

Memo

To: BCW Commissioners

From: Rebecca Stone

Re: Background for the Nov. 3 Public Hearing on Warrant Articles (WAs)

Date: October 27, 2021

In preparation for our public hearing to consider making a recommendation to Town Meeting on various warrant articles, this memo briefly describes each WA and gives the reason the BCW voted to hear it, followed by the actual language of the Warrant Article before Town Meeting. Further explanations by petitioners for each article can be found here: [Article Explanations November 16, 2021 STM1](#)

I will also circulate separately the available reports on each of these from the Advisory Committee, the body appointed by the Town Moderator and charged with studying the financial and other impacts of any WA and making a recommendation to Town Meeting based on its assessment of those impacts.

We will be joined at our hearing by the following Petitioners:

Petra Bignami (Art. 22)

Bonnie Bastien (Arts. 11&12)

Mike Toffel (Arts. 11&12)

1) **Warrant Article 7**: Petitioner -- Select Board

The article, presented by the Select Board, would increase Marijuana retail licenses by two and specify those licenses for Disadvantaged Business Enterprises (“Equity Applicants”). While this is intended to prioritize business owners of color, DBEs include women-owned businesses. BCW voted to hear Art. 7 because of our work to promote Brookline contracting with DBEs, but noted that it may not be possible to take a position on equity grounds without implicitly endorsing more marijuana retail licenses for Brookline.

ARTICLE 7

Submitted by: Select Board

To see if the Town will amend Section 8.37.3 of Article 8.37 of the Town’s General By-Laws, “CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS”, as follows (additions are in bold, underlined text, and deletions are in bold, stricken text):

Section 8.37.3 CAPS ON THE NUMBER OF SELECT BOARD LICENSES FOR MARIJUANA RETAILERS

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 to the nearest whole number in the event the number is a fraction: a) Storefront Marijuana Retailers, b) Marijuana Delivery Operators, c) Social Consumption Marijuana Retailers, and d) Marijuana Couriers. 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.

2) **Warrant Article 10:** Petitioner – Select Board

Asks the state legislature (a “home rule petition”) to allow Brookline Town Meeting to continue meeting remotely or in “hybrid,” extending rules put in place for COVID which have benefited women and others with domestic care responsibilities or inflexible work schedules and transportation issues. BCW voted to hear Article 10 because this is an issue that aligns with the remote access agenda the BCW has been pursuing.

ARTICLE 10

Submitted by: Select Board

To see if the Town will authorize and empower the Select Board to file a petition with the General Court for special legislation as set forth below:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO HOLD HYBRID TOWN MEETINGS.

Provided that the General Court may reasonably vary the form and substance of this requested legislation within the scope of the general public objectives of this petition, be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law, charter provision, ordinance or by-law to the contrary, the Town of Brookline may hold town meetings at which participants attend both in person and remotely (hereinafter sometimes called a “hybrid meeting”), subject to the following:

(a) The determination of whether a town meeting shall be a hybrid meeting shall be made by the Select Board at the time that it approves the warrant for such meeting, and the warrant shall contain such provisions as shall be deemed by the moderator and Town Counsel to be necessary in order properly to notify participants in such meeting of the requirements set forth in this section.

(b) Except as otherwise set forth in this section, town meeting members and other participants in a hybrid meeting may elect to attend such meeting either in person, at the location designated in the warrant for such meeting, or remotely by means of a video conferencing platform.

(c) All town meeting members attending a hybrid meeting, whether in person or remotely, shall be counted for purposes of determining the presence of a quorum at the meeting.

(d) The moderator, the Town Clerk and all members of the Town’s information technology staff and other persons required to operate the voting and other technical systems necessary for the proper function of a hybrid meeting in accordance with this section shall attend each session of a hybrid meeting in person. All other participants in a hybrid meeting, including town meeting members and other residents and non-residents of the Town, may attend each session of a hybrid meeting either in person or remotely. In order to attend a session of a hybrid meeting remotely, a participant shall be required to provide written or electronic notice of such participation to the moderator and Town Clerk, which notice shall be required to be received no later than 48 hours before such session. Such notices may cover

such person's remote attendance at one or more sessions of a hybrid meeting. Such notice requirement may in general or in specific instances be waived for Town officials and other Town employees by the moderator, by written notice to the Town Clerk and Office of the Select Board.

(e) The video conferencing platform shall afford all remote participants in a hybrid meeting the ability to identify and hear the moderator and each town meeting member who attends the meeting, as well as any other persons who participate in the meeting. All remote participants in a hybrid meeting shall have substantially the same access as in-person participants to the content of handouts, presentations and other material distributed or displayed, prior to or during the meeting, to in-person participants in the meeting.

(f) All participants in a hybrid meeting, whether attending in person or remotely, shall have a substantially equal opportunity to request recognition by the moderator, make a motion or raise a point of order or question of privilege.

(g) All town meeting members participating in a hybrid meeting, whether attending in person or remotely, shall have the opportunity to vote on all matters put to a vote of town meeting members; such votes shall to the extent feasible be taken substantially contemporaneously; and such votes shall in the case of recorded votes be published as soon as practicable subject to the abilities of the respective voting systems used for in-person and remote votes. All votes at a hybrid meeting shall be taken by such means and in such a manner as shall be determined by the moderator to record accurately and securely the votes of those entitled to vote at the meeting.

(h) Town meeting members who do not have access to the video or other conferencing system used for remote participants in a hybrid meeting may participate in the meeting via telephone conference call. The requirements of sub-sections (e) and (f) of this section shall to the extent that they cannot be complied with through telephone conferencing not apply to such town meeting members. No persons other than town meeting members shall be permitted to participate in a hybrid meeting via telephone conference call.

SECTION 2. All actions taken during a hybrid meeting held pursuant to section 1 are hereby ratified, validated and confirmed to the same extent as if the hybrid meeting had been conducted entirely in person, and such actions shall be deemed to comply in all respect with all other applicable laws, charter provisions, ordinances and by-laws.

SECTION 3. This act shall take effect upon its passage.

- 3) **Warrant Articles 11 & 12:** WA11 asks the legislature (a "home rule petition") to extend, for Brookline, the right for boards/commissions subject to the Open Meeting Law (OML) to form a quorum remotely and to have the chair participate remotely as well. This WA mirrors [H.3213/S.2104 An Act updating the Open Meeting Law to support remote participation](#), legislation that calls for this right to be applied statewide to all boards/commissions subject to the OML. WA12 is a non-binding resolution submitted by the same petitioners asking the Town to ensure the technology is in place to enable hybrid meetings to occur. BCW voted to hear Articles 11&12 together because we have been a leading voice in Brookline for remote access and participation in boards and commissions, including having the chair testify in favor of H.3213/S.2104.

#### ARTICLE 11

Submitted by: Bonnie Bastien (TMM 5), Mike Toffel (TMM 8). Elizabeth Schafer (TMM

10), Marissa Vogt (TMM 4), Jeffrey Benson (TMM 3), and Anne Weaver (TMM 11)

To see if the Town will authorize and empower the Select Board to file a petition with the General Court for special legislation as set forth below:

**AN ACT EXEMPTING THE TOWN OF BROOKLINE FROM IN-PERSON QUORUMS.**

Provided that, the General Court may reasonably vary the form and substance of this requested legislation which shall be within the scope of the general public objectives of this petition, be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same as follows:

SECTION 1. The town of Brookline shall be exempt from the provision of chapter 30, section 20(d), that requires that a quorum of the body, including the chair be present at an in-person meeting location (specifically, from "and provided further, that a quorum of the body, including the chair, are present at the meeting location").

SECTION 2. This act shall take effect upon its passage.

Or act on anything relative thereto

**ARTICLE 12**

Submitted by: Bonnie Bastien (TMM 5), Michael Toffel (TMM 8), Elizabeth Schafer (TMM 10), Marissa Vogt (TMM 4), Jeffrey Benson (TMM 3), and Anne Weaver (TMM 11)

To see if the Town will adopt the following Resolution:

WHEREAS, the temporary COVID provisions that suspended the Massachusetts Open Meet Law (OML) requirement that quorum must be in-person resulted in never-before-seen accessibility for civic participation via remote meeting access; and

WHEREAS, those COVID provisions are set to expire on April 1, 2022; and

WHEREAS a reversal from this greater accessibility will dampen residents' ability to attend meetings and serve as members of public bodies; and

WHEREAS, the technology required for audio visual accessibility is becoming more common and less expensive; and

WHEREAS, audiovisual accessibility accommodation is something many in disability communities and organizations have been fighting for for years; and

WHEREAS, policies and decisions our public bodies make can have a large impact on the people who are most excluded from participating in those public bodies; and

WHEREAS, the ability to attend meetings remotely has eliminated critical access barriers to a "seat at the table" for the past 18 months; and

WHEREAS, we must not return to an inequitable past as we move forward after the pandemic.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. Brookline Town Meeting calls on the Select Board to equip all municipal conference and hearing rooms with audiovisual equipment to enable all public bodies meeting under OML to provide audiovisual participation access for attendees and members by no later than November 1, 2022; and

2. The Town of Brookline should consider using non-traditional funding sources to fund the technology and training necessary to support public bodies meeting in a hybrid manner; and
3. The Town of Brookline should consider using non-traditional funding sources to fund the technology and training necessary to support public bodies meeting in a hybrid manner.
- 4) **Warrant Article 22**: This article would change Brookline’s Zoning By-Laws to restrict retail gun and ammunition stores in ways similar to those governing marijuana retail stores. BCW voted to hear Article 22 because of the use of firearms in domestic violence and the consequent harm to women who are the primary victims of domestic violence.

ARTICLE 22 [Note: for the purposes of this memo, the article language has been shortened to the core proposal. See the Town website for the full article, including Table of Use changes in the zoning by-law]

Submitted by: Petra Bignami (TMM P12)\*, Janice S. Kahn (TMM P15)\*, Alexandra Metral (TMM P1) and Sharon Schoffman (TMM P14)

\*indicates primary petitioners

To see if the Town will add a new Section 4.14: Firearm Business Uses to the Town of Brookline Zoning By-Laws, add to Sec. 4.07, Table of Use Regulations a new Principal Use under Retail and Consumer Service Uses, #29A, subject to the regulations in Sec. 4.14 Firearm Uses; and amend Article II, Section 2.00, Definitions, of the Brookline Zoning By-Laws

#### ART. IV, USE REGULATIONS

Add a new section to Art. IV, as follows:

##### Section 4.14 FIREARM BUSINESS USES

A. Purpose. To establish criteria for the establishment of Firearm Business Uses in the Town to address public safety concerns arising from the operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This Section 4.14 provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare in conjunction with the protections from G.L. c. 140, §122-131Y and other State laws and regulations. To the extent this section or any related section can be read to potentially conflict with G.L. c. 140 or other State laws or regulations, the section shall be interpreted to minimize any conflict with State laws or regulations while maximizing the furtherance of the public safety and other public purposes underlying this Section.

##### B. Definitions.

See Section 2, Definitions, of the Zoning By-Law for definitions of applicable terms.

C. Firearm Business Uses not allowed as-of-right. Firearm Business Uses are not included within the definitions of retail sales or services, manufacturing, or any other lawful business permitted as of right or by special permit contained in other Sections of this Zoning By-Law.

D. Firearm Business Uses allowed by special permit. Use of land, buildings or structures for a Firearm Business Use shall be allowed only by special permit in the districts specified in Section 4.07, Table of Use Regulations, subject to the requirements and criteria of this Section. 4.14.

E. Location requirements.

1. All distances in this Section shall be measured in a straight line from the property line of the lot containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein:

a. Firearm Business Uses shall not be located within a radius of 150 feet from any property containing a residential use.

b. Firearm Business Uses shall not be located within 1,000 feet of any private or public K-12 school.

c. Firearm Business Uses shall not be located within 500 feet of any daycare center, preschool, child-care facility, or an existing Firearm Business Use at another location, whether such firearm business use is located within or without the Town's boundaries.

2. No Firearm Business Use shall be located within a building containing a dwelling unit.

F. Operational requirements.

1. Firearm Business Uses shall obtain and maintain all necessary Federal, State and other required local approvals and licenses prior to beginning operations, including, but not limited to, a valid, current State license issued pursuant to G.L. c. 140, § 122, as applicable. Required State and Federal licenses must be obtained before applying for a Special Permit.

2. Firearm Business Uses shall comply with all applicable Federal, State and local laws and regulations in the operation of their business.

3. The hours of operation for a Firearm Business Use shall not adversely impact nearby uses. The hours of operation shall follow all state statutory and regulatory requirements, but in no case shall any Firearm Business Use be open before 10:00 a.m. or remain open after 5:00 p.m.

4. Prior to the application for a Special Permit, all Firearm Business Uses shall submit a security plan to the Brookline Police Department for review and approval. Review and approval of the security plan may include an inspection of the proposed site by the Police Department. The plan must include, but not be limited to, the following:

a. Proposed provisions for security.

b. A trained employee shall check identification and compliance with age restrictions prior to customers entering the establishment.

c. The physical layout of the interior, including a demonstration that the size of the store is not so excessive so as to create issues with site security and video monitoring.

d. After-hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.

e. The number of employees.

5. Prior to the application for a Special Permit, all Firearm Business Uses shall submit an operations and management plan to the Brookline Police Department for review and approval.

6. All Firearm Business Uses shall conduct criminal background checks for all employees in accordance with State law.

7. No persons under the age of 18 shall have access into or within a Firearms Business Use, with the sole exception that minors age 14 and older may access a Firearms Dealer accompanied by the minor's parent or legal guardian.

8. Firearms Dealers shall videotape the point of sale of all firearms transactions and maintain videos for three years to deter illegal purchases and monitor employees.

G. Special permit application and procedure. In addition to the procedural and application requirements of Section. 9.03, an application for special permit for a Firearm Business Use shall include, at a minimum, the following information:

1. Description of Activities: A narrative providing information about the type and scale of all activities that will take place on the proposed site.

2. Lighting Analysis: A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.

3. Context Map: A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot. The context map shall include the measured distance to all uses described in Section. 4.14.E.1 above, and shall be certified by a design professional such as an architect, engineer or land surveyor.

4. Description of Ownership, Management, and Employees: The name and address of the legal owner of the establishment. The name and address of all persons having any legal, beneficial, equitable, or security interests in the establishment. In the event that a corporation, partnership, trust or other entity is listed, the name, and address of every person who is an officer, shareholder, member, manager, or trustee of the entity must be listed. The name, address, phone number and email address of the manager(s) and assistant manager(s).

5. Comprehensive Signage Plan:

6. Report from Chief of Police or designee: confirming that the applicant has submitted the plans requiring approval by the Police Department...

*(this article continues with further requirements and amendments to the Table of Use Regulations)*