective and which will likely have similar effects on other neighborhoods as more retail establishments are opened.

The resolution is intended to make further assessments of the implementation and policies regarding the sale of recreational marijuana in Brookline.

SELECT BOARD’S RECOMMENDATION

A report and recommendation under Article 1 will be provided in the supplemental mailing.

November 19, 2019 Third Special Town Meeting

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ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report and recommendation on Article 1 will be included in the supplemental mailing.

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ARTICLE 2

SECOND ARTICLE

Submitted by: Citizen petition

To see if the Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B., as follows (additions are denoted **in bold, italicized** text, deletions are denoted in ~~stricken~~ text):

Add the following new subsection:

18. Purchases by customers from Marijuana Retailers (not to include Medical Marijuana Treatment Centers) shall be made solely on a reserve ahead basis for pick up at the Marijuana Retailer facility, provided, however, that if a customer requires the assistance of a marijuana consultant at the facility, an advance appointment is required; all such reserve ahead purchases require confirmation of the time at which a pick-up may be made; and, all reserve ahead pick-ups and appointments for consultation shall be scheduled and, if necessary, limited, to avoid nuisance conditions in surrounding neighborhoods as provided in Section 8.37.5, Paragraph 8.9. above, as well as to otherwise comply with State and local law.

Or take any other action relative thereto

PETITIONER’S ARTICLE DESCRIPTION

Please see the article explanation provided under Article 1.

SELECT BOARD’S RECOMMENDATION

A report and recommendation under Article 2 will be provided in the supplemental mailing.

ADVISORY COMMITTEE’S RECOMMENDATION

The Advisory Committee’s report and recommendation on Article 2 will be included in the supplemental mailing.

ARTICLE 3

THIRD ARTICLE

Submitted by: Citizen petition

To see if the Town will vote to adopt the following resolution:

BE IT RESOLVED, that Town Meeting requests that the Select Board not issue new operating licenses for Retail Marijuana Establishments until such time as: (1) the Select Board appoints a study committee, which shall include, among others, representatives from impacted neighborhoods, to assess the effectiveness of Brookline's marijuana by-laws and policies given Brookline's recent experience with the sale of recreational marijuana including NETA's operation and its neighborhood impact, and (2) the appointed study committee submits its findings and recommendations at a public hearing held by the Select Board no later than March 1,2020.

Or take any other action relative thereto

PETITIONER'S ARTICLE DESCRIPTION

Please see the article explanation provided under Article 1.

SELECT BOARD'S RECOMMENDATION

A report and recommendation under Article 3 will be provided in the supplemental mailing.

ADVISORY COMMITTEE'S RECOMMENDATION

The Advisory Committee's report and recommendation on Article 3 will be included in the supplemental mailing.

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ARTICLES 1-3

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

On November 12, the Select Board voted FAVORABLE ACTION on the Advisory Committee motions under Articles 1 and 2.

ROLL CALL VOTE:

<u>Aye:</u>	<u>No:</u>
Franco	Greene
Heller	Fernandez
Hamilton	

The Select Board moved FAVORABLE ACTION on the following motion under Article 3.

VOTED: To refer the subject matter of Article 3 to the Licensing Review Committee.

ROLL CALL VOTE:

<u>Aye:</u>	<u>No:</u>
Greene	Heller
Franco	Fernandez
Hamilton	

More detail on the Board's position on these articles will be provided in the supplement to be distributed in the aisles the first night of Town Meeting.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Special Town Meeting (STM) #3 is a citizen-petitioned special town meeting that seeks to amend the Town's General By-Laws to address issues that have affected Brookline Village and High Street Hill neighborhoods since March 2019, the start of retail sales of adult use marijuana in Brookline.

- The amendments affect all marijuana establishments in Brookline.
- They only apply to recreational sales of cannabis products, not medicinal sales.

Article 1 would amend Section 8.37.5 Paragraph B to limit the hours of operation to a maximum range of 10 a.m. to 8 p.m. Mondays through Saturdays and 12 p.m. to 6 p.m. on Sundays.

Article 2 would add a new subsection 18 to Section 8.37.5 Paragraph B to require that marijuana retailers operate on a reserve-ahead pick-up and appointment only basis.

Article 3 is a Resolution that asks Town Meeting to request that the Select Board not issue new operating licenses for retail marijuana establishments until a study committee assesses Brookline's by-laws and policies regulating the operation of those businesses, with a report no later than November 1, 2020.

The Advisory Committee recommends FAVORABLE ACTION on Articles 1, 2 and 3, as amended.

BACKGROUND:

At the May 2018 Annual Town Meeting, local legislation was passed in anticipation of State enabling legislation following the passage of a citizen initiative petition for the legalization of marijuana in Massachusetts.

Article 17, submitted by the Department of Planning and Community Development, amended the following sections of the Town's Zoning By-Laws: Section 2.13 ("M" Definitions); Section 4.07 (Table of Use Regulations); and created a new Section 4.13, Marijuana Establishments (General Requirements, Operational Requirements, Security-Specific Requirements, Access to Premises and Information/Reporting/Record-Keeping).

Articles 18-20 were submitted by the Select Board to amend Brookline's General By-Laws. Article 18 added Article 8.37 (Marijuana Establishments) setting out general requirements in Section 8.37.5 and licensing in Section 8.37.6. Article 19, which did not pass, would have allowed for a lower maximum number of marijuana retailers than the State statutory number of four. Article 20 added Article 8.38 (Marijuana and Hemp, and Marijuana and Hemp Products) and Section 8.38 (Definitions).

With regard to Warrant Article 17, new Section 4.13 of the Zoning By-Laws included the following requirements in Paragraphs 1 and 8:

1. All Marijuana Establishments' licensed operations shall be conducted within a building at a fixed location.
8. Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other

obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.

9.

The explanation for Warrant Article 17 notes: *“The Planning Department recommends being mindful of what this might look like in practice: 1, the patron verification check point is located outside. This is neither favorable nor recommended as lines could begin to form outside and disrupt the vibrancy of our sidewalks and commercial areas; or 2, the Planning Department suggests creating a queue system inside the building, which will take space from the total gross floor area.”* One of the reasons for requiring up to 5,000 square feet for retail marijuana establishments, with a 3,500 square foot ground floor area, was to enable all operations – including patron verification check point and queuing—to be located within the building, so the business would seamlessly fit into the existing commercial areas.

Article 18 added a new Section 8.37 (Marijuana Establishments) to the Town’s General By-Laws. Under Section 8.37.5.B (Operational Requirements) Paragraph 9 states that such establishments “shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties.” As did new Section 4.13, new Section 8.37 sets out what is meant by nuisance: *“Nuisance” includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment’s premises, electrical lighting, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Department Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.*

On October 29, 2018, the Zoning Board of Appeals (ZBA) held a public hearing (2018 Decision No. 0073, 160 Washington Street, NETA). The minutes note that no one spoke in favor of the proposal; several members of the public are recorded as speaking in opposition. The Planning Board comment, which appeared in the report, included a concern about queuing obstructing the sidewalk, particularly during the first six months of operation, and recommended that all queuing be contained in the parking lot. It further recommended that “at least a four-foot width of sidewalk shall be unobstructed at all times.” NETA’s counsel told the ZBA that there would be two police officers present at all times. The minutes also note that the Petitioner met with municipal representatives from Police, Fire, Health and Transportation, and that the proposal was approved by the Building Department and recommended by the Planning Board.

On November 27, 2018 the Brookline Select Board voted Marijuana Establishment License Conditions for Adult Retail Sales. Condition #5 under General Requirements states the following: “After approximately 90 days from the commencement of Adult Use Sales, the Licensee will appear before the Select Board on the date noticed by the Board for a review of the impacts of the extended hours, and will provide the Board with such information as the Board or its designee requests in connection with such review.”

The Select Board never scheduled the 90-day review as required under the license. Prior to these Legislative and Board actions, the Select Board entered into a Host Community Agreement (HCA) with NETA on April 24, 2018. This HCA replaced and superseded the HCA that was signed in 2015 for the opening of NETA's Medical Marijuana Dispensary at the same Brookline Village location. Key provisions in the 16-page document include the following:

- Community Impact Fee of 3% of gross revenue sales from marijuana and marijuana product sales (medical and non-medical) for the calendar years 2019, 2020, 2021 and 2022;
- That the Establishment's hours shall not be a detriment to the surrounding area;
- That there shall be a parking attendant on site and designated patient/handicap parking zone within the Establishment's parking lot.
- That operations shall not "create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties." Nuisance is further described word-for-word as it appears in the Brookline's General and Zoning By-Laws.

DISCUSSION:

Public Concerns

STM #3 has generated a great deal of public concern. The citizen petition that initiated this STM had 877 signatures, far exceeding the statutory requirement of 200 signatures or 10% of the residents, whichever is less. The Advisory Committee public hearing on these articles, held in Town Hall on October 28th, lasted for nearly five hours and was attended by well over 100 residents. A link to the public hearing may be found here: https://www.youtube.com/watch?v=eq67_9YLNaE

The Advisory Committee also received over 200 letters from members of the public, the overwhelming majority of which expressed support for the warrant articles. The letters came primarily from residents in the Brookline Village, High Street Hill and Coolidge Corner neighborhoods – the locations of the two retail marijuana establishments that the Town has licensed. There are two more adult use marijuana retail businesses that have expressed interest in opening on Commonwealth Avenue, but those have not yet been licensed.

Petitioners' View

The Petitioners identified both public safety and public nuisance concerns. They believe that by reducing NETA's hours of operations along with evening out the flow of sales throughout the day using a reservation-only sales model, these negative impacts would be mitigated. These mitigation responses would apply all cannabis retailers in the Town.

The Articles were filed based on the experience of Brookline Village and High Street Hill residents living with adult use marijuana retail sales at NETA for over six months. The

intent of the Petitioners, who include some of those residents is to find a means to better integrate NETA into the abutting neighborhoods. They emphasize Warrant Articles 1 and 2 would apply only to retail sales of recreational marijuana, not medical cannabis operations or delivery-only sales. According to data presented by Ranch Kimball in support of the petitioners, NETA, at approximately 10,000 square feet, has a significantly larger footprint than urban cannabis retailers in Colorado and Washington, offers significantly less parking and has the highest level of retail sales in the country, \$75.2 million. Most retailers have facilities that are 1,000 to 2,000 square feet with sales of about \$2 million.

A. The Problem

NETA's on-site parking lot was expected to hold 14 cars, including a designated patient/handicap parking zone within the company's parking lot. Instead, the parking lot contains two porta-potties and is being used for customer queuing. NETA has leased 15 spaces at the Homewood Suites down the block, however those spaces are only available for complimentary customer parking from 9 AM until 5 PM. NETA has estimated that it serves 3,600 customers per day. The lack of dedicated parking coupled with the enormous number of people driving to the site has meant a significant increase in the amount of traffic and parking in the neighboring streets.

A Walnut Street resident challenged the validity of the observations and conclusions of the Tetra Tech Traffic Monitoring Study commissioned by NETA dated August 1, 2019, and performed on Tuesday, June 18, and Wednesday, June 19, the two slowest days of the week, in both its observations and conclusions. This resident felt that the traffic study was deeply flawed and required better data.

The impact of NETA's operations on the immediate neighborhood since it commenced retail sales in March 2019 has been witnessed and documented by residents in the affected areas. The impacts identified by the neighbors that can be considered public "nuisances" under our By-Laws include: public consumption and intoxication, unruly behavior, public urination, the smell of pot on the street and litter; and public "safety" such as increased traffic, double parking, idling cars, blocking of driveways and parking congestion issues creating potential dangers to pedestrians and bikers.

B. The Remedies Sought

The remedies sought are (1) shorter hours in the evening, (2) shifting to a reserve-ahead appointment-based model, and (3) setting up a study committee to assess the effectiveness of the Town's marijuana by-laws and policies, given the recent experience with the sale of adult use retail sales of marijuana.

1. Shorter Hours

Information presented to the Advisory Committee noted that a closing time of 7 or 8 o'clock at night is more typical than the 10 pm closing time currently in effect at NETA.

When considering an appropriate range of hours for a retail site, the location needs to be considered – is it in a rural area, an urban area, an office park with extensive parking, or a commercial area embedded in or abutting a residential neighborhood (which is the case for much of Brookline).

Residents noted that most businesses in the area close by 8 pm. That is also when families with young children have their children go to bed – a time when those who live in the area expect their streets to quiet down, and experience a peaceful end to their day.

2. Reserve-ahead Appointment-based model

The petitioners concluded that although reducing hours is necessary, it is not sufficient to mitigate NETA's neighborhood impacts. The Petitioners believe that changing to a reserve-ahead appointment system, as stipulated in Article 2, in conjunction with the reduced hours in Article 1, will be more effective. There are scheduling software solutions that could resolve queuing issues by regulating the flow of demand to reduce peaks.

Linda Plazonja, Citizens Assistance Officer, Office of the Mayor, Newton, MA described Newton's experience of with the Garden Remedies store in Newtonville. This store is located on Washington Street near the Whole Foods market and does not abut a residential neighborhood. It does not have any on-site parking, but it does require all customers to make an appointment. She reported that there are few, if any, complaints about the store and that it does not require a police detail. However, the Newton store is significantly smaller than NETA and has 1/5th the number of registers.

NETA's response

NETA believes many of the negative impacts are already being responsively addressed. NETA asks that the mitigation impact fees it pays to the Town of Brookline be expended to further address public safety and public nuisance complaints, and notes that sales volume will be naturally decreasing in the future due to the opening of additional establishments in the greater Boston area and the opening of a third NETA facility in Franklin, as well as soon- to- be implemented State regulations governing marijuana delivery.

- 1) **Access:** Retail sales provide access to many people who, for a variety of reasons, are not eligible or do not want to register for medical sales, but receive major benefits from cannabis. These are individuals who may suffer from anxiety, pain, or the discomfort of cancer treatment. Curtailing the hours of operation or requiring reservations will impair the access of these individuals who, because of their illnesses, frequently cannot plan ahead; it will also make it difficult for people who work.
- 2) Demand, and therefore store volumes, will decrease as additional stores open in the greater Boston market and specifically in Brookline. NETA is selling all that it produces. It is at its regulatory production cap and, with the opening of its third store (in Franklin), the amount of products available for sale in Brookline will decrease. In

addition, she maintained that continued increases in operating efficiencies will lead to the eventual elimination of the lines.

- 3) NETA's Host Community Agreement (HCA) with Brookline requires the payment of impact fees to cover the cost to the community for mitigating the negative impacts of the business on the community. To date, NETA has paid approximately \$1.4 million to Brookline, and the Town has not spent any of this money. Expenditure of this money is being proposed as budget amendments under Special Town Meeting Warrant Article 3. NETA asked that the Town and Petitioners provide time for the impact of these expenditures to be shown.
- 4) NETA claimed that is responsive to the neighborhood and the larger Brookline community's concerns. Customers are encouraged to take the T. There is complimentary customer parking at the Homewood Suites garage, where NETA is leasing 15 spaces from 9 am to 5 pm. Employees are incentivized to take public transit, receive subsidized off-street parking and there is a one-strike policy for employees using on-street parking. There are ample lavatories: two porta potties in the parking lot and three facilities inside the building. Employees conduct regular litter pick-ups throughout Brookline Village. The parking lot, which was originally intended to hold 14 cars, is being used for waiting queues to keep customers off the sidewalk.
- 5) There are many changes occurring simultaneously in Brookline Village and NETA feels that it is being held accountable for all of their negative impacts: Children's Hospital, One Brookline Place, 700 Brookline Avenue (Hilton Garden Hotel), 20 Boylston (mixed-use at the former Dunkin Donuts), the Audi dealership construction and the use of the Old Lincoln School by the High School.

Other input

The Brookline Police Department affirmed that there has not been an increase in crime since March 1st of this year. Most of the issues they respond to are considered transient, and so often when they respond the situation is no longer happening. From March 1st to September 30th there were 1719 nuisance calls from the area around NETA. Parking nuisance calls rose from a yearly average of 30 to 40 to 103. There were 65 reported incidents of public consumption, which led to two citations. There were also three incidents of public urination near NETA.

The department has an officer assigned to Brookline Village for parking enforcement; there are undercover officers, and expanded bike patrols have been implemented using NETA impact fees. The \$21,000 that is covering the cost of the additional enforcement efforts by the police department was advanced by the Town to address immediate concerns. A budget amendment in the current warrant, if passed, would transfer \$379,944 in NETA impact fees to the Police Department and includes money to hire two additional parking enforcement officers and three additional officers for a bike unit.

Advisory Committee Discussion

Discussion focused on the potential impacts of the warrant articles on both the neighborhood's concerns and NETA's claims of adverse impacts on access to legal cannabis. The Petitioners' assertions that smoothing the flow of NETA's customers during its hours of operation will alleviate public safety and public nuisance concerns were explored. Committee members discussed that the combination of reduced hours along with a reserve-ahead and appointment model could help to reduce traffic congestion and lead to shorter queues.

The Committee asked whether the privacy of NETA's retail customers would be maintained in an appointment system. The CEO of NETA assured the Committee that the only data the business keeps is the zip code of its customers. NETA is required to verify the age of customers and although driver's licenses of customers are scanned to enter the facility, but that information is not retained by NETA.

The petitioner Paul Warren provided additional perspectives on the issue of privacy. He noted that in the Code of Massachusetts Regulations (CMR) are regulations that require cannabis operators to record and retain surveillance video – anonymity and privacy, therefore, are not a realistic expectations. Further, the video footage is required to be retained for at least 90 days and indefinitely if there is a pending investigation.

Petitioners reported that they spoke with the technology software provider (QLESS Systems) that manages the appointment system being used by Garden Remedies in Newton. They confirmed that an appointment can be made without the customer providing any identifiable personal information. Cannabis operators are also not required to maintain a log of IP addresses or phone numbers.

Plans for Sanctuary in Coolidge Corner

Jeffrey Allen, counsel for Sanctuary, which has been licensed to open in Coolidge Corner, told the Advisory Committee that they were planning to have an indoor queuing system for the Coolidge Corner store. He offered that they are not NETA and should be treated based on their own site plans. Sanctuary does not view reduced hours as problematic and, while they have no plans to secure off-site parking for customers, they will be subsidizing their employees' transportation costs. According to Mr. Allen, the Brookline Chamber of Commerce is supportive of Sanctuary, which is also working with the Coolidge Corner Merchants Association to create incentives for Sanctuary customers to frequent other stores in the area (rather than waiting outside if the queue is too long). The owner of Sanctuary does have some concern about the potentially adverse impact of an appointment system.

NETA has 30 points of sale, and all current queuing is outside. Sanctuary will have 18 points of sale, and has plans that enable 105 people to queue inside.

Store capacity

The Committee discussed NETA's claims that the store volume will soon begin to decline for reasons independent from the warrant articles. Sales are constrained by regulatory constraints and operational capabilities. A review of the Cannabis Control Commission (CCC) site shows that NETA was issued provisional licenses on July 26, 2018 for a Tier 6 indoor operation (40,000 square feet – 50,000 square feet) and for a Product Manufacturer. At present, its Franklin manufacturing operation has a total canopy of 20,804 square feet, which is equal to a Tier 4 level. NETA told the CCC in its application for a larger (Tier 6) indoor operation that it intends to expand its manufacturing capacity.

NETA will be opening a third retail business in Franklin, the location of its manufacturing operation, in addition to the ones open in Brookline and Northampton. There will be customers who will find it more convenient to go to Franklin. NETA's provisional Tier 6 license, however, means that NETA can double its current manufacturing capacity and so it is likely there will be enough product to supply the three stores without affecting sales.

Sunset clauses for closing time limits

The Committee discussed the "sunset clause" in Articles 1 and 2, which ends their applicability on June 21, 2022. Some members felt that more stores in the Greater Boston area would be opened within the next couple of years and thought this portion of the proposed change in by-law should sunset earlier. The Committee considered amendments to shorten the sunset periods, but the amendments failed.

The Committee also voted on a motion was made to restore the Article 1's original time of 7 pm, which failed..

The discussion of Article 2 (sales by appointment) was more divided. Representatives from both NETA and Sanctuary expressed opposition to that restriction, which could affect the profitability of the businesses.

Financial impact on the Town

NETA sales tax revenues since March are approximately \$1.1 million. A little less than one million dollars is projected for FY2020. Approximately \$350,000 of the funds received from NETA was budgeted by the Town for its FY 2020 operating budget. If NETA's volume is reduced, it will cut down sales tax revenues and the Town will need to raise funds elsewhere or cut services.

The petitioners estimate that the impact on sales tax revenue will be a decrease of \$250,000; this assumes a 10% reduction in revenues for NETA. NETA, however, stated that it projects a 50-60% revenue loss as a result of the impact of these warrant articles. There is no certainty to these projections at either end of the spectrum. A member of the Advisory Committee noted that there could also be a significant erosion of revenue as additional stores open in the greater Boston area, and that a \$250,000 reduction in sales tax revenue is a working number of reasonable magnitude.

Article 2 Appointment Windows

The Committee voted to amend Article 2 to clarify the language that each business could determine the time *or times* at which a pick-up may be made.

Article 3 – Moratorium on additional licenses

Passage of this Article would not impact the store opening in Coolidge Corner next spring. Since a temporary ban won't affect the two retailers that have already been issued licenses by the Town, and the other two applicants are very early in the review process, the 12-month hiatus was not viewed as a significant delay. The goal of Article 3 would be slow down the process a little, providing the opportunity to study the Town's current regulations and best practices going forward, given the experience of Brookline residents.

Future impact of store openings in Boston and Newton

Boston can open up to 40 retail marijuana businesses, but it has licensed only 13 and that to-date no business has opened. Newton has a Marijuana Host Community Agreement Advisory Group to advise the Mayor, and the City has moved more slowly into the cannabis market. Newton could eventually have a total of eight stores but to-date has approved only four move forward in the licensing process and has only one in operation.

Newton's mayor has said that the city would be moving forward with provisional host agreements with three of the six applicants. The reasons given for not moving forward with the others included safety and traffic concerns, lack of adequate dedicated parking and a weak community relations plan.

While it is difficult to compare Brookline's situation to that of Newton—Brookline is more urban and is more accessible from Boston—the Committee members were in agreement that Boston's failure to open any of its forty cannabis retailers has likely been a major contributor to the high volumes at NETA. For the past seven months NETA has been the only retail site in operation in the Greater Boston area.

Moderators Committee vs. Select Board Committee

The Select Board can appoint a committee to review cannabis operations without a warrant article. The Petitioners decided to amend Article 3 by having the Moderator appoint the study committee because they see the Select Board as unresponsive to the concerns that residents have raised. Establishing a Moderator's Committee does require the passage of a warrant article.

Brookline's "test case" experience

NETA's retail business regulations were approved before any establishments opened in Massachusetts and is in some sense a test case. Therefore, it is reasonable to have the expectation of a need to readjust the rules.

The Advisory Committee also discussed but did not factor into its decision NETA's potential legal challenge to Town Meeting's authority to create or amend the town's by-laws with respect to marijuana retailers on the basis that these regulations are within the scope of Zoning By-laws, not the General By-laws.

The Host Community Agreement and NETA's license to NETA contain provisions expressly stating that the Select Board has the right to approve of the hours of operation, and there is no requirement that only the Zoning Board of Appeals can regulate NETA's operations. It was pointed out that NETA appears to be in violation of Section 4 ("Stipulations Pertaining to the Establishment's Operation"), paragraph f, which provides that "The Establishment's operations under the Company's applicable Marijuana Retailer license shall be conducted within the building." It may also be in violation of Section 4, par. p: "Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties."

RECOMMENDATION:

By a vote of 24-1 with 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 1, as amended.

By a vote of 17-7-with 2 abstentions, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 2, as amended.

By a vote of 20-2 with 4 abstentions, the Advisory Committee recommends FAVORABLE ACTION on STM 3 Warrant Article 3, as amended.

See below for the amended text of all three articles.

Article 1

VOTED: The Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B.5 as follows (additions are denoted in ***bold, italicized text***, deletions are denoted in ~~stricken~~ text):

The hours of operation of Marijuana Establishments shall be set by the Select Board *with the maximum range of hours for Marijuana Retailers (not to include either Medical Marijuana Treatment Centers or Delivery-Only Marijuana Retailers) being 10 a.m. to 8 p.m. on Mondays through Saturdays, and 12 p.m. to 6 p.m. on Sundays.* The Licensee shall not change its hours of operation without Board approval. *The maximum range of hours of operation set forth in this Paragraph B.5 shall terminate on June 1, 2022*

Article 2

VOTED: The Town will amend the General By-Laws by amending Section 8.37.5, Paragraph B., as follows (additions are denoted in **bold, italicized text**):

Add the following new subsection:

18. Purchases by customers from Marijuana Retailers (not to include either Medical Marijuana Treatment Centers or Delivery-Only Marijuana Retailers) shall be made solely on a reserve ahead basis for pick up at the Marijuana Retailer facility, provided, however, that if a customer requires the assistance of a marijuana consultant at the facility, an advance appointment is required; all such reserve ahead purchases require confirmation of the time or times at which a pick-up may be made; and, all reserve ahead pick-ups and appointments for consultation shall be scheduled and, if necessary, limited, to avoid nuisance conditions in surrounding neighborhoods as provided in Section 8.37.5, Paragraph B.9. above, as well as to otherwise comply with State and local law. This Paragraph B.18 shall terminate on June 1, 2022

Article 3

VOTED: BE IT RESOLVED, that Town Meeting requests that the Select Board not issue new operating licenses for Retail Marijuana Establishments until such time as: (1) the Moderator appoints a study committee, which shall include, among others, representatives from impacted neighborhoods, to assess the effectiveness of Brookline's marijuana by-laws and policies given Brookline's recent experience with the sale of recreational marijuana including NETA's operation and its neighborhood impact, and (2) the appointed study committee submits its findings and recommendations at a public hearing held by the Select Board no later than November 1, 2020.

ARTICLES 1-3

MOTION OFFERED BY THE PETITIONER – ARTICLE 3

VOTED: BE IT RESOLVED, that Town Meeting requests that: (1) the Moderator appoints a study committee, which shall include, among others, representatives from impacted neighborhoods, to assess the effectiveness of Brookline’s marijuana by-laws and policies given Brookline’s recent experience with the sale of recreational marijuana including NETA’s operation and its neighborhood impact, and (2) the appointed study committee submits its findings and recommendations at a public hearing held by the Select Board no later than March 1, 2021.

Marked up:

BE IT RESOLVED, that Town Meeting requests that ~~the Select Board not issue new operating licenses for Retail Marijuana Establishments until such time as:~~ (1) the ~~Select Board~~ **Moderator** appoints a study committee, which shall include, among others, representatives from impacted neighborhoods, to assess the effectiveness of Brookline’s marijuana by-laws and policies given Brookline’s recent experience with the sale of recreational marijuana including NETA’s operation and its neighborhood impact, and (2) the appointed study committee submits its findings and recommendations at a public hearing held by the Select Board no later than March 1, 2020**I**.

EXPLANATION

These Warrant Articles are being submitted to address an unacceptable situation involving the implementation of retail sales of adult use marijuana in Brookline.

These Warrant Articles are not intended to and do not address the sale of medical marijuana or delivery-only marijuana in Brookline.

Brookline’s existing regulations were developed before the implementation of the adult use of marijuana and did not fully contemplate the effects that such sales have shown to have on the surrounding neighborhoods, such as Brookline Village.

The two by-law amendments are intended to address the issues that are principally contributing to unacceptable conditions that are overwhelming the Brookline Village neighborhood from a nuisance and quality of life perspective and which will likely have similar effects on other neighborhoods as more retail establishments are opened.

The resolution is intended to make further assessments of the implementation and policies regarding the sale of recreational marijuana in Brookline.

ARTICLES 1-3

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

The three articles that are the subject of this petitioned town meeting seek to further restrict the hours and operational aspects of retail marijuana establishments in Brookline. Specifically, Article 1 of this Warrant seeks to limit the hours in which a marijuana establishment is allowed to operate from 10:00AM to 7:00PM on Monday through Saturday and from 12:00PM to 6:00PM on Sundays. Currently, the by-law allows the Select Board to determine the hours of operation. Article 2 would create a new by-law provision that limits the sales model for marijuana establishments to reserve ahead or by appointment only. Article 3 is a non-binding resolution that seeks a “moratorium” on the Select Board’s issuance of new marijuana establishment licenses until a committee appointed by the Town Moderator assesses the impact of marijuana sales on Brookline’s neighborhoods and submits its finding and recommendations for a Select Board public hearing no later than November 1, 2020.

Background: In the spring of 2018, Town Meeting adopted a series of zoning by-laws and general by-laws necessary to implement the new industry of adult sales of marijuana authorized by Massachusetts voters in November of 2017 and subsequently controlled by the Massachusetts Legislature through the establishment of a Cannabis Control Commission (CCC). The Town’s regulatory system involves a zoning by-law that limits the location of marijuana establishments and creates numerous requirements for their operation and a general by-law that vests licensing authority with the Select Board. As an existing medical marijuana establishment in operation in Brookline Village since February 2016, NETA was one of the first entities approved by the CCC for adult sales. A Host Community Agreement (HCA) was negotiated between the Town and NETA, requiring a 3% community impact fee for hosting this facility. This community impact revenue is separate and distinct from a 3% excise tax on the sale of non-medical marijuana that is a general Town revenue. The Zoning Board of Appeals issued a special permit to NETA controlling many aspects of their operation. In November of 2018, the Select Board issued a license to NETA consisting of dozens of conditions regulating the management, operations, security, public health and community relations of the facility. Despite NETA’s medical marijuana operation being relatively problem free, the Select Board understood that recreational (adult) sales would involve a much greater volume of people and issues, especially given that it would be the first of its kind to open in the greater Boston area. Weeks before its opening, the Select Board approved an “opening plan” in order to establish an orderly commencement of adult sales. The opening plan involved the identification of available parking and drop-off areas, the deployment of police and private security personnel and the use of NETA’s adjacent lot to accommodate lines of customers. The Board discussed and considered whether NETA’s sales should be limited to an appointment only model. It eventually concluded that NETA’s “reserve ahead” application would be a more effective way to control customer visits to the facility. In addition, the

Board approved “extended hours” of operation to help spread out the impact of sales; Monday-Friday 10:00AM to 10:00PM and Weekends 9:00AM to 10:00PM. On March 23, 2019, the first sale of recreational marijuana was made at the NETA facility at 160 Washington Street.

In general, the Board and the community were satisfied with NETA’s opening. It avoided the traffic “disaster” that was experienced in other openings and avoided a line of customers onto the public sidewalk. However, with no other establishments opening in the Boston metropolitan area, NETA’s customer lines continued into the spring and summer months. Complaints about the impact of NETA’s busy marijuana establishment in Brookline Village intensified. Complaints were generally focused on the problems created by traffic and parking and the inappropriate/inconsiderate behavior of patrons, especially in the later evening hours. This included illegal/inconsiderate parking, public consumption of marijuana, littering, noise, idling of vehicle engines, public urination, etc. The current license agreement requires NETA to fund at their own cost the deployment of two uniformed police officers posted at NETA at all times to control the flow of traffic and to oversee security at the facility. NETA complements this with two dedicated employees of its own at or around the entrance of the facility. NETA is also required to provide 2 portable toilet facilities for its patrons and to post signs reminding its patrons on the prohibitions of consuming marijuana in public and to behave respectfully in the neighborhood. In response to neighborhood concerns, the Town and NETA attempted to address the complaints with targeted enforcement and related activities. The Police Department initiated additional patrols and other enforcement activities while NETA voluntarily established a “Green Team”, a group of its volunteers to regularly pick up trash and debris in Brookline Village. The Town Administrator released \$40,000 in emergency funding in advance of Town Meeting’s required appropriation of Host Community impact fees in order to fund dedicated police patrols, enhanced parking enforcement, litter receptacles and park patrols. Despite these efforts, neighborhood concerns continued to intensify and reached a boiling point at NETA’s annual community meeting and a subsequent Select Board public hearing. Many in the neighborhood encouraged the Select Board to reduce NETA’s hours of operation and to require appointments for sale in an effort to minimize impacts to the community. The Select Board initiated a “90-day review” of NETA’s hours that was allowed in the license. While a 90-day review might have been premature, the Board acknowledges that it initiated this process too late. However, based on the Board’s review and the intense neighborhood concerns, NETA did voluntarily agree to restrict its sales of adult use marijuana from Monday to Saturday 10:00AM to 8:00PM and on Sundays from 12:00PM to 6:00PM. NETA continues to assert that an appointment only sales model would actually make conditions worse for the neighborhood. The Select Board has committed to consider this matter further during its license renewal process in December. Finally, the Board agreed to establish a new committee to evaluate community impact issues and advise the Select Board on the use of community impact funds. It should be noted that the Board also has the guidance and advice of its standing Licensing Committee

Board Vote and Recommendation: The Select Board has considered its position on the three proposed warrant articles of the petitioned Special Town Meeting. Recently, the Advisory Committee has proposed to amend Articles 1 and 2 with a sunset provision (June of 2022) and to modify the committee reporting date under Article 3 from March of 2020 to November of 2020. It is the Board's understanding that the petitioners support the Advisory Committee's amendments for Articles 1 and 2, but not for Article 3. In addition, it is our understanding that the petitioners no longer seek a moratorium on the issuance of licenses during the study committee process. Following a public hearing, the Select Board voted 3-2 to recommend favorable action on the amended version of Articles 1 and 2, and by a 4-1 vote to recommend referral of Article 3 to the Select Board's Licensing Review Committee.

ARTICLES 1-3

AMENDMENT OFFERED BY CLINT RICHMOND, TMM6

VOTED: To amend the General By-Laws by amending Section 8.37.5, Paragraph B., as follows (additions are denoted in ***bold, italicized text***, deletions are denoted in ~~stricken text~~):

Add the following new subsection:

18. Purchases by customers from Marijuana Retailers (not to include either Medical Marijuana Treatment Centers or Delivery-Only Marijuana Retailers) shall be made solely on a reserve ahead basis for pick up at the Marijuana Retailer facility, provided, however, that if a customer requires the assistance of a marijuana consultant at the facility, an advance appointment is required, and, further provided, that the Marijuana Retailer must provide the customer with the option to schedule an appointment anonymously; all such reserve ahead purchases require confirmation of the time or times at which a pick-up may be made; and, all reserve ahead pick-ups and appointments for consultation shall be scheduled and, if necessary, limited, to avoid nuisance conditions in surrounding neighborhoods as provided in Section 8.37.5, Paragraph B.9. above, as well as to otherwise comply with State and local law. This Paragraph B.18 shall terminate on June 1, 2022

SELECT BOARD

Bernard W. Greene, Chair
Benjamin J. Franco
Nancy S. Heller
Heather Hamilton
Raul A. Fernandez

ADVISORY COMMITTEE

Michael Sandman, Chair