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MEMORANDUM

DATE: February 5, 2021

TO: Councilor Crossley, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Marie Lawlor, Deputy City Solicitor

RE: #41-21 Zoning Amendments for Marijuana Establishments
THE DIRECTOR OF PLANNING AND DEVELOPMENT requesting amendments to the Newton Zoning Ordinance, Chapter 30, Sections 4.4 and 6.10, to amend the regulations for marijuana establishments to be consistent with the regulations put forth by the Cannabis Control Commission on January 8, 2021.

MEETING DATE: February 8, 2021

CC: City Council
Planning and Development Board
Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani
John Lojek, Commissioner of ISD

At the January 25, 2021 meeting of the Zoning and Planning Committee, Planning staff introduced the marijuana zoning changes that are necessary to stay consistent with updated regulations from the state Cannabis Control Commission (Commission). The new regulations were filed on January 8, 2021 and can be found here: <https://mass-cannabis-control.com/the-laws/>. This memo will provide additional details regarding the necessary changes to the 2018 marijuana zoning ordinance, including recommendations for zoning districts for the two new delivery license types, and responses to questions raised by the committee at the January 25th meeting.

Zoning Updates – Minor technical changes

The attached redline of the 2018 marijuana zoning ordinance (Attachment A) represents the changes necessary to stay consistent with state regulations. These changes include:

- Registered marijuana dispensaries (RMDs) are now called Medical Marijuana Treatment Centers (MTCs). An MTC is still limited to the sale of medical marijuana and the definition is largely unchanged. MTCs, formerly regulated by the Department of Public Health, are now regulated by the Cannabis Control Commission.
- Marijuana Product Manufacturing definition has been updated to clarify that it includes packaging and transferring products to other marijuana establishments.
- The buffers for Medical Marijuana Treatment Centers have been revised to be consistent with those for Marijuana retailers. Previously medical marijuana RMDs could be required to maintain a buffer of at least 500 feet from a school, daycare center, preschool or afterschool facility, or any facility in which minors commonly congregate. Marijuana retailers are only required to maintain a 500-foot buffer from public and private k-12 schools. The MTC buffer has been revised to match the marijuana retailer buffer. The City may reduce this buffer requirement or eliminate it but may not require a greater buffer.
- The measurement for this buffer distance has also been clarified and new definitions have been added. The buffer zone distance is to be measured in a straight line from the geometric center of the marijuana establishment entrance to the geometric center of the nearest school entrance, unless there is an unpassable barrier within those 500 feet, in which case it is measured along the center of the shortest publicly accessible pedestrian travel path from entrance to entrance. An impassible barrier is defined as a highway, public or private way or path, inaccessible structure, body of water, or other obstruction that renders any part of the 500-foot straight line inaccessible by a pedestrian or automobile.
- The school buffer updates do not impact the City's required half-mile buffer between MTCs/marijuana retailers.
- The requirement for medical marijuana RMDs to be located in an area that currently does not have reasonable access to medical marijuana or an area that has been established by the Department of Health as needing supplemental service has been removed.
- For clean up purposes we are also striking Section 6.10.4 from the ordinance. This section is the moratorium that was in place in 2018 prior to adopting zoning for recreational marijuana.

Zoning Recommendations for New License Types

The new regulations also include two new delivery license types, marijuana courier and marijuana delivery operator. For a period of three years courier and delivery operator licenses will only be

granted to applicants that qualify under the state's Social Equity or Economic Empowerment programs. Additional information on these programs can be found in Planning's [January 22, 2021 memo](#).

The two new delivery license types are defined as follows:

- Marijuana courier is an entity licensed to deliver marijuana and marijuana products directly to consumers from a marijuana retailer or medical marijuana treatment center but is not authorized to sell directly to consumers.
- Marijuana delivery operator is an entity licensed to purchase at wholesale and warehouse finished marijuana products acquired from a marijuana cultivator, product manufacturer, microbusiness or craft marijuana cooperative and to repackage, sell and deliver directly to consumers but is not authorized to operate a storefront. Delivery operators are not considered retailers and are not subject to the cap on the number of licenses a municipality must issue.

New zoning is needed for the two new license types. The zoning allows for the courier or delivery operators to physically locate here, it does not affect the ability of Newton residents to receive deliveries from operators within or outside of Newton. The marijuana courier will need a site that allows for parking of the delivery vehicles and likely some office space. The delivery operator will require parking for delivery vehicles and space for a storage warehouse and office. The courier will never have marijuana products onsite as they will pick up from the retailer/MTC and deliver directly to the customer. The delivery operator will require a secure location to store products.

Planning staff have evaluated the current zoning districts for compatibility with these new uses as well as reviewed proposals from surrounding communities. Both couriers and delivery operators will need sufficient parking for their delivery vehicles and delivery operators will also need a secure, though likely relatively small, warehouse to store products. In preliminary conversations with delivery operators, they tend to be looking for warehouse space ranging from about 1,000 square feet to about 5,000 square feet. Parking needs are likely fairly high, though it will be a fixed amount based on the number of delivery vehicles and applicants can be expected to only select sites that meet their parking needs.

Staff do not anticipate external impacts from either couriers or delivery operators. All products stored in the warehouse for delivery operators must be packaged so odors are unlikely. Drivers are able to make multiple stops per trip (the cash value of product carried in the vehicle is limited to \$10,000), reducing the number of vehicular trips to and from the site. However, neither use is compatible with the vibrant, pedestrian friendly vision for village centers and commercial areas. For this reason, Planning Staff recommends limiting marijuana couriers and marijuana delivery operators to the manufacturing and limited manufacturing zoning districts (see map in Attachment B). Other zoning districts were considered, but not recommended for the following reasons:

- BU1 and BU2 – these districts represent the core of village centers and the areas just on the edge of village centers. These commercial and mixed-use areas should be preserved for more active uses.

- BU4 and BU5 – these districts are extremely limited and primarily include the Marriot hotel in Auburndale, the Street and Chestnut Hill Square along Route 9, and Northland (once the rezoning is in effect).
- Mixed Use 1 and Mixed Use 2 – MU1 and MU2 encompass Needham Street and contain a mix of predominantly retail, office, and industrial uses. The courier and delivery operator uses would not be out of place along Needham Street, but they also do not contribute towards the vision for Needham Street in the Needham Street Area Vision Plan.
- Mixed Use 4 – the MU4 district has only been applied in conjunction with development projects receiving a Special Permit for a mixed use building with residential units above ground floor retail. These buildings are not appropriate locations for this type of use, and it is not in line with the MU4 regulations.

Given the emphasis on parking and security, and for the reasons above, staff recommends limiting these uses to manufacturing and limited manufacturing zoning districts. This is also consistent with initial recommendations from Cambridge and Natick, both of which have recommended limiting these new delivery uses to industrial areas. However, given these uses will be similar to other uses allowed by-right in manufacturing and limited manufacturing districts, Planning staff recommend that both couriers and delivery operators be allowed to locate by-right. Operators will be heavily regulated by the Cannabis Control Commission (far more so than other warehouses) and as discussed above external impacts would be extremely limited.

The relevant criteria from Section 6.10.3 E will still apply, including:

- Marijuana establishments are prohibited from locating in a building containing a residential use; requirement that all marijuana establishments locate in a permanent building.
- Deliveries may not occur before 8 am or after 9 pm.
- All marijuana establishments must submit state approved emergency response plans and security plans to the Newton Police Department and Newton Fire Department for review and approval.
- All marijuana establishments must submit a state approved operation and management plan to Inspectional Services Department and Planning and Development for review and approval.
- No odors may be detected at the exterior of the building.

In addition, signage is subject to the regulations issued by the Commission which includes a prohibition on any images or marijuana or marijuana products. Signage would additionally be reviewed by the Urban Design Commission.

Eliminating the requirement for a Special Permit would also benefit Social Equity and Economic Empowerment entities who may be challenged in terms of being able to “hold” potential properties while proceeding forward with a Special Permit process and timeline.

Responses to Questions

At the January 25th meeting committee members asked a number of questions, primarily concerning the operations of the new delivery uses. Responses below are from Planning and Law staff.

- *Are we required to allow delivery operators on top of retailers?* In order to ban courier and delivery operator licensees outright in Newton, the question would have to be put to the voters at the next general or special election.
- *Can appointments for retailers be required in the ordinance?* While an ‘appointment-only’ requirement could be added for MTCs and marijuana retailers, Planning staff would recommend against such an amendment. All MTCs and marijuana retailers require a Special Permit and the City Council has the discretion to require appointments where necessary in order to mitigate potential impacts. Thus far, all three establishments granted a Special Permit have a requirement to operate by appointment-only. There are varying processes outlined in the Council Orders for removing such condition, but all require at a minimum consultation with the Land Use committee and relevant departments such as Transportation and Police. Adding a requirement for appointments in the ordinance at this point would give a competitive advantage to those operators who have already obtained their Special Permit approvals.
- *What is legally required?* As mentioned above, Newton is required to allow for couriers and delivery operators to locate in the city unless a ballot referendum is approved to ban these uses. Additionally, Newton has no authority to limit the delivery of marijuana products to Newton residents from retailers and operators that are located outside of Newton. Municipalities are only authorized to reasonably regulate hours of delivery, which per the state regulations may not occur before 8 am or after 9 pm.
- *Could couriers and delivery operators utilize bicycles for deliveries?* No, delivery licensees may not deliver on bicycles. Vehicle requirements are highly regulated for security by the Cannabis Control Commission and vehicles must be owned or leased by the marijuana establishment.
- *Can we limit drivers from carrying large amounts of cash?* The Cannabis Control Commission limits the amount of product in a vehicle at any time to a cash value of \$10,000 and requires licensees use best efforts to minimize the cash carried in the vehicle and to maximize the use of online sales transactions. Any cash must be kept in a secure, locked compartment in the vehicle, separate from the secure compartment used to store the product. Municipalities are not authorized to regulate this.
- *Will this add to issues of delivery vehicles blocking streets?* It is unknown at this time how frequent deliveries will be within Newton. We are not able to restrict deliveries into Newton, however. Even if no couriers or delivery operators locate within Newton, residents may still receive deliveries from companies outside of Newton.
- *May personal vehicles be used?* No, personal vehicles are not permitted for deliveries. The delivery vehicles must be owned or leased by the Delivery Licensee. The Cannabis Control

Commission highly regulates delivery vehicle security. For example, vehicles may not have any external markings indicating it is being used to transport marijuana; marijuana product may not be visible from outside the vehicle and must be kept in a secure, locked storage compartment that is part of the vehicle; any cash must be kept in a separate secure, locked compartment; each vehicle must be staffed by a minimum of 2 agents of the Delivery Licensee one of whom must stay with the vehicle at all times and who must report to the establishment with fixed locations before and after each delivery as well as every 30 minutes while between deliveries. Firearms are not allowed.

- *Does the state set any controls on prices and will delivery operators undercut storefront retailers?* The Cannabis Control Commission does not regulate price nor allow municipalities to regulate pricing.
- *Could vehicles be parked offsite?* Yes, vehicles could be parked offsite, however this may not be practical. Delivery operators must be able to securely transfer product and cash to and from delivery vehicles. If vehicles were located offsite they would still need to drive to the warehouse location for pick up of product/drop off of cash.

Next Steps:

A public hearing has been set for March 8, 2021. Based on the discussion at this meeting staff will make any necessary changes to the draft ordinance redline in advance of the hearing.

ATTACHMENT A: Proposed Ordinance - Redline

ATTACHMENT B: Proposed Marijuana Courier and Delivery Operator Zoning Map