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PUBLIC HEARING MEMORANDUM

DATE: February 9, 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: February 12, 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 on July 28, 2017, Governor Baker signed the General Court’s revised law on the subject, “An Act to Ensure Safe Access to Marijuana”, adopted as Chapter 55 of the Acts of 2017. This act also makes changes to the medical use of marijuana program, which was established in 2012. The Cannabis Control Commission (CCC) was

established in September 2017 to oversee all recreational and medical use marijuana and is required 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, with establishments opening as early as July 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. Approximately one-third of the municipalities in the Commonwealth have imposed a moratorium or some form of prohibition to date. Nearby towns such as Wayland, Wellesley, Watertown and Dedham have passed or recommended temporary moratoriums to allow sufficient time to study, propose and adopt zoning and general ordinances considering the coming CCC regulations and the Attorney General has approved temporary moratoria lasting until December 31, 2018.

Without an updated zoning ordinance or a moratorium in place on April 1st, the City will have very little local control over recreational marijuana. There would be no limit on the number of recreational establishments and the use would not be subject to a Special Permit. The deadline of March 15th for the final Cannabis Control Commission guidelines does not leave adequate time for the City to adopt an ordinance that we can ensure will be consistent with state law. Therefore, staff recommends that Newton adopt a temporary moratorium until December 31, 2018 or until 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*, in 2016 and as further amended in 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 one ounce for personal possession and up to 10 ounces for home growth and to cultivate up to six plants per individual and up to 12 plants per household with multiple growers. 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 notable differences that must be further analyzed 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, unless a ballot referendum has been passed to further limit the number of establishments. Newton has a total of 36 liquor licenses. Medical marijuana dispensaries are not subject to a similar minimum but are required to demonstrate through the Special Permit application that they are located to serve an area that does not have reasonable access to medical marijuana or an area where the Department of Public Health has established supplemental service is needed. Further analysis is necessary to determine the appropriate zoning districts to locate recreational establishments in order to meet the minimum threshold and to determine the maximum number of establishments to be permitted. Without new zoning requirements there would be no limit on the number of recreational marijuana establishments.
- 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. This is less restrictive than the current medical marijuana zoning requirements which recommend a 500-foot buffer from schools, daycares, places where children congregate, and places of worship but allow City Council to waive the buffer
- 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 social consumption would, however, require a local ballot referendum to allow. A ballot referendum would be necessary to ban any or all classes, other than on-site consumption. Delivery within Newton would be permitted regardless of any potential bans or restrictions on the sale of recreational marijuana within Newton. 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), however recreational establishments may opt to only participate in a particular part of the industry. The current Zoning Ordinance only permits medical marijuana dispensaries and does not contemplate cultivation, manufacturing, research or testing facilities. Further analysis is needed to identify appropriate zoning districts for each class.
- In addition to analysis of the appropriate zoning districts for the various recreational marijuana uses, additional review of other use and developmental standards in the Zoning

Ordinance, including parking requirements, signage regulations, and hours of operation may be necessary. It is anticipated that recreational marijuana retail establishments may have increased demand compared to medical marijuana dispensaries as there will no longer be a need to register with the state as a patient. Cultivation, manufacturing, research, and testing may also necessitate different development standards and use regulations.

- 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 presumed a Special Permit can also be required for recreational establishments, however the City's discretion is limited, and it needs to be determined how that process will fit within the CCC's guidelines and timeframes.
- The Marijuana Acts require that both recreational and medical marijuana establishments enter into a Community Host Agreement with the host community. Newton does not currently have a host agreement or process for establishing host agreements. A municipality may negotiate up to 3% of gross sales as a community impact fee (in addition to the 3% local sales tax), but the fee must be reasonable related to the costs imposed upon the municipality by the operation of the establishment and the municipality is required to document its costs. Host agreements must be renegotiated every five years.
- Other items outside of the Zoning Ordinance that need to be considered include: enacting the local sales tax, determining a process for one-day licenses, enforcement, and addressing public consumption.

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 as is subject to regulation under Chapter 94G of the Massachusetts General Laws".

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 adopt new Zoning Ordinances in response to these new issues.