
TO: Pepperell Planning Board (*By Electronic Mail Only*)
FROM: David J. Doneski
CC: Town Administrator
RE: Zoning Bylaw Regulation of Marijuana Retailers; Special Permit Application of New England Craft Cultivators, LLC
DATE: April 30, 2021

I have reviewed the April 27, 2021 memorandum from Sullivan & Triggs, LLP to New England Craft Cultivators, LLC, submitted to the Planning Board with the April 28, 2021 memorandum of Wes Ritchie of New England Craft Cultivators. Per the request of Planning Board Advisor Lisa Davis, in her e-mail to me of April 27, I offer the following response.

Section 3 of chapter 94G of the General Laws sets limits on local ordinances and bylaws regarding operation of marijuana establishments in Massachusetts. Certain local controls require approval of the voters, under a ballot question, in addition to adoption of an ordinance or bylaw by the respective city council or town meeting. These include a bylaw or ordinance that would: “limit the number of marijuana retailers to fewer than 20 per cent of the number of licenses issued within the city or town for the retail sale of alcoholic beverages not to be drunk on the premises where sold under section 15 of chapter 138.” G.L. c. 94G, §3(a)(2)(ii).

Pepperell has adopted a Zoning Bylaw provision which does not limit the number of marijuana retailers to fewer than that 20% figure. The bylaw provides that the number of marijuana retailers may be up to the 20% figure, as follows: “The number of Marijuana Retailers shall not exceed twenty percent (20%) of the number of alcohol licenses issued pursuant to M.G.L. c. 138, §15 for retail sale of alcohol not to be drunk on the premises in the Town of Pepperell, said 20% figure to be rounded up to the next whole number.” (Zoning Bylaw, Section 6640.5.a))

The question presented is how to construe and apply the phrase “twenty percent (20%) of the number of alcohol licenses issued pursuant to M.G.L. c. 138, §15 for retail sale of alcohol not to be drunk on the premises in the Town of Pepperell.” Alcohol licenses which are issued under

G.L. c. 138, §15 are so-called ‘package store’ licenses. In the licensing context, issuance of a license generally connotes the grant and/or delivery of a license to an applicant. See, e.g., Frequently Asked Questions guidance of the Alcoholic Beverages Control Commission:

Who issues restaurant/bar licenses and package store licenses?

The LLA [local licensing authority] issues retail licenses for both on-premises consumption under § 12 (restaurants, hotels, clubs, taverns, war veterans’ clubs, continuing care retirement communities, and general-on-premises) and off-premises consumption under § 15 (package stores, including grocery stores and convenience stores). (available at <https://www.mass.gov/info-details/frequently-asked-questions-retail-licenses-spring-2018>, accessed April 30, 2021)

On its website, which I reviewed again today, the Massachusetts Cannabis Control Commission (CCC) offers the following guidance regarding local bylaws and ordinances regulating marijuana establishments (MEs):

A municipality may pass a bylaw or ordinance limiting the number of MEs to 20% or more of the number of liquor licenses issued pursuant to G.L. c.138 §15 (sale for off-premises consumption) in that municipality without going to the ballot. For example, if a municipality has granted 100 liquor licenses, it may set a maximum limit for 20 marijuana retailers in its locality. If a municipality is calculating 20% of its §15 liquor licenses, and the calculations results in a number less than one, the Commission recommends that the municipality round up to one retailer. If the calculation results in a fraction greater than one, the Commission recommends rounding up to the nearest whole number if the municipality does not wish to limit the number of retailers to fewer than 20%. (emphasis supplied) (available at the *State & Local Government Municipality’s Roles and Responsibilities* tab; <https://masscannabiscontrol.com/state-local-government/roles-responsibilities/>.)

I construe the statutory 20% language, and therefore the language in the Pepperell Zoning Bylaw, in the same manner as stated in the CCC’s guidance; that is, the 20% figure is calculated on the basis of off-premises alcohol licenses actually granted for exercise within the Town.

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