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PUBLIC HEARING MEMORANDUM

DATE: April 23, 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
Zachery LeMel, Chief of Long Range Planning

RE: #145-21 Request for Chapter 30 Amendment to establish regulations for gun establishments
HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, KRINTZMAN, LEARY, OLIVER, GREENBERG, NORTON, LUCAS, KELLEY, WRIGHT, MALAKIE, MARKIEWICZ, GENTILE, DOWNS, CROSSLEY, HUMPHREY, DANBERG, NOEL, BOWMAN, LAREDO, GROSSMAN, BAKER, LIPOF, KALIS AND RYAN requesting amendments to the Newton Zoning Ordinance, Chapter 30, including, but not limited to, the addition of definitions of "Firearm" and "Firearm Businesses", and amendments to Section 4.4.1 Allowed Uses and Section 6.10 Restricted Uses to regulate the use of land, structures and buildings for the siting and operation of gun ranges or the retail or wholesale operation involving gunsmithing, the purchase or sale of firearms, the sale of ammunition, or firearms accessories, and to restrict such uses to the Business 4, Mixed Use 1, Manufacturing, and Light Manufacturing Districts only and only upon the granting of a special permit, and to establish minimum standards and criteria for the granting of such special permits.

MEETING DATE: April 26, 2021

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

Executive Summary

The City of Newton does not currently regulate the zoning for firearms business (or related uses). A firearms business would be considered a general retail use and would be allowed either by-right or by special permit in most business and mixed-use zones as well as the limited manufacturing zoning district. The City Council has broad authority to regulate all land uses in Newton, including the location of firearms dealers. Currently, the zoning ordinance identifies certain uses that are to be treated differently than other retail uses such as adult businesses and marijuana retailers. However, due to Constitutional protections it may be reasonable to expect that the more restrictively firearm sales are regulated, the more likely such regulations will be subject to a court challenge.

The subject docket item is a request to amend Newton's current zoning ordinance to restrict firearm businesses only to certain zoning districts, to require a special permit, and to provide minimum standards for those uses. Attached to this memo is a draft zoning ordinance for firearms businesses developed by the Law and Planning Departments (**Attachment A**), a map of the proposed zoning districts for firearm businesses (**Attachment B**), as well as a frequently asked questions (FAQ) document from the Law Department (**Attachment C**). Staff reviewed a sampling of zoning ordinances and bylaws for firearm businesses from other municipalities both in and outside of Massachusetts. Zoning regulations for firearm businesses are not common and the only nearby communities that regulate firearms businesses through zoning that staff has found are Dedham and Westwood.

The key elements of the proposed ordinance are limiting firearm businesses to the Business 4, Mixed Use 1, Limited Manufacturing, and Manufacturing zoning districts; always requiring a special permit; requiring buffers from sensitive uses; and applying additional operational standards and criteria for approval. The most complicated element is the buffer distances from sensitive uses. At this time the distances are left as to be determined in the draft ordinance. This is to allow flexibility for the Council in the ultimate decisions but is also to allow staff time to clean up our data and analyze potential buffer distances. Planning staff are working with the City's GIS analyst to understand the data we have and ensure it is up to date and in the format that is needed. At the public hearing on May 10th Planning staff will provide recommendations for buffer distances as well as maps illustrating those buffers.

Firearm Zoning Examples

Staff reviewed a sampling of zoning ordinances for firearm businesses in other municipalities in Massachusetts and beyond. Almost all ordinances require special approval for firearm businesses (a special permit in Massachusetts or a conditional use permit elsewhere). Below is a summary of the key points from other ordinances:

- Dedham, MA - Dedham recently passed a by-law regulating firearm sales.
 - Firearms businesses are limited to the Adult Use Overlay District

- 150-foot buffer from a residential use or residential zoning district, school, library, church or other religious use, child-care facility, park, playground, recreational areas where large numbers of minors regularly travel or congregate, establishments selling alcohol for on-site consumption, and other adult use and firearms businesses.
- Westwood, MA
 - Firearms/Explosives sales and service are limited to the Local Business Districts, Highway Business District and Industrial District
 - Westwood does not appear to require specific buffers between firearms businesses and other uses, however most uses in the Highway Business and Industrial districts are required to provide a buffer from adjacent residential properties.
- Bloomington, MN – Bloomington regulates primary and incidental firearms sales and firing ranges.
 - Firearms sales are permitted in certain commercial districts; firing ranges are only permitted in some industrial districts.
 - 250-foot buffer from residential zoning districts, daycares, and k-12 schools.
 - Primary firearm sales must also be 1,000 feet from another primary firearm sales facility.
- Piscataway, NJ
 - Firearm sales to certain commercial districts.
 - 1,000-foot buffer from nursery schools, preschools, child, adult and special needs day care centers, schools, colleges and universities, funeral homes, health services facilities, other firearms sales dealers, assisted living facilities, places of worship, liquor stores, establishments selling alcohol for onsite consumption, and parks, playgrounds and commercial recreational facilities.
- Contra Costa, CA
 - 500-foot buffer from schools, daycares, parks, establishments that have on-site or off-site alcohol sales, places of worship, and existing firearm sales facilities.
- Windsor, CA
 - 500-foot buffer from parks, libraries, churches, personal services, and preschools.
 - 1,000-foot buffer from all schools.
- Healdsburg, CA
 - 500-foot buffer from churches, chapels, places of worship, schools, libraries, youth centers, commercial day care establishments, parks, and other locations with firearm sales.
- McCordsville, IN
 - Firearm sales limited to a medium intensity industrial district.
 - 200-foot buffer zone from any school.
- Worcester, MA – Worcester only regulates shooting ranges
 - 1,000-foot buffer from schools and a 100 foot buffer from a public park or playground. Worcester does not appear to regulate firearm sales.

Notably, zoning regulations for firearm businesses are rare and we have found few examples in Massachusetts so far. Most of our neighboring communities do not appear to regulate firearm businesses through zoning. Staff reviewed zoning ordinances for the following Massachusetts communities: Acton, Arlington, Ashland, Bedford, Belmont, Beverly, Bolton, Boston, Boxborough, Braintree, Brockton, Burlington, Carlisle, Cambridge, Chatham, Chelsea, Concord, Danvers, Dedham, Dover, Essex, Everett, Fall River, Fitchburg, Framingham, Gloucester, Hamilton, Holliston, Hudson, Ipswich, Lexington, Lincoln, Littleton, Lynn, Lynnfield, Malden, Manchester-by-the-Sea, Marblehead, Medfield, Medford, Medway, Melrose, Middleton, Milton, Nahant, Natick, Needham, North Reading, Norwood, Peabody, Quincy, Reading, Revere, Rockport, Salem, Saugus, Sherborn, Stoneham, Stoughton, Sudbury, Swampscott, Topsfield, Wakefield, Watertown, Waltham, Wellesley, Wenham, Weston, Westwood, Weymouth, Wilmington, Winchester, Winthrop, Woburn, and Worcester. Of these communities, the only ones that regulate firearms sales were Dedham and Westwood. Framingham excludes firing ranges from the definition of outdoor recreational facilities and North Reading prohibits gun and shooting clubs in their Highway Business zoning district. Everett appears to have regulated gun shops previously, but they are no longer included after a big rezoning in 2020.

Ordinance Framework

The proposed draft ordinance draws from firearms zoning regulations from other municipalities as well as the City's existing ordinances regulating adult businesses and marijuana uses. The draft ordinance defines terms not currently included in our zoning ordinance, such as ammunition, firearm, firearm accessory, firearm business, firing range, and gunsmith and proposes that the uses only be permitted by special permit in certain districts. The ordinance also identifies sensitive uses from which a firearm business use should be buffered from, provides additional operational standards, includes required application materials, and identifies new special permit criteria which must be met in addition to the general special permit criteria.

Zoning Districts

Currently in Newton, a firearm business would be classified under zoning as a retail use. Retail uses are currently permitted, either by-right or by special permit in the Business 1 (BU1), Business 2 (BU2), Business 3 (BU3), Business 4 (BU4), Mixed Use 1 (MU1), Mixed Use 2 (MU2), Mixed Use 4 (MU4), Mixed Use 3 (MU3), and Limited Manufacturing (LM) zoning districts. The MU1 district only allows for retailers with more than 5,000 square feet. The attached zoning amendment limits firearms business uses to the BU4, MU1, LM and Manufacturing (M) zones (see map in Attachment B). This initial proposal is meant to provide flexibility to the City Council in determining the appropriate locations and buffer distances. Zoning districts where the use is currently permitted could be added to the proposed zoning districts and the zoning districts currently proposed could be removed as a result of future analysis and public testimony. The initial zoning districts proposed were chosen as they are scattered throughout the City and are

generally districts with limited housing and with less foot traffic than other commercial zones. These districts are meant to provide an initial starting point for discussion.

Buffers

Why have recommended buffer distances not been identified or mapped?

As discussed above proposed buffer distances have not yet been identified. This requires careful mapping and analysis in order to understand whether the proposal will still allow for opportunity once buffers are applied to sensitive uses and to ensure that sensitive uses will be sufficiently buffered. Mapping and analyzing these buffers will first require reviewing existing data for each of the sensitive uses to make sure it is up to date and in a usable format. For example, some sensitive uses such as schools or religious uses may just show up as a point on a map and the proposed ordinance requires the buffer be measured from the property line. When applying a buffer from a single point within a parcel the result may be very different than applying the buffer from the property lines of that parcel. Other recently approved or opened uses that fall within the identified sensitive uses may not be represented in our data. When balancing a constitutional requirement to allow for the opportunity to buy and sell firearms with a desire to ensure these uses are in the most appropriate locations and safe and sufficiently separated from other sensitive uses, these small changes may make a large difference and more time is needed to analyze the data. Responses to the questions at the end of this memo will also help inform Planning's analysis in advance of the public hearing on May 10th.

Buffer Comparisons

All of the firearm zoning regulations reviewed contained buffers from sensitive uses. Buffers range from 150 feet to 1,000 feet depending on the size of the community and the category of sensitive use. Sensitive uses also varied though all included schools, most included daycares, parks, and playgrounds, and some also included buffers from residential uses and/or residential districts. Buffers from residential uses or districts were the smallest at 150 – 250 feet. Newton's current zoning ordinance also requires a 500 foot buffer between adult businesses and the nearest religious use, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river and 150 feet from any residential property line. Additionally adult businesses must maintain a 1,000 foot buffer from any other adult business within the City or an adjacent municipality and from any zoning district that allows for an adult business in an adjacent municipality. Marijuana retailers and medical marijuana treatment centers are also required to be at least 500 feet from k-12 public and private schools and a half mile from other marijuana retailers and medical marijuana treatment centers.

Proposed Sensitive Uses

The attached draft includes a list of potential sensitive uses from which firearm businesses should be sufficiently buffered. Section 6.10.4.E.1 of the proposed draft includes a buffer requirement from the following sensitive uses: any residential property line, private or public k-12 school, daycare center, preschool, child-care facility, public park intended for passive or

active recreation, playground, land or structures used for religious purposes, library, and another Firearm Business, Firing Range, or Gunsmith, unless the City Council finds that such Firearm Business, Firing Range, or Gunsmith is sufficiently buffered such that these facilities or those uses within the buffer will not be adversely impacted by the Firearm Business, Firing Range, or Gunsmith's operation.

This list is intentionally broad, and the City Council could eliminate uses from this list if they determine a buffer is not necessary. The draft does not yet include a buffer distance for the sensitive uses. This is to permit flexibility for final policy decisions by the City Council and to allow staff time to analyze potential buffers. Careful analysis and mapping are needed in order to balance providing opportunities for firearm businesses within the city while also protecting sensitive uses.

Buffer Considerations

Planning is considering the following when analyzing potential buffer requirements:

- Newton is a residential city. Providing a buffer between firearm businesses and residences is important but challenging. Too large of a buffer may eliminate all potential parcels, unless additional zoning districts are permitted. The largest residential buffer that was used in the ordinances reviewed was 250 feet and while this is relatively small this may still be too high given the proximity of residential zones and uses to Newton's commercial and manufacturing districts. A buffer of 150 feet, such as in Dedham and in Newton's adult business zoning, may be feasible, however additional analysis is needed. Whether the buffer is from residential zoning districts, actual residential uses, or both is also an important distinction.
- 500-foot buffers from schools, parks, and other non-residential sensitive uses are the most common from the examples reviewed. This is also consistent with Newton's adult business buffer requirement. Newton has many childcare facilities and parks however, and additional analysis is needed to determine where opportunity remains if there is a buffer around all of the sensitive uses identified.
- The adult business regulations require a buffer from other adult businesses in adjacent municipalities as well as from zoning districts permitting adult businesses in adjacent municipalities. Applying this standard would be difficult in this instance as many of the areas that fall within the zoning districts currently proposed are near the city border with neighboring municipalities.
- The draft ordinance currently contains a placeholder for one buffer requirement for all sensitive uses. Similar to other regulations reviewed, it may be preferable, or necessary in order to still allow for opportunities, to vary the buffer distance based on the use. For example, schools might have the largest buffer and residential properties the smallest.
- Most of the ordinances reviewed focused just on the sale of firearms, however our proposed draft also includes gunsmiths and firing ranges. Different buffers may be desirable for the different firearm businesses as well.

At the public hearing scheduled for May 10th, the Planning Department will provide additional analysis of potential buffer distances as well as maps displaying the buffers and the proposed zoning districts.

Standards

In addition to the buffer requirement, the proposed draft ordinance includes additional standards for firearm businesses. These include requiring compliance with all federal, state and local laws and regulations; prohibiting graphics, symbols, or images of firearms or firearm accessories from being displayed or visible from the exterior of the business; prohibiting a firearm business from locating within a building containing a residential use; and limiting hours of operation to 6:00 a.m. to 11:30 p.m. (the same hours as adult businesses) and allowing further restriction of hours as part of the special permit.

Special Permit Application and Criteria

Application Requirements

Under the proposed ordinance, all firearm businesses will require a special permit from the City Council. As part of the application, and in addition to the standard application requirements, applicants for a firearm business will be required to submit a narrative providing a description of the proposed activities, a lighting analysis, and a context map showing all properties and land uses within a 1,000-foot radius. Depending on the nature of the application the City Council may also request additional information through the special permit review process, such as security information, noise analysis, landscaping or other screening, etc.

Special Permit Criteria

The draft ordinance also includes additional special permit criteria, in addition to the standard criteria, that must be met in order to approve a firearm business. These criteria include:

- The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot.
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- The Firearm Business, Firing Range, or Gunsmith establishment is designed to minimize any adverse impacts on abutters.
- The Firearm Business, Firing Range, or Gunsmith establishment has satisfied all of the conditions and requirements in this section.

Additional Regulations

Firearm sales are highly regulated in Massachusetts and all state and Federal requirements will remain in effect. Some key aspects of firearm regulations include a ban on the sale of assault weapons, a requirement that all firearms within stores are secured in a locking container or by equipping the firearm with a tamper-proof locking mechanism, a firearms dealer is prohibited from displaying firearms in the window of a store, and the Police Department is the local

licensing authority and is required to review and approve any license to sell firearms and to ensure all required safety measures are in place as well as perform annual inspections of a dealer's sales records. All firearm businesses will be subject to all other applicable local and state ordinances and regulations as well, such as noise limitations, hazardous waste removal, parking requirements, etc. More information can be found in the attached FAQ as well as here: [Firearms Zoning Amendment | City of Newton, MA.](#)

Questions

In order to guide the Planning Department's analysis to be presented at the May 10th public hearing, the City Council should consider the following questions:

- Are there any uses in the list of sensitive uses that are not necessary to buffer?
- What is the prioritization of sensitive uses? If it is critical to buffer residential properties, a smaller buffer may be necessary as compared to other uses and/or the allowed zoning districts may need to be expanded.
- Similar to some of the examples reviewed should there be a tiered system of buffers with different distances for different uses? Which use should have the greatest buffer?
- Should there be fewer allowed zoning districts and smaller buffers or larger buffers and more expansive zoning districts?
- Are there any additional criteria or standards that should be considered?
- Should there be different regulations for the different types of firearm business uses (firearm sales, gunsmiths, firing ranges)?

Next Steps

Public hearing will be held by the Zoning and Planning Committee on May 10, 2021. In advance of that meeting the Planning Department will provide an updated memo with an analysis and mapping of buffer distances.

ATTACHMENT A: Proposed Draft Firearm Business Ordinance
ATTACHMENT B: Map of Proposed Zoning Districts
ATTACHMENT C: Firearm Frequently Asked Questions – April 23, 2021