

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, SEPTEMBER 23, 2013

Present: Ald. Johnson (Chairman), Danberg, Yates, Kalis, Baker and Swiston

Absent: Ald. Lennon and Sangiolo

Also Present: Ald. Albright

Others Present: Dori Zaleznik (Commissioner, Health and Human Services), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Robert Muollo (Housing Planner), James Freas (Chief Planner, Long Range Planning), Candace Havens (Director, Planning & Development), Alice Walkup (Community Development Planner), Karyn Dean (Committee Clerk)

Planning & Development Board Present: Scott Wolf (Chairman), Joyce Moss, Doug Sweet, Leslie Burg, and Roger Wyner

*A Public hearing was held on the following item:*

#406-12(2) ALD. JOHNSON requesting that the existing provisions of Sec. 30-20(h)(6) *Election signs*. be deleted and that the following provisions be inserted in place thereof: "Election signs may be erected no earlier than forty-five (45) days before an election and shall be removed within seven (7) days after the election."

**ACTION:** **APPROVED 5-0 (Ald. Swiston not voting)**

**NOTE:** The Planning & Development Board joined the Committee for the public hearing on this item. The amendment changes the removal of election signs time-frame from 2 days to 7 days. The Committee had felt that 48 hours was unreasonable and wanted to allow for a bit more time for retrieval of signs. City candidates tend to remove the signs quickly, but the state and federal campaigns seem to have a harder time and this time-frame is more in line with other communities. Roger Wyner of the Planning & Development Board asked about enforcement of this ordinance. It was explained that this is primarily complaint driven and the City will respond to any calls they receive. It was also mentioned that David Olson, City Clerk, would make calls to a campaign to have a sign removed.

Ald. Danberg opened the public hearing and hearing no comments, closed the public hearing. Scott Wolf also closed the public hearing for the Planning & Development Board.

The Committee voted to approve this item 5-0. The Planning & Development Board also voted to approve this item 5-0.

#406-12      ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]

**ACTION:**      **NO ACTION NECESSARY (Ald. Swiston not voting)**

**NOTE:** This issue was settled in the previous item, #406-12(2). Therefore, the Committee voted No Action Necessary.

#309-13      DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to establish parameters regarding what districts and under what conditions Medical Marijuana Treatment Centers will be allowed within the City of Newton. [09/11/13 @ 4:12PM]

**ACTION:**      **HELD 6-0**

**NOTE :** In November 2012, Massachusetts passed a law to permit the sale of marijuana for medicinal purposes. The state Department of Public Health (DPH) has developed regulations to permit registered marijuana dispensaries (RMDs) and it is the City's desire that RMDs be treated as a new use within the zoning ordinance. Certain business and manufacturing locations are possible locations for the siting of such dispensaries and the zoning ordinance must be amended to reflect this new use. If no action is taken, the City's ability to regulate locations would be limited. A working group discussed this issue which included Ms. Havens, Ald. Yates and Ald. Schwartz, Marie Lawlor, Dori Zaleznik and Howard Mintz. The group reviewed the law itself and what the provisions would be appropriate locations.

Dori Zaleznik, Commissioner of Health and Human Services addressed the Committee. She explained that she is a physician and her opinion is that medical marijuana is an extremely useful agent. For some diseases it is best medicine available and for others it is a less addictive alternative with fewer side effects. The tolerance that builds up with narcotics is not seen with medical marijuana, therefore, dosages do not need to increase in order to achieve the same effectiveness.

The state is only allowing 5 RMDs in all of Middlesex County and no more than 35 in the entire state. Middlesex County received 47 applications, but, again, only 5 will be allowed and the state aims to disperse the locations for the best benefit. It is, therefore, highly unlikely that Newton would be allowed more than 1 RMD. Physicians, must register with the state in order to prescribe medical marijuana; patients and caregivers must register in order to receive prescriptions. They would then have to present their registration card as well as a prescription in order to receive the medication. Only DPH is doing the registration; municipalities don't have any role in licensing RMDs. DPH has made it clear that where the RMDs are sited needs to conform to local zoning ordinances, and the City is allowed to implement some additional security measures. Organizations wishing to open an RMD need to be non-profit, have a minimum of \$500K under their control, and an additional \$400K for each additional site they might open. The RMD must cultivate its own product either on-site or a separate site. There are many additional restrictions for off-site cultivation. Unique to Massachusetts, there is a

provision for independent laboratory testing that must be done on the product. One testing facility has made inquiries about locating to Newton, although there are no siting requirements for them in the state regulations. The security requirements are extensive and include things like alarm systems, security cameras with 24 hour retention of videos, locked storage areas, no shrubbery around the building that might hide intruders, outside lighting, etc. Waste disposal procedures are also specified in the state regulations. Local sign ordinances would apply, but the regulations also specify that logos or anything representing marijuana or paraphernalia are prohibited. For citing of RMDs, the only requirement in the state regulations is that the facility not be within 500 feet of a school, daycare center, or facility where children usually congregate. The proposed amendment for Newton also includes houses of worship. DPH can have unannounced inspections of RMDs and related vehicles. The licenses are issued for one year. Hardship waivers are being granted by the state for patients to grow their own marijuana until RMDs come online. The state permitting timeline required Phase 1 applications to be submitted by August 22, 2013 and decisions are expected in late September. After Phase 1 approval, Phase 2 applications are due within 45 days and need to include a site (with a title, option to purchase, signed lease or binding permission to use premises) and other criteria will be reviewed as well.

If Newton does not take any action, the RMDs will be allowed in the City under whichever use the Chief Zoning Code Official and the Commissioner of Inspectional Services determines is most similar to its described use. If that use were determined to be a pharmacy, then they would be allowed to be sited around most of the City. Staff recommends taking action to amend the zoning ordinance to define a use for RMDs and determine where they may be sited. Recognizing that this planning needs adequate time, a short-term moratorium is being proposed. During that time, the planning process can be completed and then applications can move forward in Newton. The working group suggested a moratorium until March 1<sup>st</sup>, but it could be lifted earlier if the work was completed before then. Many communities have enacted a similar moratorium.

The working group first considered if there were zoning districts in which RMDs could locate by-right. The more common pathway, however, would be to consider one or another business district that would be specified by special permit. The special permit process would give the City more control.

James Freas presented a map (please see attached). The working group considered different districts and different buffers and the attached map shows that overlay. There are both 500 foot and 1000 foot buffers around residential districts. The 1000 foot buffer eliminates pretty much all of the City and the 500 foot buffer doesn't add all that much more. Houses of worships were added to the map as were daycare centers and schools. The historical pattern of development in Newton shows a house of worship in every village center, therefore the 1000 foot buffer is again very exclusionary. The bottom of Needham Street and Wells Avenue seem to be the best locations to consider if the 500 foot residential buffer is in play. It was noted that the Wells Avenue Office Park deed restrictions need to be looked. Some uses could be restricted. If the buffer on residential districts is not required it opens up more possibilities that could still keep RMDs out of village centers. Committee members wondered if Riverside could be a possibility,

along with the Atrium Mall and North Street. There is also a building on Washington Street that could potentially work and the owner called the City to inquire about RMDs.

Committee members asked about the non-profit aspect of the RMDs. Scott Wolf, Chairman of the Planning & Development Board, explained that the non-profits are borrowing the money and then pay it back at rates that would be equivalent to an equity investment. Ms. Havens also noted that she read jurisdictions are making money on these ventures. Ald. Johnson asked Ms. Haven to have more information about the non-profit and profitability aspects of these ventures and perhaps have someone speak to the Committee. She would also like to hear from someone at the state about the crafting of the regulations. Commissioner Zaleznik said they borrowed heavily from the successful programs in Colorado and New Jersey. It was also felt that when community education is undertaken on the RMDs that realtors become aware of the regulations as well. There was concern in Committee that DPH may not have the staff and resources to do regular inspections and that it would be beneficial if the City could have some measure of control over inspections. Some Committee members thought this issue could be dealt with through special permit. Committee members would like to know which nearby communities have enacted a moratorium. There was concern that Newton may lose an opportunity to have a facility if other cities are ready to receive them. Ald. Johnson said it was her goal to get this issue resolved before the end of the term.

Committee members had various opinions about the appropriate areas for RMDs with no common consensus. Ms. Havens has taken note of all this and will return to Committee to answer questions asked and with further recommendations. The Committee voted to hold this item.

#### Public Comment

*Scott Murphy*, a Newton resident and Iraq combat veteran spoke in favor of medical cannabis. He asked that the Committee not rule out RMDs in any of their own districts out of fear or misconceptions. He reminded the Committee that the longer the moratorium goes on and if a RMD is far away, more and more people could receive hardship waivers to grow their own plants and there are few restrictions on where that can be. It's also not easy to grow medical marijuana and in his experience there are veterans that rely on medical marijuana for the treatment of PTSD and other conditions. He would like the Committee to consider its use for veterans and for their support of veterans when considering this issue.

*Peter Hiyashi*, a Newton resident and trained clinical psychologist spoke in favor of medical marijuana. Nerve pain from an injury has proven difficult and he gets significant relief from medical marijuana. He noted that Newton overwhelmingly supported this and voted for it and it is legitimate. He was concerned that an extended moratorium would force RMDs to go out of the City and further away for those who might need it in the City.

*John Mathis*, a Newton resident stated that his son is a medical marijuana patient in Los Angeles for the treatment of Crohn's Disease. He said the RMDs are tightly controlled and some concerns about closeness to churches or schools are unnecessary. These are medical facilities

and not places people hang around to smoke marijuana. He noted that other medical facilities do not have these kinds of restrictions.

*Karen* (inaudible) is a Newton resident and a breast cancer survivor. She went through her treatment without the aid of medical marijuana, which was extremely difficult. That inspired her to work on changing the law. She is now interested in opening an RMD.

#309-13(2) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of Medical Marijuana Treatment Center and to create a temporary moratorium on the placement of Medical Marijuana Treatment Centers 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 Medical Marijuana Treatment Centers will be allowed. [09/11/13 @ 4:12PM]

**ACTION:** **HELD 4-1-1 (Ald. Swiston opposed; Ald. Kalis abstaining)**

**NOTE:** **Please see above note.** The proposed moratorium would end on March 1, 2014, but could be ended earlier if the work was finished. Please see attached language. Some members of the Committee expressed their support for the moratorium. The staff will continue to work on the zoning changes as this process is ongoing. A public hearing is necessary for this item and will take place on October 16<sup>th</sup>. There was question about the process for repeal of the moratorium and if a public hearing would be necessary. Marie Lawlor will find out what might be possible. The Committee voted to hold this item.

#263-13 ALD. JOHNSON & ALBRIGHT requesting that the Planning Department document a clear and transparent process for the establishment of housing that complies with Massachusetts Chapter 40B statute so that citizens are knowledgeable of the steps needed, decision making points and decision makers. [07/15/13 @ 2:09PM]

**ACTION:** **HELD 6-0**

**NOTE:** Ald. Johnson explained that she and Ald. Albright would like the 40B process to be clearly explained. The Planning Department provided a memo for this item, but Ald. Johnson said it did not address her concerns. She would like to understand the roles of all the stakeholders and the various steps in a 40B development project. Candace Havens, Director of Planning & Development explained that the Law Department has been working on something that might be more in line with what she was expected. They are hoping to have user-friendly information online as well a handout with general guidance on the process, similar to the special permit brochures. Ald. Johnson asked that Ms. Havens work with her staff on developing this a bit more and bring this item back at another time.

The Committee voted to hold this item.

#81-13      DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]

**ACTION:**      **HELD 6-0**

**NOTE:** This item is relative the creation of naturally affordable housing that is affordable to families earning the regional median income of about \$100,000. The question is can these units be built in the City without public subsidy and offer sufficient profit to a developer. Candace Havens, Director of Planning & Development, addressed the Committee. She explained that there are some initiatives occurring on the state level that focus on job creation and affordable housing. Some changes in local by-laws could incentivize naturally affordable housing by loosening up some of the standards to allow some by-right developments that could serve the population without being deed restricted or subsidized. The Comprehensive Plan does call for diversity of housing in our community. The compact housing initiative allows for more smart growth, reducing traffic, and allowing density that is contextually appropriate and is consistent with the City's own Comprehensive Plan as well as with the trends across the state.

Phil Herr addressed the Committee. He said the Newton Housing Partnership created a zoning subcommittee in 2011, of which Judy Jacobson was Chairman and he and Josephine McNeil were also members, among others. Their work closely followed that of the Zoning Reform Group and they stated they would like to see some naturally affordable housing and thought it could be produced in the City given the right set of circumstances. The zoning subcommittee set some criteria for what might be sites that could be amenable to this and they focused on two lots that were next to each other and worked through a plan. They found that they could make it work financially and then worked on the zoning changes that would be necessary. The changes they proposed were brought to a number of people who have done development in the City for their thoughts and they were in agreement that the model could work. In 2012 they brought this information to the Mayor. Mr. Herr said he would like to see this go forward for a number of reasons. It won't dramatically change the City as there aren't many sites where it can be done, and many owners of those sites might not be interested in doing it. But some would and by trying it, things could be learned about the acceptability of some of the regulatory changes, how interested the development community would be, and what the market would be.

Some committee members were concerned because the value of the density gets capitalized into the price. The land is worth a certain amount, until a certain level of density is built upon it then that worth grows and that may be self-defeating. Also, smaller units don't necessarily mean less reliance on City resources. There was also concern about having these units around college areas. The special permit process keeps some controls in place, but developing these units by-right takes that away. It was pointed out that the special permit process makes a project more expensive, however. There was sentiment that units should be close to public transportation to reduce parking issues. There was also skepticism that some in the development community would not exploit these opportunities. There was also concern that some existing units could be displaced by producing new and more units. Others felt naturally affordable units in the City have been coming down to make way for bigger homes, and they really needed to be preserved or replaced and preferably added to. These units are not counted towards the City's affordable

housing numbers, but, Mr. Herr said they would be subject to Newton's inclusionary zoning rules that require that 15% of the units be "affordable".

The Committee would like to see more details about this proposal. Mr. Herr said he could provide a list of the regulatory changes that would be required and any other information the Committee would like. The Committee voted to hold this item.

#80-13        THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]

**ACTION:**    **HELD 6-0**

**NOTE:** James Freas addressed the Committee. The original schedule for Phase I of the zoning reform project called for a draft ordinance in the September timeframe. The draft is not ready, however. The consultant reported that the zoning ordinance is more convoluted and complex than was anticipated. The purpose of Phase I is to produce a usable zoning ordinance that is clarified, organized, uses more illustrations, removes inconsistencies, eliminates duplications, etc. Mr. Freas does not have a date from the consultant at this point for delivery of the draft.

Mr. Freas said that once the draft ordinance arrives, the structure would be reviewed and then presented to the Zoning Advisory Group and the Zoning & Planning Committee. The detailed review would come next and functional units would be identified and discussed in a detailed manner. The Zoning Advisory Group will then get the opportunity to review and comment on what works and what does not. They can also suggest changes to make the document more usable. Zoning & Planning will meet frequently for the final part of the project and discuss the general overview with the consultant, Lee Eisweiler and the detailed review with staff. The Committee will be making the final decision on the recommendation that will be made to the full Board of Aldermen. A public presentation will be made to highlight the new format and usability and offer an educational piece on Phase 2 and on the topic of zoning in general. The process will wrap up with a public hearing and adoption by the Board.

Committee members wanted to be sure a redlined version would be made available so that exact changes can be detailed. They wanted to be sure there was enough time for the Committee to review the document and make an informed judgment. Mr. Freas agreed that it would be a long-term process and that the consultant is planning on delivering a redlined version. The Law Department would also be deeply involved in the review. Mr. Freas will keep the Committee updated on the progress.

The Committee voted to hold this item.

#11-12      ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

**ACTION:**      **HELD 5-0 (Ald. Kalis not voting)**

**NOTE:** Mr. Freas spoke to Commissioner of Inspectional Services, John Lojek about this item. His feeling was that the original conversation between ISD, the Planning Department and the Engineering Department to resolve their process issues and to understand how to better coordinate their review under the existing ordinance, was satisfactory and their process was sufficient. The Committee would like to hear from Commissioner Lojek, Ald. Hess-Mahan and Linsky on this, therefore, the Committee voted to hold the item.

Respectfully Submitted,

















Marcia T. Johnson, Chairman



# Potential Sites for a Medical Marijuana Dispensary

City of Newton, Massachusetts

**Legend**

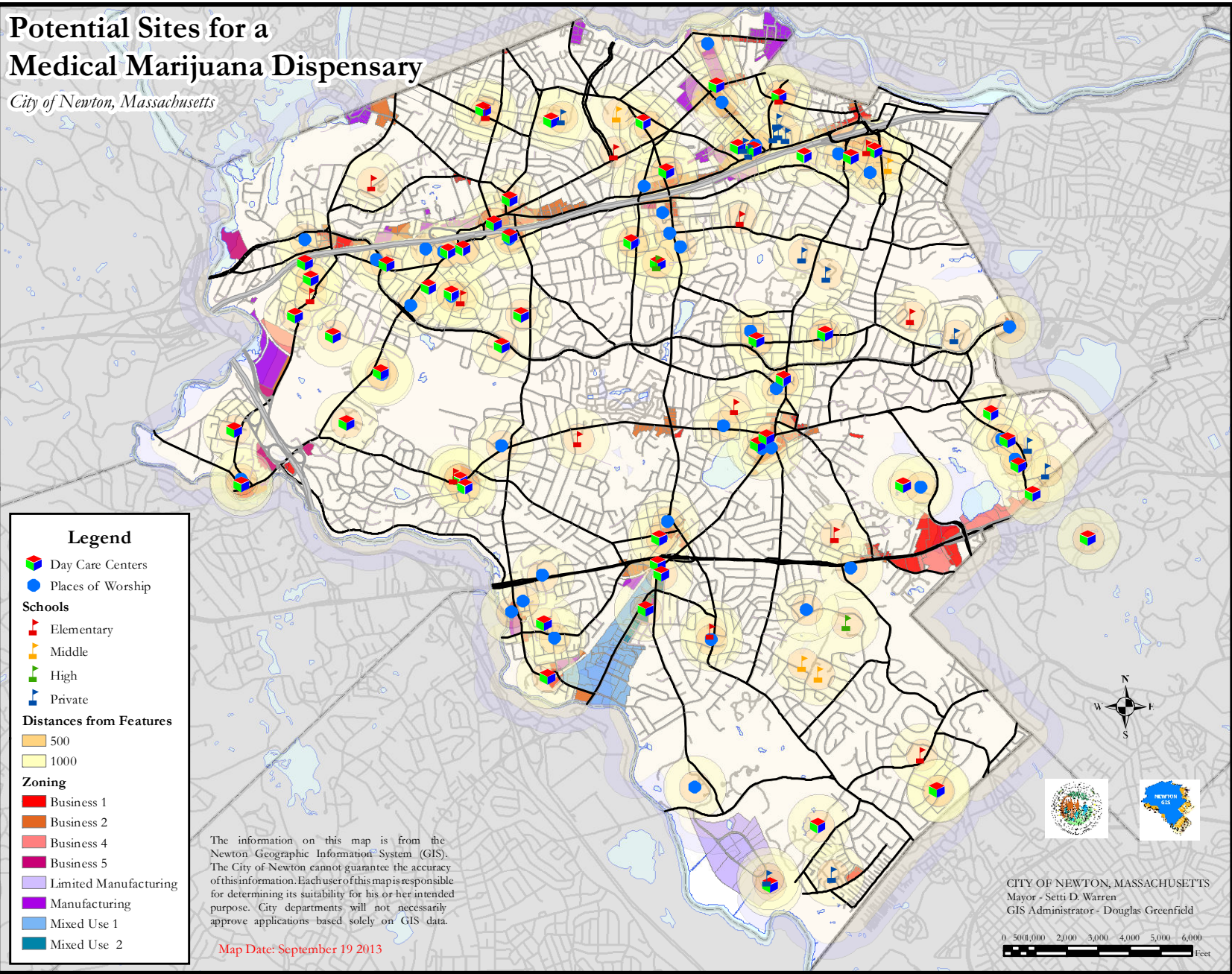
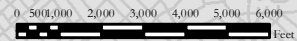
-  Day Care Centers
-  Places of Worship
- Schools**
-  Elementary
-  Middle
-  High
-  Private
- Distances from Features**
-  500
-  1000
- Zoning**
-  Business 1
-  Business 2
-  Business 4
-  Business 5
-  Limited Manufacturing
-  Manufacturing
-  Mixed Use 1
-  Mixed Use 2

The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

Map Date: September 19 2013



CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas Greenfield



# ATTACHMENT B

## MEDICAL MARIJUANA TREATMENT CENTERS

### DRAFT of PROPOSED TEMPORARY MORATORIUM

If the Board of Alderman wishes additional time to consider zoning amendments for placement of Medical Marijuana Treatment Centers, the Medical Marijuana Task Force recommends no more than a six month moratorium, and proposes the following language:

**1. Add the following definition to *Section 30-1 Definitions*:**

*Medical marijuana treatment center (registered marijuana dispensary):* A not-for-profit entity which is licensed and registered by the Massachusetts Department of Public Health under 105 CMR 725.100, also known under said regulations as a registered marijuana dispensary ("RMD"), that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana-infused products, tinctures, aerosols, oils, or ointments) transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to licensed patients or personal caregivers.

**2. Add the following language to *Section 30-5 Allowed uses in all districts; special permits in all districts; prohibitions in all districts*:**

(d) *Medical marijuana treatment center temporary moratorium.* In order to provide the City with adequate time to complete a planning process to address the potential impacts of medical marijuana treatment centers and their related uses on the city, and to study and consider adoption of zoning amendments to regulate what districts and under what conditions medical marijuana treatment centers will be allowed, no land, buildings or structures in any district shall be used for a medical marijuana treatment center. This moratorium shall expire on March 1, 2014, unless repealed earlier by the board of aldermen.