

**Warrant Article 22
Firearm Business Uses**

The Ad Hoc Subcommittee on Warrant Article 22 of the Advisory Committee held a (virtual) public hearing on Warrant Article 22 on Wednesday October 13, 2021. Subcommittee members Mike Sandman (Chair), David-Marc Goldstein, Kelly Hardebeck, Alisa Jonas and Lee Selwyn attended, joined by petitioners Petra Bignami (TMM P12), Janice S. Kahn (TMM P15), Alexandra Metral (TMM P1) and Sharon Schoffman (TMM P14). Associate Town Counsel Jonathan Simpson was also in attendance.

Recommendation: Favorable Action 5-0 with 0 abstentions

Executive Summary:	WA 22 would create a new Section 4.14: Firearm Business Uses to the Zoning By-Law, add to Sec. 4.07, Table of Use Regulations a new Principal Use under Retail and Consumer Service Uses, #29A. If adopted, the By-Law would establish specific locations within G (General Business) Districts by Special Permit only where Firearm Businesses could be located, prohibiting them within 1,000 feet of a K-12 public or private school, within 500 feet of a day care center or pre-school, and in any location that contains or directly abuts residential dwelling units.
Voting Yes will...	Allow the Town to strictly limit locations where Firearm Businesses could be located, and to regulate gun store operations.
Voting No will...	Allow Firearm Businesses to be located in any business district and enable them to operate without regulatory guidance.
Financial impact [if any]	Dollar impact: Minimal, associated with the time required of Town staff in the approval and review process and ongoing enforcement. Staff impact: Review of Special Permit applications when/as/if submitted Enforcement impact: Special Permits will be required for any Firearm Business.
Legal implications [if any]	Creating an outright ban on Firearms Businesses has the potential to invite litigation against the Town on 2 nd Amendment grounds. Town Counsel believes that the location restrictions proposed in this Warrant Article, which will still permit some such businesses in Brookline, provide a reasonable balance between the Town's public safety interests in limiting such businesses and the Town's potential exposure to 2 nd Amendment litigation.

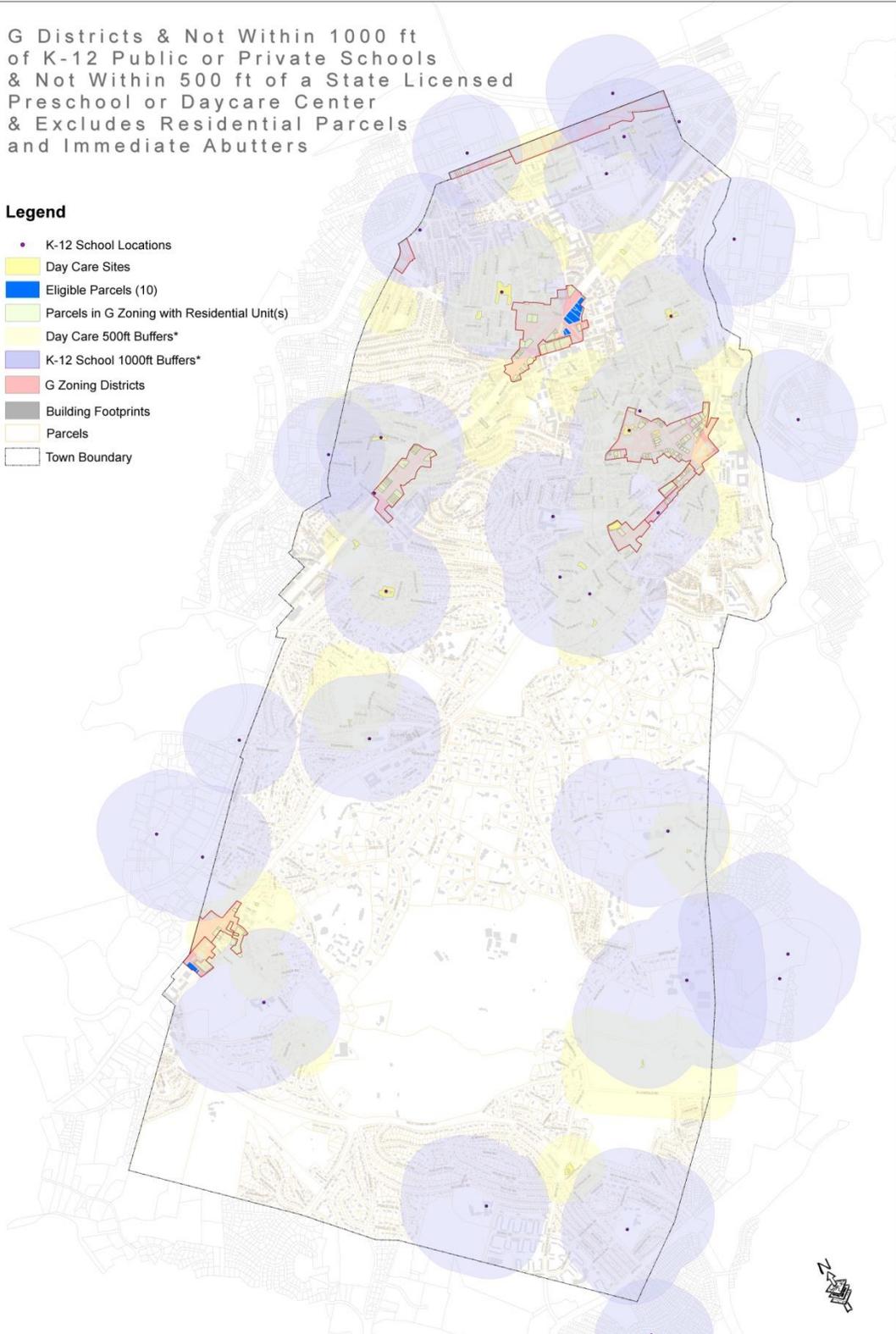
Introduction

The Town has not thus far received any applications to open a Firearm Business in Brookline. However, Newton has recently established zoning restrictions that are similar to those being proposed in this Warrant Article. The Petitioners believe that Brookline should adopt similar zoning provisions.

G Districts & Not Within 1000 ft of K-12 Public or Private Schools & Not Within 500 ft of a State Licensed Preschool or Daycare Center & Excludes Residential Parcels and Immediate Abutters

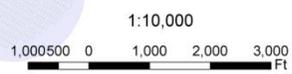
Legend

- K-12 School Locations
- Day Care Sites
- Eligible Parcels (10)
- Parcels in G Zoning with Residential Unit(s)
- Day Care 500ft Buffers*
- K-12 School 1000ft Buffers*
- G Zoning Districts
- Building Footprints
- Parcels
- Town Boundary



*All buffer of school and daycare locations are drawn from lot lines

Date Sources:
 -Public and private schools point layer MassGIS and the Town of Brookline, Sept. 2021
 -Currently licensed daycare programs from Massachusetts Department of Early Education and Care (EEC), Sept. 2021
 -Parcels from Town of Brookline, Sept. 2021
 -Zoning Districts 10-CC, Town of Brookline (Current)



The WA would allow Firearm Businesses in G Districts by Special Permit, provided that such businesses are not located within 1,000 feet of any K-12 public or private school, within 500 feet of any pre-school or licensed day care center, or in any location that contains or that directly abuts any residential dwelling unit(s). The attached map, prepaid by the Town's GIS staff, identifies (in dark blue) those locations where a Firearm Business could potentially be located under the warrant article as proposed.

Evaluation Methodology/Research

Comparisons were drawn between the proposed zoning treatment of Firearm Businesses and the location limitations adopted for Marijuana dispensaries. Associate Town Counsel Jonathan Simpson advised the Subcommittee that the 1,000-foot distance from any K-12 school was set based upon 18 U.S.C. § 922(q)(2)(A), the so-called "Gun-Free School Zone Act" ("GFSZA"). The GFSZA originally was enacted as part of the Crime Control Act of 1990. After an adverse Supreme Court decision, Congress re-enacted the GFSZA in 1996, correcting the defects identified by the Supreme Court. The amended GFSZA contained the same prohibitions as the 1996 revision, except the newer version added language to apply the law to any firearm "that has moved in or that otherwise affects interstate or foreign commerce." 18 U.S.C. § 922(q)(2)(A), (3)(A). Challenges to the new statute have been unsuccessful. See, e.g., *United States v. Danks*, 221 F.3d 1037, 1038-39 (8th Cir. 1999) and *United States v. Dorsey*, 418 F.3d 1038, 1045-46 (9th Cir. 2005), rev'd on other grounds. The GFSZA prohibits the carrying of a firearm within 1,000 feet of a K-12 school. While it does not specifically prohibit a firearm shop from opening within that 1,000-foot exclusion zone, any customer who purchases a firearm from a business located closer than 1,000 from a K-12 school would be in violation of the GFSZA the moment he or she exits the business. No similar restriction in federal law applies to pre-schools and day cares. The Petitioners, with the assistance of the Town's GIS staff, determined that due to the large number of pre-schools and day cares in Brookline, adoption of a 1,000-foot exclusion zone for these activities would operate to prevent the establishment of any Firearm Business in the Town. The Petitioners also initially considered imposing a 150-foot exclusion zone with respect to any residence, but similarly were able to determine that this limit too would effectively prevent Firearm Businesses from locating in Brookline.

Discussion

The Subcommittee was supportive of the Petitioners' objectives. One member of the Subcommittee suggested that the word "may" in the proposed language of Section 4.14.F.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...." – should be changed to "shall." This was moved and seconded, and by a vote of 5-0-0 was adopted by the Subcommittee.

Recommendation

By a vote of 5-0 with no abstentions, the Subcommittee recommends FAVORABLE ACTION on WA 22 as amended by the Subcommittee.

Goldstein	Y
Hardebeck	Y
Jonas	Y
Selwyn	Y
Sandman	Y