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Barney S. Heath
Director

MEMORANDUM

DATE: January 19, 2018

TO: Councilor Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Marie Lawlor, Assistant City Solicitor
Jennifer Caira, Chief Planner

RE:# #77-18 Zoning Amendments for Recreational Marijuana Establishments
DIRECTOR OF PLANNING requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, to add a definition of recreational marijuana establishment and to create a temporary moratorium on the placement of recreational marijuana establishments in the City of Newton to allow the city adequate time to complete a planning process to consider in what districts and under what conditions recreational marijuana establishments will be allowed.

MEETING DATE: January 22, 2018

EXECUTIVE SUMMARY

The voters of Massachusetts passed a law to permit the cultivation, processing, distribution, possession and use of marijuana for recreational purposes in November 2016. The City of Newton approved the ballot referendum 55 percent to 44 percent. Effective December 15, 2016 the law allowed certain personal use and possession of marijuana and requires the Cannabis Control Commission (CCC) to issue regulations regarding the licensing of commercial marijuana activities on or before March 15, 2018. The CCC will begin accepting license applications for commercial operations beginning on April 1, 2018 and may begin issuing licenses beginning on June 1, 2018.

Massachusetts communities are expected to have local zoning or a moratorium in place by April 1, 2018. Non-medical marijuana establishments are not otherwise contemplated or addressed under the present Zoning Ordinance and Newton will need to provide direction, via the zoning ordinance, as to the appropriate locations within the City where this use might occur. The CCC regulations will provide important guidance on aspects of local regulation, including the minimum number of establishments that must be permitted and the process for approval of establishments. Many other towns and cities in Massachusetts, including nearby towns such as Brookline and Dedham, have passed temporary moratoriums in order to allow sufficient time to study, propose and adopt zoning and general ordinances in light of the coming CCC regulations and the Attorney General has approved temporary moratoria lasting until December 31, 2018. Staff recommends that Newton adopt a temporary moratorium until December 31, 2018 or until such time as the City adopts Zoning amendments that regulate recreational marijuana establishments, whichever occurs earlier.

BACKGROUND

Massachusetts legalized medical marijuana in 2012 and with the passage of *The Regulation and Taxation of Marijuana Act*, as further amended in 2016 and 2017 (Marijuana Acts), Massachusetts is now one of eight states and the District of Columbia that have legalized marijuana for recreational use. Newton voted in favor of the law and may only ban recreational marijuana through a referendum at a regular or special election. Communities where voters rejected the question may ban recreational marijuana businesses through their standard ordinance or bylaw process.

The Marijuana Acts permit anyone 21 years or older to legally possess up to 10 ounces and cultivate up to six plants per individual and up to 12 plants per household. It also changes the penalties for home growth and possession by individuals under 21 from criminal to civil offenses and reclassifies other previously criminal offenses as civil and prohibits smoking marijuana wherever smoking cigarettes is prohibited. The law also gives local government limited authority to determine zoning and other ordinances to regulate marijuana and raises the effective tax rate from 12% to 20%. Of that tax, local governments may collect 3% by enacting the local tax option. Communities will also be required to negotiate community host agreements with all medical and recreational marijuana dispensaries, which may include a percentage of gross sales.

Zoning Considerations

The Marijuana Acts allow municipalities to pass ordinances and bylaws which govern the “time, place, and manner” of marijuana establishments as well as businesses dealing with marijuana accessories, so long as they are not “unreasonably impracticable”. While the use shares many similarities with medical marijuana, recreational marijuana and the regulations of Marijuana Acts contain a number of unique complexities that must be further studied prior to the adoption of a zoning amendment.

- Municipalities must provide “meaningful opportunities” for a minimum number of recreational marijuana establishments. The number of marijuana retailers may only be limited to 20 percent or more of the number of liquor licenses issued. Newton has a total of

36 liquor licenses. Medical marijuana dispensaries are not subject to a similar minimum, so further analysis of current zoning is necessary to determine potential opportunity sites.

- The Marijuana Acts state that a marijuana establishment may not be sited within 500 feet of a pre-existing public or private k-12 school; however municipalities may reduce that buffer distance requirement. Medical marijuana zoning requirements presently recommend a 500 foot buffer from schools, daycares, places where children congregate, and places of worship. This requirement may also be waived through the Special Permit process; however it is not clear if the buffer zone requirement for recreational marijuana can similarly be waived.
- The City may not prohibit existing medical marijuana facilities from converting if it is approved to do so by the state, except through a total ban. Newton presently has one medical marijuana dispensary, Garden Remedies, which was approved by Special Permit by the City Council on October 20, 2014.
- Draft regulations from the CCC contemplate different license classes allowing for cultivation, craft marijuana cooperatives, product manufacturers, marijuana retailers, research facilities, testing laboratories, transporters, and marijuana micro-business. Marijuana retailers would include storefront, delivery-only, and marijuana social consumption establishments. On-site consumption is not presently permitted for medical marijuana dispensaries. Also, a medical marijuana facility is required to cultivate, process, and retail its own marijuana and marijuana products (though it need not occur all at the same site) and recreational establishments may opt to only participate in a particular part of the industry.
- The Marijuana Acts give municipalities 60 days from the date the CCC receives a complete application for a marijuana establishment to notify the CCC that the applicant is not in compliance with local ordinances. A lack of response means the applicant will be deemed to be compliant with all applicable local ordinances. The Newton Zoning Ordinance allows medical marijuana dispensaries by Special Permit approval from City Council only. It is unclear as to how the new requirements will relate to the Special Permit process.

PROPOSED MORATORIUM

Non-medical marijuana is not otherwise contemplated or addressed under the present Zoning Ordinance and raises novel legal, planning, and public safety issues. In light of the Cannabis Control Commission regulations expected March 15, 2018, staff recommends a temporary moratorium, as defined below, lasting through December 31, 2018 to provide time for the City to study, propose and adopt new zoning and general ordinances.

Definitions

“Recreational Marijuana Establishment” shall mean a non-medical “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed non-medical marijuana-related business”.

Temporary Moratorium

The City hereby adopts a temporary moratorium on the use of land or structures for Recreational Marijuana Establishments. The moratorium shall be in effect through December 31, 2018, or until such time as the City adopts Zoning Ordinance amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the City shall undertake a planning process to address the potential impacts of recreational marijuana in the City, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments and related uses, and shall consider adopting new Zoning Ordinances in response to these new issues.