



Programs & Services Committee Report

City of Newton **In City Council**

Thursday, September 6, 2018

Present: Councilor Rice (Chair), Albright, Greenberg, Baker, Brousal-Glaser, Kalis, Schwartz and Krintzman

Also Present: Councilors Laredo, Cote and Markiewicz

City Staff: Jonathan Yeo (Chief Operating Officer), David Olson (City Clerk), Ouida Young (Acting City Solicitor), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#439-18 Appointment of Alice Kelly to the Biosafety Committee

PRESIDENT LAREDO appointing ALICE KELLY, 98 Fairway Drive, West Newton as a member of the BIOSAFETY COMMITTEE for a term to expire July 31, 2021.

Action: **Programs & Services Held 7-0 (Councilor Krintzman not voting)**

Note: The Chair introduced Ms. Kelly and asked her why she would like to join the Biosafety Committee. The Programs & Services Committee had an opportunity to review her resume prior to the meeting. Ms. Kelly explained that she applied to serve on the Health Advisory Committee but was informed that there were no vacancies. It was then suggested that her background in communication and marketing would be very helpful to the Biosafety Committee so she accepted that recommendation.

Councilor Albright noticed that Ms. Kelly had no science background or experience on her resume. One of the responsibilities of the Biosafety Committee is to review complicated applications and grant permits and at one of the last meetings with Biosafety Committee members, they mentioned they could use more scientists to help with those tasks. She would like to have the opportunity to speak with the Biosafety Committee members to see if they need someone with Ms. Kelly's experience or if another scientist would be more beneficial at this time.

President Laredo, who appointed Ms. Kelly, explained that he has worked with the Dana Hanson in the Mayor's office to screen applicants for various open positions on boards and commissions. It was his understanding from Ms. Hanson that Ms. Kelly's background would be helpful to the Biosafety Committee. He feels that Councilor Albright's request is quite reasonable and suggested she speak with Ms. Hanson first and then speak to Biosafety Committee members if more information is necessary. President Laredo thanked Ms. Kelly for her willingness to serve and if this particular placement were not ideal then he would very much like to find a board or commission that could benefit from her excellent experience. The Committee Clerk will follow up with Ms. Kelly on next steps and she would not be required to return for another visit to Committee.

The Committee voted to hold this appointment 7-0 with Councilor Krintzman not voting.

#470-18 Initiative Petition requesting a ballot question prohibiting recreational marijuana establishments with exceptions

SUZANNE BENDER ET AL., submitting an Initiative petition pursuant to the City of Newton Charter and signed by 10% of the registered voters, requesting that the City Council place a question on the November 6, 2018 ballot as to whether the City of Newton will adopt the following ordinance:

“Operation of recreational (non-medical) marijuana establishments as defined in M.G.L. Chapter 94G is prohibited in Newton, provided that a marijuana establishment that was licensed and approved to operate as a Medical Marijuana Treatment Center (Registered Marijuana Dispensary) in the City of Newton prior to July 1, 2017 may, if otherwise allowed by zoning, (a) cultivate non-medical marijuana; (b) manufacture and/or produce non-medical marijuana related products; (c) test non-medical marijuana and the products derived therefrom; (d) engage in wholesale distribution of non-medical marijuana and non-medical marijuana products, but not to include retail sales thereof in the City of Newton.”

Action: Programs & Services voted No Action Necessary 8-0

Note: The Chair explained that this item began with a 50-person petition that was submitted to the City Council to place a question on the November 2018 ballot prohibiting recreational marijuana establishments. The City Council voted against that petition, feeling that 50 signatures was not a high enough bar to prompt a ballot question of this nature. The petitioners then submitted this initiative petition which required signatures from 10% of registered voters in the City in order to be brought back before the City Council for another vote. The petitioners were able to collect those signatures (approximately 6,000) and that is now what is before this Committee. The City Charter states, however, that initiative petitions can only be placed on ballots at the next municipal election, which would not take place until 2019. In order to get this question on the ballot this November in a special election to take place on the same day as the state election, several Councilors docketed the following item (#469-18). The recommendation is to vote No Action Necessary on this item and then discuss the ballot question through the newly docketed item and propose a more simplified version of the question.

The Committee wanted to make clear that a vote of No Action Necessary is not meant to disparage the tremendous effort that was put forth by the Opt-Out group. This vote is procedural and is meant to provide an opportunity to get the question on the 2018 ballot instead of waiting until 2019.

President Laredo clarified that if the City Council votes to approve an opt-out question on the ballot, but the Mayor exercises her right to veto, a vote of No Action Necessary would not prevent the petitioners from collecting an additional 3,000 signatures, which would allow the question to

be placed on the municipal 2019 ballot without approval through the City Council, or the Mayor, as provided in the City Charter.

Councilor Rice introduced Laurie Palepu, one of the organizers of the initiative petition. She explained that after the 50-person petition was denied by the City Council, there was some disappointment but those invested in getting this question on the ballot worked diligently to collect the required number of signatures in order to show that there was significant support for the opportunity to take this to the voters. The group had over 200 volunteers gathering signatures and talking to thousands of Newton voters even though they were told they could never collect that many signatures in such a short amount of time. They found that about 15-20% of people said they wanted the retail stores, for various reasons. However, over the next few months, people started to realize that if they voted for Question 4, they also voted for an opportunity to exercise local control. The organizers found that the responses changed over time because people got more information and realized that they like Newton just the way it is. Introducing the for-profit marijuana industry into Newton could be benign or it could result in a host of problems, which were described at the June public hearing.

She further explained that while she cannot speak for all 9,000 signatories, the group she has conferred with is in favor of a simplified question banning recreational retail establishments only. Newton seems to be fine with legalization and it does not affect medical marijuana, and those who want access to recreational marijuana will have that since Brookline, Watertown and other communities will have it available. People just did not want the message sent that Newton believes in normalizing recreational sales. Having a simpler question would be acceptable to them.

The Committee voted No Action Necessary 8-0.

#469-18 Requesting the City Council place a question on the ballot prohibiting retail recreational marijuana sales in Newton
COUNCILORS BAKER, NORTON, GENTILE, KALIS, COTE, CICCONE, LAREDO, KELLEY, SCHWARTZ AND MARKIEWICZ requesting reconsideration of item #312-18 so that the Council can place a question on the ballot that would prohibit retail recreational marijuana establishments in the City at a November 2018 Special Election.

Action: **Programs & Services Approved as amended 8-0**

Note: The Chair reiterated that this item was docketed as a mechanism through which the City Council can have the opportunity to vote on placing an “opt-out” question on a November 2018 special election ballot. The initiative petition, as submitted, would require that the question wait for the next municipal ballot, which would be in 2019. Item #312-18, noted in this docket item, was the original 50-person petition presented to the City Council and proposed the same language as seen above in item #470-18.

The Committee has heard through public hearing testimony and through many emails that the primary concern seems to be with retail storefronts. There has been little to no conversation

relative to cultivation, manufacturing, testing and other related uses, therefore, there is a recommendation from some Committee members to simplify the question to ban only recreational retail sales. As stated earlier, Laurie Palepu agreed that a simpler question would be acceptable to the group as they are primarily concerned with the retail storefronts. Testing, cultivation and other related industries were unlikely to locate in Newton and would not have the same kind of impact as retail stores.

The Chair of Land Use Committee asked about controlling the other uses through zoning. Marie Lawlor, Assistant City Solicitor, explained that no type of marijuana establishment may be banned through zoning, but there can be regulations and requirements such as special permits, so if one of the related businesses decided to locate in Newton they would be subject to those regulations and criteria through special permits. Councilor Schwartz said getting some guidance on these other businesses would be helpful and the ballot question may provide that. Zoning may not be effective enough and the land use process can be challenging to control these. He asked that the Zoning & Planning Committee take note of this when working on the zoning for marijuana establishments. Councilor Rice would like to highlight to the full City Council that the recommendation is to remove these other uses from the ballot question so that they can provide feedback.

Other Committee members felt that excluding these businesses from the ballot question is preferable. They would not have the impact that retail stores would have and they would bring business and revenue to the City.

Councilor Baker proposed the following language for the November 2018 ballot question, which amends the language originally submitted in #312-18. This language is also proposed by the Mayor in item #476-18, also on this agenda.

Shall the City adopt the following general ordinance?

All recreational marijuana retail establishments shall be prohibited from operating in the City of Newton.

Councilor Baker explained that for this question to pass, it needs to get more yes votes than no votes. It is not being measured in any other way. Blank votes would not count in any way.

The Committee voted in favor of the amended language, unanimously.

#468-18 Request to remove the Question regulating the number of recreational marijuana establishments from the November ballot.

COUNCILORS COTE, NORTON and KELLEY requesting that the City Council remove from the November 2018 special election ballot the question as to whether the City of Newton shall limit the number of retail recreational marijuana establishments operating in Newton to no fewer than two and no more than four, which was approved by the City Council on July 9, 2018.

Action: Programs & Services Motion to Approve as amended failed to carry 4-4 (Rice, Kalis, Baker, Schwartz opposed)

Note: Councilor Baker proposed amending this item so that the Committee can consider language that is different from the language that was approved on July 9, 2018. In order to place a 2-4 question on the ballot, this Committee has to recommend a question to the City Council and it would have to be affirmatively voted again. The proposed amendment is as follows and is also recommended by the Mayor in docket item #476-18, also

Shall the City adopt the following zoning ordinance?

The number of recreational marijuana retail establishments shall be not fewer than two (2) nor more than four (4) establishments set by a general ordinance adopted by the City Council notwithstanding M.G.L. Chapter 94 G, Sec 3(a)(2)(ii).

The Committee agreed to amend the language. Ouida Young, Acting City Solicitor explained that the change in language from July 9 was minimal and clarifying in nature. It essentially made it clear that this would be a zoning ordinance that would then reference a general ordinance. The question, however, is basically the same.

A Committee member noted that in the event that two or more questions end up on the ballot, they would each be considered separately. She received emails that noted concern that if there were more than 2 questions, then none could receive a majority vote. She wanted to be clear that voters can vote for any, all, or none of the questions and each is considered on its own in terms of percentage of votes.

She also heard from many people in the City that they did not object to having recreational retail marijuana stores in the City. Their main concern was that eight establishments would be too many and that is what prompted this proposal to limit the number to 2-4. A Councilor noted that some voters knew there was a device for another vote, and others did not, so there is a good argument to be made that having this middle of the road option is reasonable.

It was asked if a City Council could increase the number of establishments to more than four at a later date if they so desired. Ms. Young said that currently Chapter 94G says that a City may adopt an ordinance that implements the ballot question directive. There is currently pending a change in the general law that the ballot question be what is actually implemented in the ordinance. She felt there is a slim chance that any future City Council will ignore a ballot question vote and seek to have a higher number without taking that back out to a vote. If the zoning ordinance says not more than 4, that is what it means and it will not change through any other mechanism. A new ordinance would have to be adopted to change the number and if it was in the zoning ordinance, it would require 16 votes in order to do so. Ms. Young said there still needs to be some clarity from the courts or from the general legislature that says the ballot questions will be binding in terms of the subsequent ordinance.

A Councilor said that because there is a petition with 6,000 signatures, and because 25,000 people voted in favor of recreational marijuana in 2016, it makes sense to have an up or down both of opt-in or opt-out, which can be done with the opt-out question alone.

Some Committee members felt that two questions would be confusing. Others felt because there was a petition with 6,000 signatures and the opt-out question should have a "clean" ballot with that question only. Determining which question would prevail if both receive a majority vote makes this even more complicated.

There were further discussion among the Committee members relative to how different questions could lead to various results based on the different permutations of voting. There was a question as to whether the voters can be instructed that City Council is intended to limit the number of establishments to 8 through zoning. Unfortunately, the zoning amendment has not been voted yet. Summary and information will be sent out to the voters on any question(s) that may go on a ballot. Ms. Young explained that you cannot include on any instructions what the City Council might intend to do or might be considering. Only information regarding the current law and the consequences of voting in a particular law may be included. A Councilor felt it was unfortunate that the voters will not know that the establishments will be limited to 8.

A motion to approve the question, as amended, failed to carry 4-4 with Councilors Rice, Kalis, Baker and Schwartz opposed. Councilor Baker clarified that this is a denial in Committee to add a 2-4 ballot question, but it could change at the full City Council meeting.

#471-18 Provide a means for voters to determine which marijuana question prevails if both are approved

PRESIDENT LAREDO requesting discussion and vote on a means to enable Newton voters to determine which of two ballot questions limiting retail marijuana sales will prevail if both appear on the November ballot and both receive a majority vote of the electorate, recognizing that a subsequent implementing ordinance may still be required.

Action: **Programs & Services Approved 4-2-2 "that if more than one question passes, the question with the highest number of votes will prevail." (Kalis, Baker opposed; Schwartz, Rice abstaining)**

Note: President Laredo explained that this docket item is designed to draft a Resolution to the Election Commission so that guidance can be given to voters so they know what their votes will mean.

Ouida Young, Acting City Solicitor offered three options for providing a means for voters to determine which marijuana question would prevail if more than one are on the ballot and approved, attached.

President Laredo and Councilor Baker were in favor of Option 2, which provides that the question that bans all recreational marijuana retail establishments would prevail in the event both questions are approved, even if it gets fewer absolute votes than another question. Councilor Baker said if there is a choice that opt out will prevail, then it is a clear choice with both questions. The majority vote does not inform the voters of the clear choice but if you know the outcome, voters can cast their votes in advance. President Laredo explained that if someone is in favor of opt-out, but is concerned that it might not pass, they might vote for 2-4 as a second option because it is better than 8. That voter is faced with a dilemma and is therefore voting for an option he/she might not favor. This is an unfair choice for voters.

In addition, the City Charter, Section 10-18, provides guidelines that appear under the heading of Initiative and Referendum. Since these questions being considered are neither of those, President Laredo and Councilor Baker feel this section does not apply and that the City Council can provide its own policy as to which question would prevail. Because initiative or referendum petitions cannot be changed in any way by the City Council, they felt this provision was valid. However, because the City Council can shape the questions, this provision need not apply. The Charter does not speak to ballot questions that are not the result of an initiative or referendum and the City Solicitor advised him the Council could choose either option. Ms. Young said the Charter relates only to initiative or referendum questions

Section 10-18. Initiative and Referendum: Inconsistent of Conflicting Provisions

It two or more questions are submitted or referred to the voters at one election and as a result of the election inconsistent measures, which were contained in such questions, would be in effect thereafter, only the measure receiving the greater number of votes in favor of its effectiveness shall take effect or remain in effect.

Other members of the Committee felt that even though this provision is under the heading of Initiative or Referendum, it seems a clear directive on how the Charter speaks to conflicting ballot questions and there is no reason to adopt any other policy in this regard. This seems like a very strong recommendation on how to solve this problem. Also, this section in Article 10 does not mention either initiative or referendum in the body of the text – it just says if two or more questions are presented to the voters, this is what will happen. It is also modeled after a provision in the Massachusetts Constitution that deals with two conflicting questions which allows the one with the most votes to prevail. Also, Councilors felt it was more democratic to allow the question with the most votes to prevail and it is much simpler.

Councilor Albright moved adoption of the Instructions to the voters and Option 1: the question with the highest number of votes will prevail.

The Committee voted in favor of Option 1, 4-2-2 (Councilors Kalis and Baker opposed; Councilors Schwartz and Rice abstaining)

#476-18

Proposed ballot questions re recreational marijuana retail establishments

HER HONOR THE MAYOR requesting the three following questions be placed on the ballot for a special election in November:

Question 1.

Shall the City adopt the following general ordinance?

All recreational marijuana retail establishments shall be prohibited from operating in the City of Newton.

Question 2.

Shall the City adopt the following zoning ordinance?

The number of recreational marijuana retail establishments shall be not fewer than two (2) nor more than four (4) establishments set by a general ordinance adopted by the City Council notwithstanding M.G.L. Chapter 94 G, Sec 3(a)(2)(ii).

Question 3.

Shall the City adopt the following zoning ordinance?

The number of recreational marijuana retail establishments shall be not fewer than two (2) nor more than eight (8) establishments set by a general ordinance adopted by the City Council notwithstanding M.G.L. Chapter 94 G, Sec 3(a)(2)(ii).

Action:

Programs & Services voted No Action Necessary 8-0

The Committee took straw votes on each question:

Question 1: No Action Necessary 8-0 as this question was discussed in #469-18

Question 2: No Action Necessary 8-0 as this question was discussed in #468-18

Question 3: Motion to Approve failed to carry 3-5-0

Note: Councilor Baker explained that Questions 1 and 2 have been discussed and voted in other items this evening. Question 3 remains to be discussed.

A Councilor said that it is difficult to educate the public on how the number of 8 establishments would work and this question would turn that number from a minimum to a maximum. Having all three questions provides options that could give the City Council a truer sense of the will of the voters.

Other Committee members felt this question could lead to further confusion, people trying to decide how to “play the game” in order to get what they want, or at least hedge their bets to get something they do not want, but might be better than nothing. It is confusing and the more questions that are on the ballot, the chances increase that none of them pass. In trying to have something for everyone, nothing may pass at all, and the status quo remains.

A Committee member said that no matter how someone votes, it is their choice and does not detract from any point of view or the ability for good campaigns to be run for each question.

It was asked if having this question would give the City the opportunity to summarize to the voters that the City Council is intending to have a maximum of 8 establishments. Ms. Young said you could not speak to any intentions.

Councilor Brousal-Glaser said she liked that the three questions provided the spectrum of options and in the summary, perhaps the 20% limit could be explained. The Chair reminded the Committee that if they vote No Action Necessary on the question and the City Council would like to add the third question, they would be able to do so.

Councilor Baker suggested splitting the item and voting each question. The rule in the Clerk's office is that items cannot be split, so the Committee can take a straw vote on the questions, but the full item will be voted No Action Necessary and reported as such. The Committee voted No Action Necessary 8-0 on Questions 1 and 2, and motion to approve failed to carry 3-5-0 on Question 3 with Councilors Greenberg, Schwartz, Baker, Kalis and Rice opposed.

#441-18 Set the date of November 6, 2018 for a Special Municipal Election

CITY CLERK requesting the City Council set the date of November 6, 2018 as the date for a Special Municipal Election to submit to the voters question(s) related to limiting retail marijuana in Newton.

Action: **Programs & Services Approved 8-0**

Note: The Committee voted to approve November 6, 2018 as the date for a Special Municipal Election, unanimously.

Meeting adjourned.

Respectfully Submitted,

John B. Rice, Chair

Docket #471-18 **Provide a means for voters to determine which marijuana question prevails if both are approved.**

Recommended Action: **Adopt a Resolution requesting the Election Commission place the following Instruction to Voters on the Ballot**

Instructions to Voters:

Questions 1, 2 and 3 are separate questions. You may vote for or against each question independently.

Each question requires a majority of those voting on that question to pass.

If more than one question passes,

Option 1: the question with the highest number of votes will prevail.

Or

Option 2: the question that bans all recreational marijuana retail establishments will prevail.

Or

Option 3: the question that bans all recreational marijuana retail establishments will prevail, provided that if the question to ban does not pass and the other two questions pass, the question with the highest number of votes will prevail.