

**LAW DEPARTMENT RESPONSES TO CITY COUNCILOR QUESTIONS FROM
ZONING AND PLANNING COMMITTEE MEETING HELD ON APRIL 26, 2021**

May, 6, 2021

Under the proposed zoning, how many votes will be required for the issuance of a Firearm Business Use special permit by the City Council?

All special permits for Firearm Business Uses will require a two-thirds vote of the City Council.

Can the City limit the number of Firearm Business Uses?

An interpretation of state law suggests that the City Council has the authority to limit the number of firearm dealer licenses issued pursuant to state law through adoption of a general ordinance. The Law Department is currently drafting an ordinance for Council review.

Can the City prohibit off-site signage for Firearm Business Uses?

The City only has the authority to regulate signage located within the City. The City's Zoning Ordinance already prohibits non-accessory signs on private property. Signs for businesses are regulated and only permitted on the premises of the business itself. This means that no businesses can have off-site signage in Newton. The City, however, does not have the authority to prohibit a business located in Newton from erecting signage outside of the City.

Can the City limit or prohibit signage on-site at a Firearm Business Use?

The City cannot completely ban signage on site, but the City Council may impose some reasonable limitations as to size and location through its discretionary special permit review process. The proposed ordinance also prohibits the exterior display of graphics, symbols, or images of firearms and ammunition.

Can the City require additional security on-site at a Firearm Business Use? Can the City require firearm purchases be made by appointment only?

Additional requirements have been added to the draft ordinance to address security in greater detail. For example, all applicants must submit a security plan to the Newton Police Department for review and approval and conduct employee background checks in accordance with state law. A required finding has also been added to ensure any Firearm Business Use takes all appropriate safety measures: in order for the City Council to issue a special permit it must first determine that the business has adequate and safe storage, security, and lighting.

As part of the discretionary special permit review process, the City Council has broad authority to impose additional conditions and requirements on the use and operation as necessary to ensure the

business meets the special permit standards. While the proposed zoning ordinance does not require that all Firearm Business Uses operate on an appointment only basis, that is a valid consideration for the City Council to evaluate during the special permit process and require when appropriate.

If a specific provision of the firearm zoning amendment is overturned by a court challenge, will the remainder of the ordinance remain valid?

The draft ordinance does include a “severability provision” that seeks to protect the validity of any portion of the firearm ordinance not specifically ruled invalid.

Can the City tax firearm sales?

The City does not have the authority to impose a local tax on the sale of firearms. Under state law, the City does not have the power to assess taxes unless explicitly authorized by the State Legislature. For example, state law explicitly authorizes the City to collect a local tax option on the retail sale of marijuana. There is no statutory authority permitting the City to assess a local tax on firearm sales.

The current proposed zoning amendment prohibits a Firearm Business Use from opening within a certain buffer to specific land uses, such as childcare facilities. Will those specified land uses be prohibited from locating within the buffer of an existing Firearm Business Use?

No. The proposed restriction against a Firearm Business Use from opening within a certain proximity of other specified uses only applies against the proposed Firearm Business Use at the time it receives a special permit. For example, a childcare facility that wishes to open within the buffer of an existing Firearm Business Use retailer may do so.

Can the City ban firing ranges?

In light of the implications of Constitutional protections and the current legal landscape, it is likely that a complete ban would ultimately be deemed unconstitutional.