

WA 8

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To: Somani Alok <ninetyouth@yahoo.com>; Susan Park <mrssusanpark@yahoo.com>

Cc: Jonathan Simpson <jsimpson@brooklinema.gov>

 1 attachments (2 MB)

Charlton MLU decision- invalidating bylaw that retroactively voided HCAs as conflicting w. Section 3 (impacticability).pdf;

Dear Mr. Somani and Ms. Park – You may wish to share this email with your co-petitioners regarding Warrant Article 8.

I am writing on behalf of both Associate Town Counsel Jonathan Simpson and myself. In reviewing WA 8, there seemed to be some possible ambiguities and legal infirmities. I am writing to bring them to your attention and to suggest alternative language (see below, following my signature). (I have inserted in bold italics the proposed additional language of WA 7 so that all language can be reviewed for internal consistency, in case WA 7 passes.)

I presume that the last sentence (which was not underlined) refers to the effective date and was not intended to be added substantively.

The language and the explanation were unclear, from what I could see, as to whether or not the intention is to attempt to lower the cap retroactively (which could purport to put an existing license at risk at renewal). If so, the proposal is likely invalid as conflicting with G.L. c. 94G s. 3. Note in particular that the AGO disapproved of Charlton's by-law that purported to void existing host community agreements, in part because a by-law that resulted in retroactive voiding made it "unreasonably impracticable" to conduct a marijuana business. I attach the decision. The infirmity identified by the AGO in Charlton's case would be exacerbated with regard to an operating business. Therefore, the language of WA 8 should be clear that the proposal applies prospectively, and not retroactively.

The language proposed below would clarify that the effective date of the rounding down is prospective and contingent on consistency with G.L. c. 94G s. 3 generally (as may be required by s. 3(b), not only 3(e)) AND that it does not reach existing licenses. (It also deletes the effective date sentence and incorporates the more complete notion into the text substantively, which would account better for the possible addition of licenses per WA 7.)

We expect to attend and participate in upcoming meetings to vet WA 8 and will cover the article at Town Meeting; therefore, we bring the above and below to your attention at this early juncture.

You would need to vet changes through the Town Moderator for scope and present the new language to the Advisory Subcommittee, etc., as Town committees take up WA 8.

Regards,

Patty

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The Select Board shall not issue more Marijuana Establishment licenses in each of the following categories of Marijuana Establishment licenses than the number that is 20% of the number of liquor licenses for off-premises alcohol consumption that have been issued by the Select Board pursuant to M.G.L. c. 138, § 15, ~~as rounded up down to the nearest whole number in the event the number is a fraction~~: a) Storefront Marijuana Retailers, b) Marijuana Delivery Operators Delivery-Only Marijuana Retailers; and c) Social Consumption Marijuana Retailers, and d) Marijuana Couriers. ***[WA 7 proposed addition: The Select Board may increase the foregoing limitation in (a) by two (2) as to Storefront Marijuana Retailers in the event it is granting the additional license(s) to an Equity Applicant as defined in a Select Board policy or regulation then in effect.]***

Effective January 1, 2022, in the event that the foregoing calculation of Select Board license caps results in a fraction, the fraction shall be rounded down to the nearest whole number as may be permitted by and consistent with G.L. c. 94G, s. 3; otherwise, the number shall be rounded up to the nearest whole number. The foregoing sentence shall not affect the validity of licenses outstanding as of January 1, 2022.

~~This bylaw, as amended, shall take effect only upon an affirmative vote by the voters of a ballot question as provided in G.L. c. 94G, s. 3(e);~~