



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Thursday, May 13, 2021

Present: Councilors Crossley (Chair), Leary, Wright, Krintzman, Danberg, Baker, Albright and Ryan

Also Present: Councilors Bowman, Markiewicz, Greenberg, Kalis, Humphrey, Norton, Oliver, Malakie, Gentile, Lucas, and Norton

City Staff: Jonathan Yeo, Chief Operating Officer; Jonah Temple, Assistant City Solicitor; Andrew Lee, Assistant City Solicitor; Jen Caira, Deputy Planning Director, Barney Heath, Director; Planning & Development Department; Maura O'Keefe, Assistant City Solicitor; Alissa Giuliani, City Solicitor

Planning Board: Peter Doeringer (Chair), Chris Steele, Jennifer Molinsky, Kevin McCormick, Sonia Parisca, Kelley Brown, Sudha Maheshwari, James Robertson and Barney Heath

Others Present: NewTV

#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.

Zoning & Planning Committee Held 8-0 on 04/26/21

Zoning & Planning Committee Held 8-0 on 05/10/21, Public Hearing Closed

Action: Zoning & Planning Committee Approved 8-0

Note: The Committee was joined by members of the Planning and Development Board, Director of Planning and Development Barney Heath, Deputy Director of Planning and Development Jennifer Caira, City Solicitor Alissa O. Giuliani, Associate City Solicitor Maura O’Keefe, Associate City Solicitor Andrew Lee and Associate City Solicitor Jonah Temple. The Zoning & Planning Committee held a public hearing on Monday, May 10, 2021. After item #145-21 was docketed before the City Council, the public hearing was initially advertised on April 23, 2021. The effective date of the zoning ordinance amendment can be made effective retroactively to the date of the first advertisement. As such, any zoning approved under this item, will have an effective date of April 23, 2021.

The Chair noted that the draft ordinance provides the Council with extensive authority to regulate the location(s) and processes by which gun and/or firearm establishments might be able to locate in the city (location, buffering to sensitive uses, requiring a special permit). The Chair noted that although there additional items have been docketed for acceptance to the City Council Docket on Monday, May 17, 2021. The proposed docket items may or may not be considered under #145-21. It was noted that a zoning ordinance that responds to docket item #145-21 is the only ordinance that may be made effective as of April 23, 2021.

City Solicitor Alissa O. Giuliani addressed the Committee on the pending amendment(s). She explained that that an act by any local government to completely prohibit the purchase and/or sale of firearms in the City will be challenged and will likely be found unconstitutional. The Law Department has worked with local and national experts to review statutes and case law. Atty. Giuliani noted that a ban will not withstand a legal challenge and could create a precedent with wide-ranging negative impact. She explained that litigation of a local ban could have unintended consequences to communities nationwide and could result in diminishing the City’s ability to regulate gun stores through zoning. A full copy of her statement is attached to the end of this report.

Deputy Director of Planning and Development Jen Caira provided a review of the recommended option and key elements of the proposed ordinance. A copy of her full presentation can be found at the end of this report. Ms. Caira noted that the proposed ordinance is the most robust and restrictive of other community’s firearms regulations that the Planning and Law Departments have reviewed and considered. The proposed zoning ordinance resulted from a citywide analysis in order to identify areas of the city furthest from a list of the most sensitive uses. The recommended option #5, limits firearm businesses to the BU2, MU4 and M districts, includes a 1,000 foot buffer from schools, childcare uses, colleges and universities, religious uses, libraries, hospitals and nursing homes, as well as a 150’ buffer from residential uses. Three areas that fall outside of those buffers are shown on the attached map. Ms. Caira noted that for a location to be considered, the entire building must be outside the buffer zone, which further reduces the number of possible locations. As uses in the City change over time, the map will change, and Planning would reassess the buffer zones at the time an application may be submitted. In addition, any application for a firearm business within the City would be subject to a Special Permit, require additional thorough, site-specific analysis at that time.

Ms. Caira explained that as part of the special permit process, applicants would be required to submit a description of activities, lighting analysis, a comprehensive sign package, a context map showing all properties within 1000' and a description of the operation and ownership. She presented all required findings and special permit criteria that would be applied to any special permit applications for firearm businesses.

With respect to sensitive uses, the proposed ordinance requires a buffer from sensitive uses located within Newton. Ms. Caira noted that neighboring communities do not have firearm zoning regulations. She explained that the draft ordinance can be modified to consider sensitive locations outside of Newton (but within the buffer zone) but stated that this would result in a reduction of the buffering zones within the City. Ms. Caira noted that adding sensitive uses outside the City would likely result in the creation of more opportunities within the City limits.

In response to questions from Committee members, Atty. Giuliani confirmed that the City may not require a Host Community Agreement as a condition of approval, and that the City does not have the authority to regulate signage outside of the City limits.

It was noted that a new item calling for a prohibition of firearms business within the City was docketed in order to respond to the majority of speakers at the public hearing who spoke against having a gun store in Newton. Council will consider accepting this item on its May 17, 2021 docket. A councilor suggested that creating zoning districts for firearms businesses will allow for them in locations where residents are powerless.

One Councilor suggested that if firearms are banned within the City, but the ban were to be challenged and loses, that there could be a provision allowing for the automatic enactment of a comprehensive zoning ordinance for firearms. However, other Councilors emphasized their desire to protect members of the community and agreed that there is no good place within the City for a firearm business but acknowledged the importance of making sure the ordinance passed is strong, but defensible.

Atty. Lee responded to the suggestion that there could be an "alternate zoning ordinance". He noted that any alternative would be viewed as an amendment, not as an alternate. Solicitor Giuliani reiterated that any new or subsequent zoning ordinance would be viewed as an amendment and would supersede whichever ordinance was first approved.

Atty. O'Keefe responded to questions from the Planning Board relative to the requirement for a "10-day waiting period" prior to buying a firearm. She explained that there is an existing (state mandated) background check process. Applicants must submit a license to carry. The Police Department conducts the background check which is subject to input from the Mass Department of Public Health, a nationwide security check, a national warrant system and a review of fingerprint results from the State police. At the point of purchase, there is a secondary, redundant background check to ensure that there were no changes to the applicant's background information during the waiting period.

It was noted that some uses (i.e., adult entertainment, marijuana) are prohibited in sensitive locations that include Conservation areas and walking routes to school. A Councilor questioned whether the Council should consider additional sensitive locations both within and outside the City. Ms. Caira explained that there are some school routes mapped by Safe Routes to School, but additional analysis would be necessary. Atty. Temple reiterated to the Committee that the City can consider uses proximate to the site of a proposed firearm business during the special permit process. He noted that it is difficult to implement zoning for buffer zones outside of Newton and noted that some adjacent communities do not have any firearm zoning regulations and could locate on the line.

Councilors emphasized the importance and their desire to ensure that no firearm businesses are able to locate near any sensitive locations, both within and across City borders. Atty. Temple confirmed that maintaining the language of the special permit criteria in its current form, as broad as possible, allows for considerable discretion by the Council during the special permit process.

Councilor Krintzman motioned to amend the item the main item for Alternative #5 to include the following language as part of the special permit criteria.

“The location and operations characteristics of the proposed use promotes and will not be detrimental to, the public health, safety, and welfare of the neighborhood or the City.”

His motion carried unanimously. Councilor Krintzman suggested an amendment to section D of the additional special permit criteria as shown below.

“The establishment is designed to minimize impacts to abutters or children walking to school.”

Atty. Temple noted that this can already be considered in special permit finding “E” and noted that this modification may not be necessary. Councilors expressed support for the amendment. The recommended a modification in the language and Councilor Krintzman motioned to amend the language in section D as shown below.

“The establishment is designed to minimize impacts to abutters or pedestrians.”

The Committee voted unanimously in favor of accepting this modified language.

With respect to the hours of operation, the Chair noted that the Council has the authority to limit hours of operation during the special permit process. Atty. Temple reiterated that additional restrictions in the zoning ordinance creates additional opportunities for the ordinance to be challenged. He reiterated that the Committee could restrict the hours of operation to 10:00 am – 6:00 pm during the special permit process. The Committee took a straw poll with five Committee members in support of restricting the hours of operation to 10:00 am to 7:00 pm.

President Albright moved approval of Alternative #5 as amended and the Zoning & Planning Committee voted unanimously in favor of approval. Chair of the Planning and Development Board called for a motion from the P&D members. Ms. Parisca motioned to recommend approval of the Planning Department's recommended "Alternative #5" as the ordinance regulating firearm business uses, including the amendments approved by the Zoning & Planning Committee under Council Docket item #145-21. With that, the P&D Board voted 6-0-1 (Director Heath abstaining).

The Chair emphasized gratitude for the extensive analysis and expeditious and thoughtful work done by the Planning Department and the Law Department. The recommendation by the Zoning & Planning Committee is subject to a vote by the City Council on Monday, May 17, 2021.

With that, The Committee adjourned at 10:00 pm.

Respectfully Submitted,

Deborah J. Crossley, Chair