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Barney S. Heath
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MEMORANDUM

DATE: January 21, 2022

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

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning

RE: **#41-22 Requesting a discussion on how “last mile” delivery services should be regulated**
COUNCILORS LAREDO, ALBRIGHT, HUMPHREY, DOWNS, CROSSLEY, LIPOF, KALIS, WRIGHT, KELLEY, NORTON, BOWMAN AND GROSSMAN requesting a discussion with the Planning Department regarding whether and how “last mile” delivery services with physical locations in village centers should be regulated and what amendments to the zoning code might be needed to address these issues.

MEETING: January 24, 2022

CC: City Council
Planning Board
Jonathan Yeo, Chief Operating Officer

Introduction

The City’s Economic Development Director and Inspectional Service Department (ISD) recently received inquiries by a business looking to open a last mile delivery service within one of Newton’s village centers. Based on our existing Use Regulations (Article 6), ISD determined that this type of business would be categorized as a Retail Sales use (Sec. 6.4.30), which is allowed by-right in Newton’s business zones (BU). Newton’s village centers are primarily zoned BU1 and BU2.

What are Last Mile Delivery Services

E-commerce and on-demand delivery services have been impacting traditional brick-and-mortar retail for years now. Over the last year, spurred largely by the pandemic, cities across the United States have seen a rapid rise in the number of last mile delivery services, also known as dark stores or mini-warehouses. These storefronts, not open to the public, are stocked with groceries and other home goods that are marketed as deliverable within 15- to 30-minutes. For more information, see this [recent Boston Globe Article](#).

Impact on Village Centers

Prior to the pandemic, Newton’s village centers suffered from vacant storefronts due to the difficulty of both attracting and maintaining desirable businesses. A healthy mix of uses within village centers

contributes to the conveniency and vibrancy we seek within our communities. Instant delivery services provide significant convenience, while providing little to nothing towards vibrancy and community. Tim Richards, a planner and lawyer, thoughtfully writes:

In a world where more and more purchases are completed with a click of a mouse or a tap on a screen, and where delivery times are measured in minutes and hours rather than weeks and days, we can expect to see more micro-fulfillment facilities, including so-called “dark stores”, as well as a spectrum of land uses that mix, in varying proportions, fulfillment of online orders and in-person shopping. Communities will do well to consider whether and how their land-use policies address this changing landscape and amend their zoning regulations if needed.

Potential Zoning Amendments

The Planning Department is at the initial stages in thinking about how to best advise the City Council on options within zoning for regulating these uses both within village centers and the city at large. To determine the best course of action staff is seeking input from the City Council, the Economic Development Commission (EDC), and the Planning Board. At a high level, courses of action the City Council could take include:

- Do nothing
 - ISD has determined these businesses as a Retail Sales use, regulated by those zoning requirements and standards
- Ban outright
 - Create a new use definition and restrict in all zoning districts or amend the Retail Sales definition to exclude these uses
- Allow in limited areas
 - Create a new use definition and only allow in certain zoning districts
- Allow, but with certain design and development criteria
 - Create a new use definition allowing in all, or limited, zoning districts with certain standards that must be met like:
 - Transparency requirements
 - A self-service/pick-up option
 - Limited amount or type of delivery vehicles
 - Maximum business size

Planning staff have made an initial presentation to the EDC and will be working closely with one of their subcommittees on this issue. Staff and the EDC’s initial assessment is that these uses contribute very little to the vibrancy of village centers when they are located at the ground floor. However, any new use definition needs to be carefully considered to ensure there are no unintended consequences to other desirable uses, such as restaurants that are just take out and delivery or retailers that also rely on online orders and in store pickup. Last mile delivery services also would provide a direct benefit to Newton

residents and contribute to the City's commercial tax base so an outright ban may be less desirable than limiting these uses to certain zoning districts and/or requiring design and operational standards.

Additional Thoughts

The feedback received during the recent village center engagement effort made clear that most people would like to see more active, vibrant spaces in village centers. Regulating last mile delivery services is consistent with that vision. However, it is important to also acknowledge the challenges traditional retail businesses currently face and that vacant storefronts are not any more desirable than dark storefronts. Therefore, staff recommend also exploring other targeted zoning amendments that would level the playing field for desirable businesses to locate within Newton. The Planning Department has started working on zoning updates tailored for village centers, however there are also zoning amendments that could be made now that could help small businesses across the city. These could be categorized by immediate and near-future updates:

- Immediate Updates
 - Eliminate parking requirements for ground-floor non-residential uses under a certain square footage of leasable space
- Near-Future Updates
 - Revise the Use Table for commercial and industrial uses that:
 - Combines and categorizes uses to ease understanding and enforcement
 - Introduce new uses for the 21st century economy (ex. co-working)
 - Remove or modify specific rules applying to certain uses

Looking Ahead and Next Steps

Following initial guidance from the City Council, staff would like to continue to engage with ZAP, the Planning Board, and the EDC to develop a fuller understanding of options and return at a future ZAP meeting with a more fully developed recommendation.