



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, February 12, 2018**

Present: Councilors Albright (Chair), Danberg (Vice Chair), Kalis, Baker, Leary, Brousal-Glaser, Downs and Krintzman

Also Present: Councilors Leary, Crossley, Greenberg and Noel

Planning & Development Board Present: Peter Doeringer, Megan Meirav, Christopher Steele and Barney Heath

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Jennifer Caira (Chief Planner), Rachel Blatt (Long Range Planner), Rachel Powers (Community Development Programs Manager), Marie Lawlor and Maura O'Keefe (Assistant City Solicitors) and Karyn Dean (Committee Clerk)

**#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.

Public Hearings Closed

Planning & Development Board Approved with exemption of Garden Remedies 3-1-0

**Action:** **Zoning & Planning Approved 4-3-1 (Councilors Albright, Leary and Krintzman opposed; Councilor Downs abstaining)**

**Note:** Councilor Albright, Chair of the Committee, opened the public meeting. Peter Doeringer, Vice Chair of the Planning & Development Board opened their public hearing as well.

### History and Timeline

Jennifer Caira, Chief Planner addressed the Committee. She provided a PowerPoint presentation which is attached. She explained that Massachusetts voted to legalize recreational use of marijuana and Newton voted in favor as well by 55%. Communities that voted in favor of the bill would need another ballot initiative to ban recreational use in whole, or in part.

In July 2017 there were some changes which were approved by the Governor and the Cannabis Control Commission (CCC) was formed in September of that year to oversee regulation and licensing of recreational marijuana use. In December, 2017 the CCC issued their draft regulations with final regulations expected this coming March.

On April 1<sup>st</sup>, the CCC will start accepting applications and on that date Newton would either have to having zoning for the recreational marijuana establishments or have a moratorium in place. The first licenses will be issued on June 1<sup>st</sup> with establishments opening a month later. Many communities have adopted or are recommending temporary moratoria. Wellesley, Watertown, Wayland and Dedham have moratoria or pending moratoria. Attorney General has approved temporary moratoria through the end of 2018.

### Marijuana Acts

The Marijuana Acts allows the time, place and manner of the use and allows local government to impose a 3% local sales tax option. Communities must also negotiate host agreements with establishment that can include up to 3% of gross sales going to the City. Host agreements will also have to be negotiated with any existing or new medical marijuana establishments. A process needs to be developed to negotiate host agreements and staff would also need to calculate the cost to the City as a result of these establishments.

Different license classes are include in the Marijuana Acts including cultivation, craft marijuana cooperative, product manufacturer, retailer, research, testing, transporter and microbusiness. The City's current zoning ordinance is only regulating medical marijuana dispensaries. On-site consumption establishments are currently not permitted unless approved through a local ballot initiative. Banning any of the other license class would require a ballot initiative as well.

### Zoning

The City is required to provide meaningful opportunities for a minimum number of establishments, which would be 20% of off-site liquor licenses. A ballot initiative would be required to lower that number, but the City may increase that cap through an ordinance amendment. Medical marijuana dispensaries are not subject to these minimum requirements.

Recreational establishments would require a 500-foot buffer from public and private K-12 schools. Currently, Newton's zoning requires medical marijuana dispensaries to include daycare, places that children congregate and places of worship in that buffer zone. Any of those buffers may be waived through Special Permit and the establishment would be required to demonstrate need for service in that area. There is no similar requirement for recreational uses.

Medical marijuana dispensaries are allowed in Business 2, Business 5 and Mixed-Use 1 zones. Staff will need to determine whether these zones are appropriate for recreational establishments considering a number of factors. Different classes may need to have different zoning. Other development and use standards will need to be reviewed such as parking, signage and hours of operation, among others.

Simply applying the medical marijuana zoning to recreational marijuana zoning as there are new elements to consider, additional direction is needed from the state, and locations need to be carefully reviewed for the establishments.

### Recommendation

Without zoning or a moratorium in place on April 1<sup>st</sup>, the City will have very limited control over the establishments. Applications will not be subject to a special permit and there would be no limitation on the number of establishments. As the recreational marijuana establishments raise a number of unique zoning and legal questions, and final regulations are not expected until 2 weeks before needs to be in place, staff is recommending a temporary moratorium through the end of 2018. The hope is to complete the zoning ordinance before that time, but the City would like to allow sufficient time to study the regulations as they come out from the state and to go through a thorough planning process in order to propose an ordinance that complies with state regulations and also appropriately regulates the use.

### Proposed Zoning Language

A definition for a Recreational Marijuana Establishment needs to be added to the ordinance as well: *“Recreational Marijuana Establishment” shall mean a non-medical “marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licenses non-medical marihuana-related business as is subject to regulation under Chapter 94G of the Massachusetts General Laws”.*

The Moratorium amendment would be: *The City hereby adopts a temporary moratorium prohibiting the use of land or structures in any district for Recreational Marijuana Establishments. The moratorium shall be in effect through December 31, 2018, unless repealed earlier by the City Council. During the moratorium period, the City shall undertake a planning process to address the potential impacts of recreational marijuana establishments on the City, consider the Cannabis Control Commission regulations pertaining to Recreational Marijuana Establishments and related uses, and to study and consider adoption of zoning amendments to regulate in what districts and under what conditions licensed marijuana establishment may be allowed.*

### Public Comment

*Karen Munkacy*, President and CEO of Garden Remedies. said there are some legal issues to consider relative to applying the proposed moratorium on recreational marijuana to existing medical marijuana operators. Dr. Munkacy also apologized for what she called an ill-conceived public relations campaign that resulted in some of the Councilors receiving multiple form email relative to this issue. She did not approve the emails and she would retract them if she could and offered sincere apologies.

*Jim Smith*, Attorney representing Garden Remedies said he has been engaged in legal work on behalf of the cannabis industry. There are 18 stores opened in the 5 years since the legislation passed to allow medical marijuana facilities with about a dozen more opening in the next month or so.

Everyone from Governor Baker to the CCC promised that July 1<sup>st</sup> would be the day that recreational marijuana facilities could open. He said the only way possible for that date to met is to allow the use in the currently operating medical facilities. He noted that the Department of Revenue FY 19

budget, currently under review, anticipate cannabis tax revenues to the Commonwealth beginning July 1<sup>st</sup>.

The statute includes the inability to prevent the conversion of a medical marijuana facility to a recreational facility. The CCC issued guidance to municipalities and it specifically said that zoning ordinances are not permitted to prevent these conversions as well. The legislature clearly anticipates openings on July 1<sup>st</sup> which puts communities in a challenging situation. Local law cannot supersede state law, but on the other hand communities need time to understand this new use and how to implement it properly. Garden Remedies wants to meet the state law and work with Newton to assure that the community's needs are met. He asks that the Garden Remedies be exempt from this moratorium and work with Garden Remedies to figure out all the issues to the satisfaction to the City and Garden Remedies.

*Bob Cavanaugh, 69 Court Street* said that he is around the corner from Garden Remedies. He is opposed to a moratorium. It has been 15 months since recreational use has been approved and asking for the maximum time the Commonwealth with allow seems odd. If the City delays it now, they will keep on delaying it and will extend it further. The voters should be taken into consideration since they voted in favor of recreational use. If time is needed, it should not be more than six months.

William Land, 63 Mandalay Road said he was one of the voters who enthusiastically voted for legal recreational use. Newton is a great place to live and will be greater with one or two legal marijuana shops. He has no concern about having them in the City and is not happy with delaying it. Fifty five percent of the voters supported this.

*John Matthis, Central Street* said that he is against the moratorium and does not understand why there have been any delays on the state level and why it should be taxed more. He is a medical patient and uses Garden Remedies. They are a wonderful business and are very professional. That had been worries that kids going to Cabot's would be hanging out there. There are no kids hanging out there. There are strict controls, identification is required and none of the fears expressed by people have not materialized. He hopes that the moratorium does not pass.

*Jerry Reilly, 12 Spring Street* said that he is not sure why this is an issue tonight. Voters passed this law legalizes recreational use as a legal business. The City has an array of rules governing commercial businesses whether it is a pizza place or a variety store. He was not sure why those could not apply. The state is regulating this use in great detail and the City does not need to do more. If the City thinks it needs its own special regulations, it had 15 months since this was approved. So why didn't the City work on this during that time. That does not seem responsible and the City dropped the ball. The answer to that is get the work done on schedule that the City knew was coming.

*Name not audible, 652 Chestnut Street* said she is in the minority and is against recreational marijuana. She does support medical marijuana and recognizes its important for patients. She

knows people in her community about this as well as there could be 7+ recreational establishments in Newton. Buffer zones will be cut. She is in favor of the moratorium and some of her friends asked her to speak as well. She is against this because of her kids. Children are not mature enough to make good decisions so she wants to provide a supportive environment for them to grow up and channel their energy and time to more constructive activities. She wants them to be independent and contribute to the community when they are grown. The recreational marijuana is not a beneficial way for people to spend their time rather than spending time in sports, music and arts. Marijuana is addictive. She is in favor of the moratorium and against any recreational marijuana in Newton.

Hearing no more requests to speak, the Committee voted to close the public hearing. The Planning & Development Board also voted to close their public hearing.

#### Law Department

Marie Lawlor, Assistant City Solicitor said she was asked by the Chair to speak to the issue of whether a moratorium can be applied to an existing facility such as Garden Remedies, which was licensed prior to July 1, 2017. The specific language in the law says that city and towns can govern the time, place and manner of marijuana establishment operations and of any business dealing with marijuana accessories except that ordinances shall not operate to prevent the conversion of a medical marijuana treatment center licensed or registered not later than July 1, 2017.

This issue is whether this would prevent the City from enforcing a moratorium against Garden Remedies. Attorney Smith's opinion was that it could prevent a moratorium from applying to Garden Remedies. There is another opinion that is equally held and equally supportable that a moratorium is a zoning tool that is regularly enforced and upheld by the courts when it is for a limited purpose to study a new use, impact or development in a municipality and when it is limited in duration. The moratorium is temporary in nature and does not prevent a conversion, but merely delays it while zoning is put in place. Ms. Lawlor believes that 90 cities and towns have a moratorium in affect and the Attorney General, who must approve zoning by laws for towns, has said that moratorium through December 31 is a very reasonable timeframe given that the CCC will not finalize any regulations until March 15<sup>th</sup> and will accept applications on April 1<sup>st</sup>.

On April 1<sup>st</sup>. the zoning in effect in a city or town would govern the zoning for that particular use. If new zoning has not be adopted by Newton and there is no moratorium in place, any facility could come into Newton as any other retail establishment and the Commissioner of Inspectional Services would have to determine the closest applicable use and its accompanying zoning would apply. There would be no special permit process or other regulations aside from the buffer from schools mandated in the statute. The CCC has identified more than a handful of different types of establishments that have different impacts. The City would like to control where, and under what circumstances those establishments are located. Until the CCC rules on whether established medical facilities should be exempt or not, from moratoria, there will be uncertainty as to what should be done.

The moratorium will be upheld against any new establishment coming in, not licensed before July 1, 2017. Whether this can be applied to Garden Remedies is another question with differing opinions.

A possible option is creating a community host agreement with Garden Remedies which would provide a good opportunity to place controls on an establishment. It would identify all the rights and responsibilities of the facility. Also, Garden Remedies currently operates under a special permit at their current location. In order to expand their use, they would have to come to the City Council to amend their special permit for recreational use. This is another opportunity for the City to put conditions on the establishment.

#### Committee and Planning Board Questions/Comments

A Planning Board member asked what the process would be after the state regulations are released in terms of developing the zoning ordinance. He wondered if any of the medical marijuana dispensary zoning could be applied. Ms. Caira said some of the medical requirements can be transferrable. Staff is looking at mapping and buffer zones while keeping in mind the requirement for meaningful opportunities for establishments to open. Buffer zones need to be confirmed by the state and staff needs to do some research on the other allowable uses. There is a good deal of analysis to be done as well as release of the final regulations. A draft ordinance will be crafted and vetted internally and externally and then brought to the City Council for input and a vote. The hope is to finish before the December 31<sup>st</sup> deadline.

It was asked if combined uses might be included in the same facility. Ms. Caira said that medical establishments are generally cultivated and selling in different locations. They would have to look at zones where combined uses would be appropriate. It was noted that Garden Remedies would add the recreational use to their facility and continue with their medical business. The statute does not allow communities to prevent the conversion of an established medical facility to a recreational facility, so moratorium or not, Garden Remedies will be allowed to add recreational use to their facility. It is just a matter of when that could happen.

Committee members wanted it to be clear that this moratorium is for future recreational establishments and would not require currently licensed medical marijuana establishments, such as Garden Remedies to close or alter its business. A moratorium is not a punitive measure or a delay tactic. The City is in phase two of a complete re-write of the zoning code since 1987. This takes a tremendous amount of time, energy and resources in the Planning Department and they need some time to respond to this new use and work on zoning. In addition, the state has not published its final regulations.

Some Councilors felt that three months would be sufficient to get the zoning finished. There are plenty of regulations on the books for alcohol establishments, medical marijuana establishments and retail establishments. Figuring out parking and signage might be necessary but should not take much time. In the meantime, the City would be losing tax revenue. A Councilor noted that allowing Garden Remedies to open as a recreational establishment could be a good test of the

parking and traffic impact of such facilities. It was noted that it would become one of the required 7 or 8 establishments.

Ms. Caira noted there are no zoning requirements for package stores, but there are licensing requirements. She also noted that while some of the restrictions in place for medical establishments could be used, there were still many other areas to consider including buffer zones, sensitive uses, parking and transportation impacts, demonstrated need for service in areas and other requirements and limitations that may come out of the final state regulations.

Up to 3% of gross sales can be negotiated into a host agreement with a recreational establishment. The use of those funds would be limited to education and prevention and the City must show that the money is directly related to the cost to the City. The other 3% tax is a local tax option, similar to the meals tax that the City imposed several years ago. That money may be used in any way the City chooses. It is not possible to estimate what those revenues might be. It is possible that there are certain areas in which the tax could be collected such as transportation services, for example, so the City would like to get the local tax option in place as soon as possible.

A Councilor said that Salem passed zoning and regulations for medical marijuana establishments last week. Ms. Caira said they would run the risk of being noncompliant with state law and having to revise their zoning ordinance.

It was suggested that while some of the various uses of recreational marijuana may need further review, retail uses could be more quickly dealt with.

Brookline is getting their regulations to Town Meeting in May and there is some frustration in Committee that Newton is not ready to move forward in a similar manner. However, the Mayor expressed on January 2 that the Planning Department should start working on this. The Committee is asking the Planning Department to move as expeditiously as they can on this issue considering all the other work they have underway. It will be considered in the context of the zoning redesign project that is in progress.

Councilor Leary suggested changing the moratorium end date to June 30th providing that Garden Remedies could be exempt from the moratorium pending a host agreement and special permit amendment.

Councilor Baker moved approval of the item as recommended by the Planning Department. The Committee voted to approve 4-3-1 with Councilors Albright, Leary and Krintzman opposed, and Councilor Downs abstaining.

#### The Planning Board

The Planning Board voted in favor of the moratorium adding an amendment to exempt Garden Remedies, 3-1-0. (See attached recommendation)

- #30-18      Zoning ordinance amendment regarding lodging houses**  
COUNCILORS CROSSLEY, ALBRIGHT, NORTON, DANBERG, LEARY, KALIS AND BAKER  
requesting to amend Chapter 30, City of Newton Ordinances, to include a “lodging house” ordinance to promulgate standards for new buildings and developments that would provide congregate living arrangements and/or single room occupancy.  
Public Hearings Closed  
Planning & Development Board Approved 4-0
- Action:      Zoning & Planning Approved 6-0-2 (Councilors Baker and Brousal-Glaser abstaining)**

**Note:** The Zoning & Planning Committee and the Planning Board opened their public hearing on this item.

It was explained that this item was originally docketed in 2015. The conversation began in 2017 and this is a continuation of that discussion. This zoning ordinance amendment is necessary as well as regulations and licensing which will be reviewed under a different docket item in the Programs & Services Committee. The Licensing Commission will also be taking this up their next meeting. Ms. Blatt provided a PowerPoint presentation which summarized the topic. Please refer to it for details.

Hearing no requests to speak, the Committee and Planning Board voted to close the public hearings.

#### Committee Questions/Comments

A Councilor was concerned with the Boston College and he does not want to create a system where the dormitory responsibilities are being off-loaded into this type of housing.

It was asked how many legal lodging houses are in the City. Ms. Blatt said there are a few legally non-conforming lodging houses in the City. It is their burden of proof to show they have been in existence and continually operating since before the City started regulating lodging houses. Those establishments would then have to fulfill the newly created licensing requirements, but would not be subject to the special permit process and would new establishments.

A Councilor asked if sprinklers are required in lodging houses. Ms. Blatt said that would be in the building code and is not in the zoning ordinance. If in-room mini-kitchens are present (up to two-burner stove or convection microwave) then she believed a sprinkler system was required. The Fire Department will oversee quarterly evacuation drills.

A Committee member said that an existing lodging house has an asphalted parking lot that is quite large and the owner rents out excess spaces. Ms. Blatt said the zoning is prospective so it would not apply to any grandfathered, legally created parking. The regulations do not control parking. Ms. Lawlor, Assistant City Solicitor noted that non-accessory parking is illegal so that may apply in



this case. This issue can be better discussed in the Programs & Services Committee when licensing requirements are reviewed.

There will be an interdepartmental inspections (ISD, Health and Human Services, and Fire Departments) as part of the licensing process. The report of those inspections will go the Licensing Board prior to the granting of a license. If there are any issues, a license will not be granted until the problem is resolved. The Licensing Commission would also take complaints and those would be taken into consideration during the licensing process and beyond. If the terms of the license are not being met, the license may be revoked. It was suggested a more proactive inspection cycle might be necessary.

Ms. O'Keefe noted that if the Licensing Commission hears complaints about an establishment, they will contact them and have them appear at the next meeting to answer to those complaints. A Councilor noted that in her experience, if there is a problem with a particular establishment, Councilors get involved and the appropriate departments do act as they should regarding enforcement.

Any new establishments would be developed under special permit and must comply with all conditions of the special permit. They would also be subject to all the same licensing requirements as the existing establishments.

A Councilor would like it explicitly stated that if someone who claims they are not subject to the zoning regulations has the burden of persuasion to show they are in fact exempt in order to protect the community around them. The Licensing process can be used as a zoning enforcement tool in that compliance with the existing zoning is one of the conditions of maintaining a license. This could help solve the problem of the excessive parking that was mentioned.

A Councilor asked why lodging houses would not be allowed in SR zones that are close to transit. It was suggested this could be something considered during zoning reform.

A Committee member would like to see the transportation map with the MR zones laid over it.

In terms of next steps, the Licensing Commission will be taking this up on February 13 and the licensing docket item could go to Programs & Services on February 21.

Councilor Kalis moved approval and the Committee voted in favor 6-0-2 with Councilors Baker and Brousal-Glaser abstaining. The Planning Board approved this item as well 4-0 and their recommendation is attached.

#### **#29-18**

#### **Acceptance of MGL regarding cooking facilities in lodging houses**

COUNCILORS CROSSLEY, ALBRIGHT, NORTON, DANBERG, LEARY, KALIS AND BAKER requesting acceptance of MGL Chapter 140, Section 22A to allow lodging houses to include limited cooking facilities in rooming units.

**Action: Zoning & Planning Approved 8-0**

**Note:** Councilor Krintzman moved approval of this item and the Committee voted in favor unanimously.

**#113-18 Zoning Ordinance technical amendments**

DIRECTOR OF PLANNING requesting technical amendments to the Newton Zoning Ordinance, Chapter 30, in order to address edits related to missing or incorrectly transcribed ordinance provisions.

Public Hearings Closed

Planning & Development Board Approved 4-0

**Action: Zoning & Planning Approved 8-0**

**Note:** James Freas, Deputy Director, Planning Department explained that since the adoption of the Phase One zoning ordinance, the Planning and Inspectional Services Departments have been identifying errors, omissions and issue in the zoning ordinance. Those items are then corrected in a yearly technical amendment item. The technical amendments were detailed in the Planning Memo.

The Zoning & Planning Committee and the Planning Board opened their public hearings on this item. Hearing no requests for public comment, both public hearings were closed.

Committee Comments/Questions

Councilor Baker suggested amending the 2 square foot allowable sign for a home business to 1.5 square feet. The Committee failed to approve the amendment.

The Committee voted to approve the technical amendments, unanimously, as did the Planning Board.

**Economic Development Strategy Introduction – Camoin Associates**

Barney Heath, Director of Planning explained that Camoin Associates, who are undertaking the City's Economic Development Strategy were in town today. They went on a bus with Katherine Ellis, Economic Development Director for the City and visited all the villages and commercial areas. They have a good understanding of what is on the ground in the City. The firm is already familiar with Newton from their work on the N2 Corridor. They have a slate of interviews tomorrow with key businesses and stakeholders in the City to reinforce their knowledge base and enhance the initial stages of their study. A PowerPoint was presented, but was not provided to the Clerk by the time this report was being written. A report with the accompanying materials will be forthcoming.

**REferred to Zoning & Planning and Finance Committees**

**#85-18** HER HONOR THE MAYOR requesting authorization to appropriate and expend five hundred thousand dollars (\$500,000) from Free Cash for the purpose of developing an actionable plan for the Washington Street Corridor that addresses land use,

economic development, transportation, fiscal impacts, and other issues that may arise, as well as a new zoning district(s).

Finance to Meet

**Action: Zoning & Planning Approved 8-0**

**Note:** At the last discussion of this item, which was a joint meeting with Finance Committee, there were many questions that remained unanswered. The questions were provided to the Planning Department and were addressed in the Planning Memo that was prepared in advance of this discussion.

Mr. Heath explained that this project is a priority of the Mayor. The Washington Street corridor and its fate is important to the City, therefore, a proactive vision with appropriate zoning in place prior to the initiation of proposed redevelopment is a priority. Significant land assemblage has taken place along the corridor which is seen as a precursor to major development. Getting the communities desires for that development on paper and then enacting the zoning to support that vision. The current staffing in the Planning Department does not have all of the specific expertise to do this project in-house. That, along with the time committed to other work, necessitated the assistance of this consultant and it is not unusual for communities to do this.

There had been specific concerns that this project had not been put out to bid. Mr. Heath explained that there are exemptions in state bidding law for design professionals along with medical and law professionals. The City wanted to be sure they hired the best in the business with the most appropriate skill set. The firm they hired, the Principle Group, has done excellent work in advance of redevelopment proposals. They have worked in Somerville, Providence and Maine and are a highly skilled team with an attuned architect who knows Newton and greater Boston. They place a hallmark on community involvement and dedicate a large portion of their budget to it. The group also works on transportation and has experience in code based zoning. They were the best choice for this project.

Councilor Albright explained that she met with the Mayor right after the last discussion of this item. The Mayor expressed her concern that it was not voted out because it represented pushing the project out another 6 weeks and would like to have it voted out as soon as possible.

Committee Comments/Questions

The Chair explained that the community engagement aspect of the Principle Groups proposal is extensive. Mr. Heath said they come to the community and spend as much time as it takes to get to the core of what is wanted. A typical consultant would spend a day in the community and then go back to their offices and work on the proposal with mixed results. This group conducts a 6-day open studio from 8am to 10pm. People can walk in and have any number of conversations or share ideas. The consultants will draw up what is expressed and provide as many feedback loops as possible. This process keeps the momentum going. About \$300K of the project is spent on the community engagement process. There will be experts available for real-time analysis on a number of factors. This is completely different than anything the City has done before.

Newtonville Area Council is conducting some community engagement as well and that information can be incorporated into this process.

A Councilor noted that this is the perfect type of project for consultants. Hiring staff in the Planning Department would not provide the same level of varied areas of expertise needed for this complicated project.

A Committee member said he would like to see where the money will be coming from going forward. This could set a precedent for other areas in the City that might want this type of project done. He would like to hear from Maureen Lemieux how this would work and be covered financially.

It was asked if the Principle Group always recommends development. Mr. Heath said they do not have preconceived notions about what should happen and that is why they want to hear so extensively from the community. They are an instrument for the community and its vision so that zoning can be written to support that vision. Generally, they are called in by communities to manage impending growth of some sort, whether it is being imposed on them, or whether they want to work with the growth that they anticipate. They look to shape the proposals to express what the community wants, which includes open space, streets, buildings, transportation, etc. Mr. Freas said he has seen the group be highly responsive and did see examples of allowing for parks and open spaces.

There was a scenario in Taunton where everyone filed subdivision plans and it froze zoning for seven years after a whole planning and zoning process had been undertaken. Mr. Korff, who has purchased multiple parcels on Washington Street and is planning to develop there, has able lawyers. The Councilor does not want to see the developer given more development opportunities so that he will not “stop the game”. Is this process going to be effective in what is trying to be accomplished. He agreed that this firm is an excellent choice and that the talent is worth the money. He, also was concerned with the financial commitment involved, beyond this project. A wonderful plan could be developed with no money to implement.

The Chair explained the City hired MAPC years ago to study the Washington Street corridor and provided a road diet plan. There had been no time to implement that plan even though everyone liked the plan.

Mr. Heath explained that if the proactive response is not taken, then the City is always reacting to developers. It would be desirable to have zoning in place that developers have to react to. He is not aware of Mr. Korff’s timeline, but hopes he will wait until this process is done so that his project is somewhat in line with what the community wants and needs. To a great extent, this project will be focused on the nodes that were identified on the corridor since the City is expecting some sort of proposals for development there. Fundamental questions need to be answered so that the City can shape what they feel are the priorities for the areas. Part of the plan is to bring in

experts to look at the issues to see how the community can finance the projects, where are the public/private partnerships and other opportunities, what is achievable and how does it happen.

There is, of course, the zoning redesign overall project. Does the Washington Street project become a one-time exercise or will other areas of the city want a similar process. Mr. Freas said that zoning redesign is aiming to establish a better baseline zoning ordinance that is context based, for the entire City. It will bring the zoning in line with the built environment and reinforce the character and qualities of the City that people know, enjoy and love today. Some places are riper for a greater degree of change like the Washington Street corridor. The zoning redesign project does not have that level of community engagement built into it to address that need.

Mr. Freas reminded the Committee that Planning staff had introduced a process of master planning for neighborhoods, corridors and village centers to lead zoning reform and the Committee chose not to pursue that. The efforts now have to be targeted and do master planning for areas where this is potential for bigger chance. Both processes will have to be managed, along with other issues in the pipeline.

A Committee member noted that planning does not involve just buildings but issues of wildlife, shade trees, vibrant public spaces, storm water management, etc. Almost everything she thinks about has to do with the consequences of climate change. The way things have been built in the last 100 years cannot continue. This is an opportunity to get those issues into the forefront and make significant change.

The consultants will be looking at all the resources available to them through other studies that have been done in the city around a number of issues like transportation. The topic of safety along the corridor came up as well. Mr. Heath said that is very much in the proposal under "mobility" to specifically looking at how people, bikers, etc. make their way through the corridor safely.

Some Committee members noted that if a zoning ordinance for the corridor is in place, then the City will start getting proposals that fit into that. This will also allow to design in some usable open space that will benefit the corridor. This is a very able team who could bring about some very useful tools for the area.

Councilor Kalis moved approval and the Committee voted in favor, unanimously.

### **Referred to Zoning & Planning and Finance Committees**

**#86-18**

#### **Add a full-time position in the Planning Department**

HER HONOR THE MAYOR requesting authorization of the addition of one full-time employee position in the Planning & Development Department to create a Director of Transportation Planning position.

Finance Approved 6-0-2 (Councilors Ciccone and Lappin abstaining) on 1/22/18

**Action:**

**Zoning & Planning Approved 8-0**

**Note:** This item had been in Committee previously and was approved with the caveat that job descriptions would be provided for the Transportation Planning and Transportation Operations positions. Those job descriptions were not provided in advance of the City Council meeting, but have since been provided. The Committee was satisfied with the scope of the positions. A Councilor asked where transit planning and execution might fall. Mr. Freas noted that it would be under the purview of the Transportation Planning position. Parking planning and parking operations need to work closely together and the close relationship and biweekly meetings with the Department of Public Works will be maintained.

David Koses will remain in Transportation Operations. Nicole Freedman will be focused on the implementation of transportation planning strategy that encompasses bicycle and transit planning. She will also be in charge of communicating with other communities on their initiatives.

The Committee voted in favor of this item, unanimously.

**Respectfully Submitted,**

**Susan S. Albright, Chair**

# Zoning and Planning Committee

1

## RECREATIONAL MARIJUANA TEMPORARY MORATORIUM

# Timeline

2

- November 2016 – Massachusetts votes to legalize marijuana for recreational use
  - Newton votes in favor 55% to 44%
- July 2017 – Governor signs a revised law
- September 2017 – Cannabis Control Commission (CCC) established
- December 2017 – CCC issues draft regulations
- March 15, 2018 – Final regulations expected



# Timeline

3

- April 1, 2108 – CCC will start accepting applications. Must have zoning or moratorium in place at this time.
- June 1, 2018 – CCC will start issuing licenses
- July 1, 2018 – First recreational establishments can open
- December 31, 2018 – Attorney General has approved temporary moratoria up until the end of this year.

# Moratorium

4

- Without zoning or a moratorium in place on April 1<sup>st</sup>, the City will have limited control over recreational marijuana establishments.
- Applications would not be subject to Special Permit and there would be no limit on the number of establishments.
- Staff proposes a temporary moratorium through December 31, 2018 in order to allow time to craft an ordinance that complies with final regulations.

# The Marijuana Acts

5

- Allow up to one ounce for personal possession and 10 ounces for home growth
- May cultivate up to 6 plants per individual
- Allow Municipalities to regulate “time, place, and manner”
- Local governments may enact 3% local sales tax option
- Communities must negotiate host agreements, which can include up to 3% of gross sales

# The Marijuana Acts

6

- Different license classes: cultivation, craft marijuana cooperative, product manufacturer, retailer, research, testing, transporter, micro-business
- On-site consumption not permitted unless approved through local ballot initiative
- Ballot initiative required to ban any other classes

# Zoning

7

- Must provide “meaningful opportunities” for minimum number of establishments
  - 20% of off-site liquor licenses
  - Local ballot initiative required to further restrict
- 500-foot buffer from public and private k-12 schools
- City has 60 days from notification from CCC of a complete application to respond whether location is within buffer

# Zoning

8

- Medical marijuana dispensaries are currently permitted in BU2, BU5, and MU1 zones. Need to determine appropriate zoning districts for each class of recreational marijuana.
- Evaluate development standards and use regulations for each class:
  - Parking, signage, hours of operation, etc.

# Proposed Moratorium

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## 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.*



- Questions?

# PLANNING & DEVELOPMENT BOARD



Date: February 14, 2018

The Honorable City Council President, Marc Laredo

City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Honorable Council President Laredo:

On February 12, 2018, the Planning & Development Board (P&D Board) discussed petition #77-18 concerning a request to amend Chapter 30, City of Newton Zoning Ordinances, to add a definition of recreational marijuana establishment and to adopt a temporary moratorium on the placement of recreational marijuana establishments in the City through December 31, 2018, 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.

The Planning Board voted 3-1-0 to recommend that this zoning amendment be granted.

Further, the Planning Board recommended an amendment that the moratorium shall not apply to prevent a medical marijuana dispensary licensed or registered not later than July 1, 2017 from converting to the retail sale of recreational marijuana under the provisions of MGL c.94G. The Planning Board also voted 3-1-0 in favor of this amendment.

Submitted on behalf of the Planning & Development Board.

Sincerely,

Scott I. Wolf  
Chair

Cc: City Council

Ruthanne Fuller  
Mayor

Barney Heath  
Director  
Planning & Development

Rachel Powers  
CD Programs Manager  
Planning & Development

Members

Scott Wolf, Chair  
Peter Doeringer, Vice Chair  
Barney Heath, *ex officio*  
Megan Meirav  
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# Lodging House Regulation

1

**PROPOSED LODGING HOUSE  
ZONING AMENDMENTS  
PUBLIC HEARING**

# Outline

2

- What is a lodging house?
- Lodging House Ordinance Updates
- Proposed Zoning Amendments
- New since 2017 public hearing

# What is a lodging house?

3

## **Lodging House**

- 4+ individuals living in a quasi-group setting
- Leasing a room rather than sharing in an apartment lease
- Access to but not legal responsibility for shared kitchen and bath facilities

*Also known as a boarding house or a rooming house*

# What is a lodging house?

4

Renter #1 | Renter #2 | Renter #3 | Renter #4 |

## Lodging House



## Shared Apartment



Same distinction applies for larger groups:

- more than four individual lodgers = lodging house
- More than four roommates = association of persons

# How does Newton currently regulate a lodging house?

5

## Newton, MA

### Zoning

- Defines a lodging/rooming/boarding house
- Establishes where lodging houses can be located and by what process those locations are approved
  - Use is allowed by Special Permit in the MR-1, MR-2, MR-3, and MR-4 districts (3.4.1)
- Sets parking standards
  - 1 parking stall per sleeping room plus 1 per 3 employees (5.1.4)

### License Fees

- \$50/year Lodging House License (§17.3)
- \$50/quarter On-site Inspection Fee (§17-10)
- **NO REGULATIONS ASSOCIATED WITH THE FEES**

# Zoning and Licensing

6

## Zoning

+

## Licensing

### Establishing a new lodging house

- Allowed Zones
- If/When a special permit is required
- Parking standards
- Building Development Standards

### Operating a lodging house

- Operator Requirements
- Inspection Schedule
- License Fees
- Responsibilities for Managing Lodgers
- Responsibilities for Property Maintenance

Approval of use of a property

Approval of an operator



# Outline for Zoning Amendments

7

## 6.2.7 Boarding House, Rooming House, Lodging House

A. *Intent Statement – add new section*

B. Defined. – *minor changes*

C. *Standards – add new section*

D. *Process – add new section*

## 5.1.4 Number of Parking Stalls – *updated*

## 3.4.1 Residential Districts Allowed Uses – *no change*

## 4.4.1 Business, Mixed Use, & Manufacturing Districts - *explicitly allowed on upper stories only*

Standards for  
Development

Allowed  
Zones

# New Since 2017



## 6.2.7 Boarding House, Rooming House, Lodging House

A. *Intent Statement – add new section*

B. Defined. – *minor changes*

C. *Standards – add new section*

D. *Process – add new section*

- **Refer all approved Special Permits to Licensing Board**

} New since  
2017

5.1.4 **Number of Parking Stalls** – *updated*

3.4.1 **Residential Districts Allowed Uses** – *no change*

4.4.1 **Business, Mixed Use, & Manufacturing Districts**  
- *explicitly allowed on upper stories only*



# ADDITIONAL MATERIAL

# State Statutes

10

Lodging Houses are regulated by  
Massachusetts General Laws  
Chapter 140, Sections 22-32

By Chapter 140 – if a community is a City with a licensing commission, that is the body charged with reviewing lodging house licenses

# City Council actions being considered

11

## Accept §22A

- Allow for mini-kitchens if the standards are met

## Zoning Amendment

- Add intent statement
- Add development standards & design review component
- Update parking requirement
- Explicitly allow lodging houses where other residential uses are allowed on upper floors of commercial districts

## Licensing Ordinance Amendment

- Set general requirements for all lodging houses
- Set requirements for operators (licensees & resident supervising agents)
- Outline responsibilities for operators regarding residents and property maintenance
- Outline application process requirements & fees

# Best Practice Review

12

## Cambridge

- Follows state statute directly, no additional information
- Application is processed by the Licensing Commission alongside the inn holder license

## Brookline

- For decades, Brookline has used an in-depth lodging house by-law covering all lodging houses, dorms, inns, bed & breakfasts, etc.
- Ordinance last updated in 2013
- Application to the Board of Selectmen (town without a Licensing Commission)

## Louisville KY

- Like Newton, Louisville has had both zoning and licensing of lodging houses, but had no licensing regulations
- Like Newton, principal concern was resident safety and need for routine inspections
- Adopted lodging house license regulations in 2015

# Restaurant Permitting Process

## 1. Zoning

- Special Permit

## 2. Building Permit

## 3. License





# Lodging House Permitting Process

## 1. Zoning

- Special Permit

## 2. Building Permit

## 3. License



*Pine Street Inn Housing*



# Lodging House Formats

15

## Caritas Communities

- Non-profit operated
- Mix of lodging house styles:
  - Single rooms (furnished & unfurnished) with shared kitchen and bath,
  - Small 1-bed units
  - “hotel style” units w/o kitchens
- Some units accessible
- Some with parking available, some without
- TARGET POPULATION:  
low-income working adults



**30**   
BUILDINGS  
plus 2 more building  
sites in progress

**14**   
GREATER BOSTON  
COMMUNITIES

**1000+**   
CURRENT  
RESIDENTS

# Lodging House Formats

16

## Caritas Communities

22 Fessenden Rd, Arlington

- 15 rooming units
- Shared kitchen & bathrooms



# Lodging House Formats

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## WeLive

- Full-furnished and outfitted units
- Rent a studio, 1-bed, or room in a 2-4 bedroom shared apartment
- Housekeeping & Concierge
- Laundry in the building
- Limited parking but transit accessible
- TARGET POPULATION:  
mobile tech workforce  
participating in WeWork  
coworking locations

### A New Way of Living.

WeLive is a new way of living built upon community, flexibility, and a fundamental belief that we are only as good as the people we surround ourselves with. From mailrooms and laundry rooms that double as bars and event spaces to communal kitchens, roof decks, and hot tubs, WeLive challenges traditional apartment living through physical spaces that foster meaningful relationships. Life is better when we are part of something greater than ourselves. Whether for a day, a week, a month, or a year, by joining WeLive - you'll be psyched to be alive.

MOVE IN FOR MONTHS or STAY A FEW NIGHTS WeLive is your home as long as you need.

Excerpt from the WeLive webpage

<https://www.welive.com/dc>

# Lodging House Formats

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## WeLive

### Crystal City, Arlington, VA

- Studio, 1-bed, & rooms in a 2-4 bedroom shared apartments
- Housekeeping & Concierge
- Laundry in the building
- Daily community building events



**Each unit is outfitted in our signature style, from the living and sleeping areas to the kitchen and bathroom.**

<https://www.welive.com/dc>

## PLANNING & DEVELOPMENT BOARD



Date: February 14, 2018

The Honorable City Council President, Marc Laredo

City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Ruthanne Fuller  
Mayor

Dear Honorable Council President Laredo:

Barney Heath  
Director  
Planning & Development

On February 12, 2018, the Planning & Development Board (P&D Board) discussed petition #29-18, concerning a request to amend Chapter 30, City of Newton Zoning Ordinances, accepting MGL Chapter 140, Section 22A to allow lodging houses to include limited cooking facilities in rooming units; and petition #30-18, concerning a request to amend Chapter 30, City of Newton Zoning Ordinances, to include a "lodging house" ordinance to promulgate standards for new buildings and/or single room occupancy.

Rachel Powers  
CD Programs Manager  
Planning & Development

The Planning Board voted 4-0-0 to recommend approval of both these requests.

Members

Submitted on behalf of the Planning & Development Board.

Scott Wolf, Chair  
Peter Doeringer, Vice Chair  
Barney Heath, *ex officio*  
Megan Meirav  
Sonia Parisca  
Chris Steele

Sincerely,

Scott I. Wolf  
Chair

Cc: City Council

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