

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

WEDNESDAY, OCTOBER 16, 2013

7:45 PM

Aldermanic Chamber

ITEMS SCHEDULED FOR DISCUSSION:

Chairman's Note: The items will be taken up in order and discussed as time permits.

Appointment by His Honor the Mayor

#320-13 STEPHEN FELLER, 64 Harvard Street, Newtonville, appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire September 10, 2016 (60 days 12/20/13) [09/16/13 @ 10:46 AM]

Re-appointment by His Honor the Mayor

#321-13 CHARLES EISENBERG, 4 Ashford Road, Newton Centre, re-appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire September 10, 2016. (60 days 12/20/13) [09/16/13 @ 10:46 AM]

Re-appointment by His Honor the Mayor

#322-13 BARBARA LISCHINKSY, 1942 Washington Street, Auburndale, re-appointed as a member of the NEWTON COMMISSION ON DISABILITY for a term to expire June 30, 2105. (60 days 12/20/13) [09/19/13 @ 2:00 PM]

Re-appointment by His Honor the Mayor

#323-13 JINI FAIRLEY, 80 Rowena Road, Newton Centre, re-appointed as a member of the NEWTON COMMISSION ON DISABILITY for a term to expire June 30, 2015. (60 days 12/20/13) [09/16/13 @ 10:46 AM]

A Public Hearing will be held on the following item:

#309-13(3) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, as needed to add a definition of “registered marijuana dispensary” and to create a temporary moratorium on the use of land, buildings and structures for registered marijuana dispensaries in the City of Newton in order to allow the City adequate time to complete a planning process to consider in what districts and under what conditions registered marijuana dispensaries will be allowed. [09/25/13 @ 9:21 AM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, please contact the Newton ADA Coordinator, Joel Reider, at least two days in advance of the meeting: jreider@newtonma.gov . or 617-796-1145. For Telecommunications Relay Service dial 711.

- #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]
- #295-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by deleting paragraph (11) *Hotels* in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing. [08/26/13 @ 12:30PM]
- #64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities. [03-14-12 @8:54AM]
- #296-13 ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by reorganizing and clarifying the provisions regarding purchaser and renter income limits and sale and rental price limits. [08/26/13 @ 12:30PM]
- #294-13 ALD. DANBERG proposing amendment to **Sec.30-24(f) Inclusionary Zoning** to clarify the limitation on use of public funds in constructing inclusionary units and to expand on where the use of public funds for inclusionary units will be allowed. [08/26/13 @ 12:30PM]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #214-12 ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.
- #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]
- #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]
- #80-13 THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #406-12(3) ZONING & PLANNING COMMITTEE requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding the size and number of campaign signs allowed on lots. [08/15/13 @ 4:37PM]
- #264-13 ALD. YATES requesting that the Zoning Reform Group or its successor consider amending City of Newton Zoning Ordinances Chapter 30 to develop additional residential districts reflecting the small lots in older sections of the City and map changes to bring the zones of more residential sections of the City into conformity with the existing land uses. [08/05/13 @ 12:28PM]
- #265-13 ALD. YATES requesting a report from the Law Department on the decision by the U.S. Supreme Court on the *Koontz vs. St. Johns River Water Management District* and its possible impact on the City's zoning ordinances. [08/05/13 @ 12:28PM]
- #266-13 ALD. YATES requesting that the Law Department provide the Zoning & Planning and Land Use Committees and other interested members of the Board with legal advice on what parties have standing to challenge zoning ordinances and the relevant court cases involving uniformity. [08/05/13 @ 12:28PM]
- #267-13 LAND USE COMMITTEE proposing to amend Section 30-21(c) to permit de minimis relief for alternations, enlargements, reconstruction of or extensions to lawfully nonconforming structures in which the nonconformity is due to Floor

Area Ratio (FAR) requirements set out in section 30-15(u) Table A, subject to administrative review by the Planning Department.

- #222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances. [06/07/13 @ 1:31 PM]
- #129-13 ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for "attached dwellings" in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**. [05/25/13 @ 5:14 PM]
- #128-13 ALD. ALBRIGHT, FULLER, CROSSLEY, LAREDO requesting the creation a comprehensive, 10-year strategic plan for Newton's conservation lands which would include a multi-year prioritized list of short-term and long-term projects with appropriate estimated budget. This plan should be finished in time to include high priority item(s) in the FY15 Budget, with any project exceeding \$75,000 added to the Capital Improvement Plan. [03/15/13 @ 10:56 AM]
- #65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]
- #64-13 NEWTON HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation. [02/05/13 @ 11:35 AM]
- #423-12 ALD. JOHNSON AND SANGIOLO requesting that the Director of Planning & Development and the Commissioner of Inspectional Services review with the Zoning & Planning Committee their analysis of the FAR regulations and assessment of the possible impact on housing construction and renovation in the City. [12/03/12 @ 9:14 AM]
- #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]
- #328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]

- #308-12 ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @3:59 PM]
- #282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*. [09-09-12]

REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES

- #273-12 ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer. [09/10/12 @ 1:17 PM]
- #260-12 ALD. YATES proposing amendments to Sec. 30-19 to increase the vitality of village centers without adverse impacts on the residential neighborhoods around them. [08-17-12 @1:01 PM]
- #215-12 ALD. YATES proposing a RESOLUTION requesting that the Planning Department and the Economic Development Commission develop a Main Streets Program following the model of the National Trust for Historic Preservation to revitalize the Newtonville and Newton Centre business districts. [07-17-12 @2:55PM]
- #48-12 ALD. ALBRIGHT requesting a discussion with the Executive Office and the Planning Department on the creation of a housing trust. [02/10/2012 @ 9:13AM]
- #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]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]

- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05- 10-11 @3:19 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
- #164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

ITEMS FOR ZONING REFORM DISCUSSIONS WHEN SCHEDULED:

- #220-12 RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a) be clarified with respect to “lot width,” “lot area,” or “lot frontage.”
- #219-12 RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”
- #218-12 RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.
- #217-12 RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.
- #216-12 RECODIFICATION COMMITTEE recommending that the definition of “Space, usable open” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.
- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

Respectfully Submitted,

Marcia T. Johnson, Chairman



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

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swarren@newtonma.gov

September 10, 2013

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

RECEIVED
Newton City Clerk
2013 SEP 16 AM 10:46
David A. Olson, CMC
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to appoint Stephen Feller of 64 Harvard Street, Newton as a member of the Economic Development Commission. His term of office shall expire on September 10, 2016 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,

Setti D. Warren
Mayor



STEPHEN FELLER

64 Harvard Street
Newton, MA 02460

PROFESSIONAL SUMMARY

A seasoned entrepreneur with a history of successfully developing and executing strategic initiatives designed to build, grow and improve organizations. Extremely strong strategic planning & development expertise combined with financial & economic modeling skills. A self-motivated, personable leader adept at establishing and leveraging strong relationships while focusing an organization on its core strengths to facilitate sustainable growth.

PROFESSIONAL EXPERIENCE

BREAD & CHOCOLATE BAKERY CAFE (2005 – PRESENT)

Newton, MA

Co-Founder, Vice President, CFO & Operations Manager

- Conceptualized and launched Bread & Chocolate Bakery Café retail stores.
- Accomplished annual average revenue growth of over 30% on an annual basis.
- Created operating and financial procedures resulting in over 20% annual profit margin (more than double industry averages).

BIOGEN IDEC, INC (2003 – 2005)

Cambridge, MA

Senior Forecasting Analyst

- Maintain existing forecasting models while adding creative input into developing new approaches to forecasting, such as statistical and simulator analysis, resulting in more robust forecasts while reducing re-forecast time by 75%.
- Improved forecasting accuracy from a 10% margin of error on an annual and quarterly basis, to a variance of only 2% annually and 0.5% quarterly, for a product with \$1.4 Billion in annual sales.
- Process, analyze and integrate all aspects of product and market trends to provide Senior Management with timely and accurate insights that help define strategies and drive decision making.
- Developed and maintained monthly, quarterly and annual plans and forecasts to effectively communicate data and analysis on performance including, revenue, demand trends, and competitive intelligence.
- Supporting forecasting, short and long-range planning activities of the Sales & Marketing organization.
- Spearheaded planning and analysis for a new product launch, including development of domestic and international forecasts.
- Established a management “dashboard” to track key operating metrics and variances.
- Manage shipment schedules, inventory levels and wholesaler relationships.

ISAAC'S BAKERY (2001 – 2003)

Belmont, MA

President, Chief Baking Officer

- Extensively researched the dog biscuit industry to define an innovative market opportunity, create a business plan and develop a start-up company based on healthy, gourmet dog treats.
- Developed the business plan, strategic direction, product characteristics and packaging for a new product line, which included five flavors of dog biscuits and five types of dog pastries.
- Operated a test pilot program to validate and refine the business plan, marketing materials, cost and pricing structure, and to test manufacturing and distribution capabilities.
- Manufactured and distributed products to local retail establishments, including pet and health food stores.
- Prepared and managed the financial planning and analysis functions, including revenue and expense forecasting.

#321-13



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David A. Olson, CMC
Newton, MA 02459

2013 SEP 10 AM 10:46

RECEIVED
City Clerk

September 10, 2013

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint Charles Eisenberg of 4 Ashford Road, Newton as a member of the Economic Development Commission. His term of office shall expire on September 10, 2016 and his reappointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,

Setti D. Warren
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

CHARLES S. EISENBERG

4 Ashford Road
 Newton Centre, MA 02459

EXPERIENCE

WINDSTREAM RENEWABLE ENERGY LLC, Woburn, MA. 2008-Present
 Chief Executive Officer

Develop distributed wind turbines and commercial solar installations in the United States and India

- Continental Properties-Solar panels on parking sheds-Rocky Hill, Ct.
- Consultant to Town of Scituate, MA on 3 MW solar installation on capped landfill-Scituate, MA.
- Two 660 KW wind turbines for the MWRA-Winthrop, MA
- One 1.5 MW wind turbine-Scituate, MA

EISENBERG CONSULTING, LLC, Newton, MA. 2004-Present

President

Enable clients to achieve growth and greater performance through new business concepts and business process engineering. Selected recent engagements include:

- Housing Partners, Inc.-Affiliate
 - The Stabile Companies-Development consultant for 109 unit historic mill rehab in Nashua, NH
 - Fitchburg Housing Authority-Consultant directing the identification of and agreement with a private sector partner to develop an affordable senior development totaling 96 units in Fitchburg, MA.
Served as the Authority's representative during the development and construction process.
 - Developed smart growth zoning overlay districts consistent with M.G.L. Ch. 40R for Chicopee and Reading, MA.
 - Paxton Housing Partnership-Managed the permitting and RFP process for the private development of a 60 unit affordable housing development on Town-owned property
- Trafalagar Capital-Development consultant
 - 55 unit affordable family historic mill rehab-Gardner, MA.
- The Kelley Group-Consultant to the landowner
 - Permitting and joint venture of 45 unit condominium project-Norfolk, MA
- J.K. Scanlan Co.-Development Consultant
 - 49 unit multifamily affordable development in Wareham, MA.
- Weld Management Company-Development consultant for 58 unit affordable housing development in Holyoke, Massachusetts.
- Belgrade Place, LLC-Development consultant for 40 unit apartment building in Boston, MA.
- RRCI-Financial consultant for low income housing tax credit project in St. Thomas, USVI.
- The Community Builders, Inc.-Development Consultant
 - 49 unit affordable development in Chatham, MA
 - 56 unit affordable development in Edgartown, MA

- THE COMMUNITY BUILDERS, INC., Boston, MA. 2003-2004
Northeast Regional Director
Managed the development operation in New England and New York for national, non-profit affordable housing developer.
- LEA GROUP, INC., Boston, MA. 1994-2002
Principal, Chief Administrative and Financial Officer
Led finance, marketing and operations for this family-owned regional engineering/architecture firm.
- RECOLL MANAGEMENT CORPORATION, Boston, MA. 1991-1993
Vice President, Fleet Bank
Managed and disposed of non-performing real estate assets of the former Bank of New England.
- FEDERAL DEPOSIT INSURANCE CORPORATION, Franklin, MA. 1990-1991
Senior Account Officer-Division of Liquidation
Special Assistant to Assistant Managing Liquidator for New England region.
- CHARLES EISENBERG & CO., INC., Boston, MA. 1987-1990
President
Principal of real estate and planning consulting firm
- RELATED COMPANIES NORTHEAST, Boston, MA. 1986-1987
Vice President/Development of The Related Companies, N.Y.
Developed projects in New England
- THE DRUKER COMPANY, Boston, MA. 1980-1986
Financial Vice President
Responsible for all project financing and development of suburban properties.
- THE BEACON COMPANIES, Boston, MA. 1978-1980
Project Director
Managed development of residential properties.

TEACHING EXPERIENCE

- BOSTON UNIVERSITY CENTER FOR PROFESSIONAL STUDIES 1999-Present
Instructor, Program in Real Estate Studies
Teach Real Estate Market Analysis course to students in certificate programs.
- Course designed to be immediately applicable to real estate professionals.
 - Course credits apply towards certificate requirements in real estate finance and management.
- NORTHEASTERN UNIVERSITY-UNIVERSITY COLLEGE 2003-2010
Adjunct Professor
Teach International Business Management and Operations to Undergraduates
- Upper level one-semester course required for degrees in Business or Finance.

EDUCATION/PROFESSIONAL DEVELOPMENT

Harvard University, M.B.A. with Honors

Cornell University, M.A. in Government/Planning

Brandeis University, B.A. Magna Cum Laude with Honors, Phi Beta Kappa

MAJOR ACTIVITIES AND AFFILIATIONS

Member-Newton Mayor's Mixed Use Task Force

Co-Chairman-Commonwealth Housing Task Force Public Housing Committee

Past Chairman and Member-Newton Economic Development Commission.

Vice Chairman and Chairman of the Facilities Committee-Greater Boston Jewish Community
Housing for the Elderly

Member, Newton Wellesley Hospital Patient and Family Advisory Committee

Chairman-Newton Centre Task Force

Fellow-Brandeis University

Advisory Committee, Newton Cultural Alliance

Member-Newton Comprehensive Planning Advisory Committee

Trustee (1987-1991)-Brandeis University

Member:

Real Estate Finance Association of Greater Boston

Urban Land Institute

Citizens Housing and Planning Association

American Wind Energy Association

New England Sustainable Energy Association

#322-13



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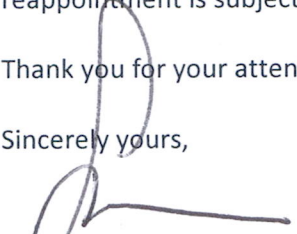
RECEIVED
Newton City Clerk
2013 SEP 19 PM 2:00
David A. Olson, CMC
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint Barbara Lischinsky of 1942 Washington Street, Apt. 424 Newton as a member of the Newton Commission on Disabilities. Her term of office shall expire on June 30, 2015 and her reappointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,


Setti D. Warren
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

BARBARA LISCHINSKY
1942 Washington St. #424
Newton, MA 02466

PROFESSIONAL EXPERIENCE

Disability Advocate/Educator, self-employed. 2008 – Present

- Provide education and assistance to persons with disabilities regarding Federal and State entitlements.
- Worked with the Newton Housing Authority on Section 8 application procedures to insure that individual Privacy Laws are protected.
- Worked with Policy Analyst at MassHealth to expand the definition of “financial hardship” in the CommonHealth Premium Waiver Process allowing more people with exorbitant out-of-pocket medical expenses to qualify for waivers.
- Assist individuals in all facets of the application process for MassHealth, SSDI, Food Stamps, Fuel Assistance, Transportation and more.
- Educate individuals about reasonable accommodation with regard to application procedures and insure that agencies comply with the law allowing accommodation.
- Help individuals with documentation collection to insure timely processing of applications and proper benefit levels.
- Research new regulations to insure compliance for individuals and organizations.
- Provide education and outreach regarding rights and responsibilities of entitlements.

Motivational Speaker and Fundraiser, Massachusetts Association for the Blind, Brookline, MA 2001- 2008

- Seven time Boston Marathon entrant and Visually Impaired division winner, National 5K Blind Champion representing MAB at fundraising events, newspaper and television opportunities.
- Sponsored by Saucony Athletic Company to represent Newton in the 2006 Boston Marathon.
- Featured on Channel 5’s television show “Chronicle” for performance as a Saucony athlete in “Every Runner Has a Story”, April 2006.
- Kick-Off Speaker National Blind 5K Championships Boston, MA 2006, 2007
- Guest Speaker at the Perkins School for the Blind with Marla Runyan and Bill Rodgers promoting the importance of physical education in the life of blind children, 2003.
- Featured in Running Times and in many Boston Globe, Boston Herald, Newton Tab and other articles.

Consultant, St. Joseph Nursing Care Center, Dorchester, MA 1998-1999.

- Developed new clerical system to facilitate office communication.
- Performed accounting functions, data entry and resident account management.

Administrative Assistant to the Administrator and the Director of Nursing, St. Joseph Nursing Care Center Dorchester, MA 1997-1998

- Replied to all correspondence for the Administrator and the Director of Nursing.
- Drafted Monthly Board of Trustee agendas and minutes.
- Liaison between Administrator and personnel.
- Handled record keeping duties for Director of Nursing.
- Handled all mail directed to Administrator and Director of Nursing.

Assistant Director of Financial Aid Harvard University Graduate School of Education, Cambridge, MA 1986 – 1990

- Responsible for counseling HGSE graduate students in the application process for financial aid.
- Processed State and Federal Grant applications for potential incoming students and current students.
- Developed a computer program to calculate financial aid based on students application data.
- Monitored trends in applicant pool for racial and ethnic diversity to insure the proper administration of restricted University grants.
- Made final decisions on aid packages to incoming and current students based on application data and funds available from the Federal and State government as well as University Scholarship monies.
- Supervised support staff

Laboratory Science Coordinator, Department of Biology, Suffolk University Boston, MA 1982 – 1986

- Developed new curriculum for all undergraduate biology laboratory courses in order to better prepare faculty, teaching fellows, and students.
- Teach thirteen laboratory sections of undergraduate Biology.
- Train all department teaching assistants in laboratory protocol and prepare them for each laboratory course.
- Prepare and maintain all necessary laboratory equipment for classrooms.
- Stock supplies for Biology classrooms.
- Order all biologic and support supplies for the Department of Biology.
- Reconcile invoices with received orders for all incoming biologic and support supplies.
- Contact chemical company vendors to obtain quotes for chemicals purchased in bulk and make decision about what company would supply the University.
- Oversee departmental compliance with OSHA regulations.
- Maintain work-study logs for all teaching assistants and submit to central university financial aid office.

VOLUNTEER ACTIVITIES

- **Mayor's Committee for People with Disabilities** 2004 – Present
Involved in the Mission of the Committee.

- **Understanding Our Differences Speaker 2005 – Present**
Speak to Third Grade students about visual impairments. Since 2008, these visits include the role of Seeing-Eye dogs in the life of a blind person.
- **Guiding Eyes for the Blind Ambassador 2008 – Present.**
Developed educational lectures and materials about the role of Seeing-Eye dogs tailored to the needs of various church and civic groups.
- **Fair Housing Task Force – 2005 – 2007**
One of the original members of the Fair Housing Task Force. Involved in the two audits done by the City of Newton demonstrating discrimination against protected classes.
- **Literacy Tutor – 2005- 2006**
Taught conversational English to a Korean student. Met weekly, developed lesson plans.

EDUCATION

Ed.M Harvard Graduate School of Education, Cambridge, MA

B.S. Suffolk University, Boston, MA

#323-13



SETTI D. WARREN
MAYOR

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Office of the Mayor

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September 10, 2013

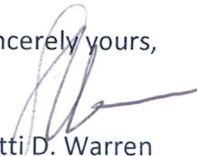
Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint Jini Fairley of 80 Rowena Road, Newton as a member of the Newton Commission on Disabilities. Her term of office shall expire on June 30, 2015 and her reappointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,


Setti D. Warren
Mayor

RECEIVED
Newton City Clerk
2013 SEP 16 AM 10:46
DAVID A. OLSON, CMC
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

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DEDICATED TO COMMUNITY EXCELLENCE

Mary R. Fairley (Jini)

80 Rowena Road, Newton, MA 02459 ~ (

Summary

Well-organized, detail-oriented, and energetic administrative professional with strong oral and written communication skills. Proven ability in all aspects of program development, supervision, and coordination. Proficient in Microsoft Office and experienced with a variety of databases, including IDMS.

WORK EXPERIENCE

Director of Services

MetroWest Center for Independent Living, Inc., 2005-Present Framingham, MA

- Member of the management team
- Supervise and manage the Direct Service staff
- Develop training materials, including the Direct Service Manual
- Train all new Direct Services staff
- Facilitate accessibility features to ensure ADA compliance of the database used in all Massachusetts IL Centers
- Responsible for all ADRC activities
- Created an accessible document for referrals among the Metrowest ADRC agencies
- Provide IL training to ASAP staff
- Chair of the Consumer Engagement Workgroup of the MSW Regional EmploymentCollaborative
- Verify accuracy of all Braille productions
- Improved computer class training program for consumers
- Manage the VR-IL contract
- Provide advocacy, information and referral, peer counseling, and skills training to consumers
- Produce monthly, quarterly, and annual reports to state and federal agencies

Project Director, Disability Rights Advocate

Disability Policy Consortium, Inc. 2004-2005 Boston, MA

- Created a process, supervised a team of volunteers, and conducted an accessibility review of the Massachusetts State House
- Authored the SHARE report, which became the transition and implementation plan for the State House
- Designed materials, coordinated distribution, and maintain respondent database for the CommonHealth Project
- Coordinated individuals and organizations for legislative advocacy for several bills that affect people with disabilities, including Home-Based Community Services

Computer Consultant, Owner

JDF Data Services, 1982-Present Newton, MA

- Create and maintain customer database
- Produce mailing labels and reports
- Provide direct customer service

Mary R. Fairley (Jini) Resume continued**Board Member, Treasurer, School Coordinator, Presenter**

Understanding Our Differences, Inc., 1981-Present Newton, MA

- Coordinated, implemented, and presented a disability awareness program
- Recruited and trained 35 parent volunteers to participate in the program
- Created and maintained a database of the program participants
- Prepare and present Program and Corporation budgets to the Board of Directors and the Newton School Committee

Co-Founder, President, Vice-President

Foundation Fighting Blindness-Mass Affiliate, 1988-2006 Boston, MA

- Created and administered a volunteer board
- Coordinated fund raising events
- Developed support groups in different regions
- Educated the general public through speaking engagements

European Area Coordinator of Leaders, Accredited Leader, Peer Counselor

La Leche League International, 1975-1995 Schaumburg, IL

- Co-founded the first LLL group in France, which has grown to 120 groups today
- Administered projects and corresponded with LLL leaders in 11 European countries
- Arranged and presented at international conferences in U.S. and Europe
- Facilitated and educated at monthly meetings in U.S. and abroad

Co-Founder, Treasurer

Cesareans/Support, Education, and Concern, Inc., 1973 -1993 Framingham, MA

- Started a grassroots childbirth group which became a national non-profit 501 © (3) organization
- Effected change in healthcare policies and practices for women throughout the U.S.
- Presented at national healthcare conferences

Community Service

Disability Policy Consortium
Board member since 2006

Newton Mayor's Committee For People with Disabilities
Member since 2003

Carroll Center for the Blind
Legislative Advocacy Committee since 2002
Alumni Association since 2002

Awards

Heroes Among Us awarded by the Celtics 2005
the Carroll Society The Carroll Center for the Blind and Massachusetts Commission for the Blind 2009

EDUCATION

Bachelor of Arts, Emmanuel College, Boston, MA
Supervision Certificate Human Services provider Council



Setti D. Warren
Mayor

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Candace Havens
Director

PUBLIC HEARING MEMORANDUM

DATE: October 11, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Dori Zaleznik, Commissioner of Health & Human Services
Marie Lawlor, Assistant City Solicitor
James Freas, Chief Planner, Long-Range Planning

RE: #309-13(3): DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City Of Newton Zoning Ordinance, **Chapter 30**, as needed to add a definition of “registered marijuana dispensary” and to create a temporary moratorium on the use of land, buildings and structures for registered marijuana dispensaries in the City of Newton in order to allow the City adequate time to complete a planning process to consider in what districts and under what conditions registered marijuana dispensaries will be allowed.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

EXECUTIVE SUMMARY

Since the passage of the law permitting the cultivation and sale of marijuana for medicinal use, cities and towns in Massachusetts have had the task of defining and identifying appropriate regulations for this new land use. As a highly regulated industry that is also new to the State, there are a number of local land use considerations a City like Newton must make in order to accommodate this new use while meeting the stated purposes, goals, and values of the City’s Zoning Ordinance and *Comprehensive Plan*. In order to have adequate time to consider these factors, the City is proposing a moratorium on registered marijuana dispensaries (RMD), set to expire in March, 2014. The City intends to advance a final amendment regarding RMDs as quickly as possible, with all due consideration, so as to not unnecessarily limit access to the services provided by these facilities.

BACKGROUND

With the passage of the Medical Marijuana referendum in the 2012 elections, Massachusetts became one of 18 states to legalize the use of marijuana for medicinal purposes. While the issue of medical marijuana is not without a degree of controversy, the drug has demonstrated effectiveness in a number of serious medical conditions. Marijuana has been shown to be effective for control of pain, particularly the chronic unremitting pain associated with cancer and neuropathy (nerve irritation). The drug is also useful for control of nausea especially in patients receiving chemotherapy for cancer. Marijuana additionally has the benefit of improving appetite in patients with debilitating illnesses such as cancer or AIDS when weight loss can be severe. It has been used with some success in some patients with seizure disorder, Parkinson's, and Lou Gehrig's disease. Compared to some of the medications used for chronic pain, in particular narcotics, marijuana has fewer side effects, less of a need to increase doses due to tolerance, and significantly less addiction potential.

The primary cause of controversy surrounding the issue of medical marijuana is the drug's continued illegal status under the Federal Controlled Substances Act and its potential for recreational use. In recognition of these issues, the DPH adopted a set of strict regulations governing the siting and operation of RMDs and the methods by which the drug can be prescribed to patients. This extensive set of regulations was summarized in a previous memo, dated September 20, 2013, to the Zoning and Planning Committee on this topic.

The regulations serve two primary purposes: 1) to strictly control the distribution of the drug so that only those with a legitimate medical reason will have access; and 2) to avoid the promotion of the use of marijuana outside of medicinal purposes. Towards those ends, the regulations focus on security of the premises and operations, the prescription process, and the location and nature of the growing areas and dispensaries. The State regulations are both comprehensive and carefully considered and state regulators clearly drew lessons from the experiences of other states where medical marijuana is permitted.

State Permitting Timeline

In considering a moratorium on RMDs, it is important to understand the permitting timeline and how a moratorium might affect the ability of a potential RMD to be located in Newton. The application process for an RMD is divided into two phases:

PHASE 1

- Phase I applications were due on August 22. Forty-seven organizations applied for dispensaries in Middlesex County, which is the largest number of overall applications received by any county.
- DPH reviewed these applications for compliance with the resource requirements (available money) of the organization and absence of any convictions of any of the individuals involved for any illegal activities.
- Decisions on Phase 1 applications (per criteria above) were delivered September 23, 2013.
- After receipt of Phase 1 approval, applicants are required to notify the chief administrative officer and the chief of police of any community in which they are looking to site an RMD of their intent to submit an application for Phase 2. (Newton has currently received 9 or 10 inquiries from different organizations looking to come to Newton during the Phase 1 process).

PHASE 2

- Applications are due within 45 days of receiving Phase 1 approval (November 8, 2013).
- Applications must include a detailed business plan, an operating plan, summary of operating policies and procedures, detailed security and product transport plan, analysis of the projected patient population and projected need within a defined service area, training procedures, experience of the organization, patient education materials, and procedures for giving marijuana to registered patients who qualify for financial hardship, etc.
- If an applicant has an identified site, the application must also include proof of interest in the property (title, lease agreement, etc.) a detailed floor plan, and description of plans to ensure compliance with local codes.
- Applications must also include a proposed timeline for achieving operation. The license will hold the applicant to finalized version of this timeline.
- In considering Phase 2 applications, DPH may conduct site visits. The regulations state that they will take into consideration geographical distribution (convenience for patients and avoidance of clustering in one location) and local support for the application.
- The newspapers have reported that DPH will be making their Phase 2 decisions before the end of the calendar year with an expectation that RMDs will take at least an additional several months before they are ready to open.

If no action is taken

As an undefined use in the Newton zoning ordinance, there are limited controls available in the existing ordinance. In this context, an applicant with a proposed site for a registered marijuana dispensary, like any other undefined use, would be asked to provide a detailed description of the use which would be used as the basis for a determination by the Chief Zoning Code Official and the Commissioner of Inspectional Services with regards to what existing, defined use in the ordinance, the proposed use would be most similar to. The registered medical marijuana dispensary would then be regulated as that use. A registered marijuana dispensary is a use that would be hard to equate to an existing use in the ordinance given its highly specified and regulated product and necessary security attributes so staff cannot predict with great certainty what existing defined use it would be equated to, but staff would not be able to disallow the use based on it not being defined in the ordinance; it must be allowed somewhere.

Actions in Surrounding Communities

A significant majority of the municipalities surrounding Newton have enacted moratoria on RMDs. These moratoria have end points ranging from March to June of 2014. Of those municipalities that are close to Newton, only Westwood and Boston have enacted zoning regulation establishing the allowed locations for RMDs. A small number of these indicate that they will be deciding on new zoning language in the near future, including Brookline this November and Cambridge in January. Waltham and Somerville both described their amendment process as being in progress. Many other communities said the issue would be taken up in the spring.

| Progress on Registered Marijuana Dispensary Zoning Amendments by Neighboring Municipalities | | | |
|--|-----------|------------|------------------------|
| | Moratoria | Expiration | Amendment in progress? |
| Boston | No | NA | Adopted in July |
| Brookline | Yes | | Yes - Nov |
| Needham | Yes | March, '14 | Yes |
| Waltham | Yes | June, '14 | Yes |
| Watertown | Yes | June, '14 | Yes |
| Wellesley | Yes | | Possibly in Spring |
| Weston | Yes* | | No |

** Meeting to decide to impose a moratorium scheduled for Dec 2.*

PROPOSED AMENDMENT

The amendment proposed does two things: first, it defines “registered Marijuana dispensaries” for use in the Zoning Ordinance; and second, it establishes a moratorium on this use in the City of Newton until March, 2014 or such time as the Board of Aldermen replace the moratorium with permanent zoning regulations for RMDs. (See attached for the text of the proposed amendment.)

NEXT STEPS

A working session will follow the public hearing and at that time the Zoning and Planning Committee will have an opportunity to discuss the proposed amendment to the Newton Zoning Ordinance. Staff will provide additional analysis as requested to respond to public comments or questions. Staff recommends adoption of the proposed amendment to the Newton Zoning Ordinance.

ATTACHMENTS:

Attachment A, Draft Definitions

#309-13(3)
DRAFT FOR DISCUSSION

Add the following definition to 30-1:

Marijuana Dispensary, Registered. Registered Marijuana Dispensary, also known as RMD or Medical Marijuana Treatment Center, shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 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 registered qualifying patients or personal caregivers.

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

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



Setti D. Warren
Mayor

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Dori Zaleznik, Commissioner of Health & Human Services
Marie Lawlor, Assistant City Solicitor
James Freas, Chief Planner, Long-Range Planning

RE: #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.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

With the passage of the Department of Public Health (DPH) regulations permitting registered marijuana dispensaries (RMDs) and progress by numerous potential medical marijuana service providers through the first phase of this permitting process, it has become important for Newton to prepare appropriate local land use regulations to govern this potential use in the City. The proposed amendment includes three primary components: 1) identifies the districts in which the RMD use will be allowed and establishes that the use will only be allowed by Special Permit; 2) describes the submittal requirements to be included in an RMD application; and 3) establishes special permit criteria unique to this use.

BACKGROUND

The State of Massachusetts legalized the use of marijuana for medical purposes in a 2012 referendum and DPH issued regulations governing the siting and operation of RMDs and the methods by which the

drug can be prescribed to patients in 2013. The regulations serve two primary objectives: 1) to strictly control the distribution of the drug so that only those with a legitimate medical reason will have access; and 2) to avoid the promotion of the use of marijuana outside of medicinal purposes. Towards those ends, the regulations focus on security of the premises and operations, the prescription process, and the location and nature of the growing areas and dispensaries. The State regulations are both comprehensive and carefully considered and state regulators clearly drew lessons from the experiences of other states where medical marijuana is permitted. These regulations were summarized in the Planning Department memo provided for the September 23rd meeting of the Zoning and Planning Committee.

A working group composed of Candace Havens, Director of Planning and Development; Dori Zaleznik, Commissioner of Health & Human Services; Marie Lawlor, Assistant City Solicitor; Howard Mintz, Chief of Police; and Aldermen Greg Schwartz and Brian Yates have analyzed these regulations and developed the draft zoning ordinance amendment presented below and attached.

PROPOSED AMENDMENT

The proposed amendment includes three primary components: 1) identifies the districts in which the RMD use will be allowed and establishes that the use will only be allowed by Special Permit; 2) describes the submittal requirements to be included in an RMD application; and 3) establishes special permit criteria unique to this use.

Location and Special Permit Requirement

In identifying the districts to consider where RMDs would be allowed, the working group considered the likely nature of the proposed use as defined by the DPH regulations and the locational requirements already defined in those regulations. Given the still unknown aspects of these facilities and a desire for close review, the working group recommends the use be allowed by special permit only.

The DPH regulations strictly limit the number of RMDs statewide and by county and clearly indicate that geographic dispersion will be an important factor in their selection of which RMD applications to permit. By these factors, it is likely that DPH will favor regionally-accessible locations near highways and public transit services. Coupled with the extensive security protocols required by the regulations, the nature of the resulting RMDs will likely be highly suburban favoring stand-alone commercial buildings. Building design will likely not be pedestrian-friendly in the sense that there will not be engaging storefront windows and the use will likely not be highly active in the sense of generating a great deal of foot traffic. For these reasons, the RMD use is likely inappropriate for Newton's villages where active uses and pedestrian-friendly design are key components of the City's economic development strategy and efforts to improve village vitality. The working group therefore focused attention on those zoning districts where a use exhibiting these characteristics might be most appropriate, narrowing the choice down to Business 2 and 5 and Mixed-Use 1.

Based on the limited districts identified and the special permit requirement, the working group concluded that the buffer areas identified in the DPH regulations were generally sufficient and is thus recommending 500 foot buffers on schools, daycare facilities, places of worship, and other places where children commonly congregate. The special permit is specifically identified as being non-transferable and only valid for a permitted RMD while its permit remains valid.

Submittal Requirements

There are a number of additional submittal requirements proposed for RMDs in order to allow necessary review of a given proposal in the special permit process. Most of these submittal requirements are self-explanatory and listed in the attached draft ordinance language. The list of submittals includes a transportation analysis so that both the transportation impacts of the proposed use can be understood and also to allow for the identification of an appropriate parking requirement. As a new use, there are not sufficient studies or models for parking requirements to draw on and, in this instance the best course is to rely on a direct study of the proposed use. The State regulations already require an applicant to identify their anticipated service area and demand and this information would readily form the basis of a transportation analysis. The proposed submittal requirements in the draft ordinance language also includes a context map, which would allow staff and the Board to readily identify those nearby uses that might be incompatible with a proposed RMD such as a facility where children commonly congregate.

Special Permit Criteria

The special permit criteria are intended to reinforce the requirements of the DPH regulations and advance local interests with regard to the possible impacts of a RMD. To that end, these criteria include consideration of compatibility with the surrounding area, access to regional transportation facilities, and consideration of security and law enforcement concerns.

NEXT STEPS

If the Zoning and Planning Committee concludes that the proposed draft Registered Marijuana Dispensaries zoning ordinance amendment is ready for public review and comment, staff recommends this item be scheduled for a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee define what additional data and analysis it may need to inform further discussion. Staff is prepared to hold an additional meeting of the Committee on October 22 should further discussion be necessary.

Enclosures

Attachment A Proposed Ordinance Language to allow Registered Marijuana Dispensaries

Add the following definition to 30-1:

Marijuana Dispensary, Registered. Registered Marijuana Dispensary, also known as RMD or Medical Marijuana Treatment Center, shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 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 registered qualifying patients or their personal caregivers.

Add the following new section:**30-36. Registered Marijuana Dispensaries**

- (a) *Purpose.* The purpose of this section is to provide for the limited establishment of registered marijuana dispensaries (“RMD”) within the City as they are authorized pursuant to state regulations set forth in 104 CMR 725.000. Since RMD’s are strictly regulated and will be limited in number by the Massachusetts Department of Public Health, the intent of this section is to permit RMD’s where there is access to regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not adversely impact the character of residential neighborhoods and business districts.
- (b) *RMD uses not allowed as-of-right.* RMD uses are not included within the definition of retail sales or services, agriculture, or any other lawful business permitted as of right or by special permit as provided in Chapter 30.
- (c) *RMD uses allowed by special permit.* Use of land, buildings or structures for RMD’s shall be allowed only by special permit pursuant to section 30-24 in the following districts, subject to the requirements and criteria of this section: Business 2; Business 5; and Mixed Use 1.
- (d) *Minimum criteria and limitations on approval.*
- (1) An RMD shall not be located within a radius of five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility.
 - (2) An RMD shall not be located within a radius of five hundred (500) feet from a house of worship or religious use, measured as specified in (d)(1) above.
 - (3) An RMD shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local

laws, rules and regulations. No building permit or certificate of occupancy shall be issued for an RMD that is not properly registered with the Massachusetts Department of Public Health.

(4) A special permit granted by the board of aldermen authorizing the establishment of an RMD shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the RMD has been authorized by the special permit. If the registration for the RMD is revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to the issuance of a certificate of occupancy.

(5) An RMD shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home delivery to qualified clients pursuant to applicable state regulations.

(6) An RMD shall conform to the dimensional requirements applicable to the zoning district in which it is located.

(7) Notwithstanding anything to the contrary in section 30-19, the required number of parking spaces for an RMD shall be determined by the board of aldermen based on the transportation analysis provided by the applicant

(8) All signage shall conform to the requirements of state regulations and of this ordinance. The board of aldermen may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.

(e) *Special permit application and procedure*

In addition to the requirements of section 30-24, an application for special permit shall include, at a minimum, the following information:

(1) *Description of Activities:* A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIP's), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.

(2) *Service Area:* A map and narrative describing the area proposed to be served by the RMD and the anticipated number of clients that will be served within that area. This description shall indicate where any other RMD's exist or have been proposed within the expected service area.

(3) *Transportation Analysis:* A quantitative analysis, prepared by a qualified transportation specialist acceptable to the director of planning and development, modeling the expected origin and frequency of client and employee trips to the

site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.

(4) *Context Map:* A map depicting all properties and land uses within a minimum one thousand (1,000) foot radius of the proposed site, whether such uses are located in Newton or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs.

(5) *Site Plan:* A plan or plans depicting all proposed development on the property, including the dimensions of the building, the layout of automobile and bicycle parking, the location of pedestrian, bicycle and vehicular points of access and egress, the location and design of all loading, refuse and service facilities, the location, type and direction of all outdoor lighting on the site, and any landscape design.

(6) *Building Elevations and Signage:* Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.

(7) *Registration Materials:* Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to that department for the purpose of seeking registration, to confirm that all information provided to the board of aldermen is consistent with that provided to the Massachusetts Department of Public Health.

(f) *Special Permit Criteria.* In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in section 30-24 of this ordinance, the board of aldermen shall find that the following criteria are met:

(1) The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

(2) The site is located at least five hundred (500) feet distant from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, or from a house of worship.

(3) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and users of public transportation.

- (4) Traffic generated by client trips, employee trips, and deliveries to and from the RMD shall not create a substantial adverse impact on nearby residential uses.
 - (5) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
 - (6) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.
 - (7) The building and site are accessible to persons with disability.
 - (8) The site is accessible to regional roadways and public transportation.
 - (9) The site is located where it may be readily monitored by law enforcement for health and public safety purposes.
- (g) *Severability.* If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.



Setti D. Warren
Mayor

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning

RE: #295-13: ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by deleting paragraph (11) Hotels in its entirety to remove the requirement that new hotel developments must make cash payments to the City in support of housing for low and moderate income housing.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

Hotels represent a land use and business type that is in high demand in the greater Boston region and that provides net benefits to its host municipality in terms of real estate taxes, meals taxes, occupancy taxes, and economic multipliers of guests dining, shopping, and visiting the community. Hotels and motels are allowed in some zoning districts by special permit, and Newton currently has three hotels. It has been observed that no new hotels have been proposed in Newton since the adoption of the Inclusionary Zoning ordinance in 1977, which requires a hotel developer to pay a fee equal to 10% of the valuation of any new hotel rooms created. This memorandum addresses the comments and questions raised at the September 9, 2013 Zoning and Planning Committee meeting, and it proposes a recommended text amendment that would eliminate the paragraph on hotels from the Inclusionary Zoning ordinance.

BACKGROUND

In mid-2012, a small joint working group was formed by the Economic Development Commission (EDC) and the Newton Housing Partnership (NHP) to identify and draft proposals for improvement to the current Inclusionary Zoning regulations in Chapter 30 Section 24(f). Driven by the observation that Newton has not had any recent hotel development and that current development projects do not explore hotel development among their possible land uses, the group investigated the barriers that exist to hotel development in Newton. The group discovered that the Newton Zoning Ordinance requires a “housing affordability” fee on any new hotel rooms created, which dates to Newton’s initial adoption of the Inclusionary Zoning ordinance in 1977. That is, a special permit for a hotel is conditional on a cash payment in the amount of “10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction.” The EDC/NHP study found that no parallel provisions exist in other communities in Massachusetts and that this linkage does not apply to any other non-residential land uses in Newton. The EDC/NHP study elaborates on the origins of this linkage in the Inclusionary Zoning ordinance. Furthermore, they found that no hotel has been built or has added guest rooms anywhere in the City of Newton since the hotel fee was added, which has resulted neither in gains for hotels nor for affordable housing.

ANALYSIS

Newton has three hotels: the Boston Marriott Newton (2345 Commonwealth Avenue, Auburndale), the Crown Plaza Boston-Newton (320 Washington Street, Newton Corner), and the Hotel Indigo Boston-Newton Riverside (399 Grove Street, Newton Lower Falls). There are no motels, inns, or other lodging areas. “Hotel/motel” is a use allowed by special permit in Business Districts 1, 2, 3, and 4, in Mixed Use 2, and in Mixed-Use 3/Transit-Oriented Development District. In Business District 5, which is the zone for the Marriott and Indigo locations, “hotel/motel” is allowed by special permit.

At the September 9, 2013 meeting of the Zoning and Planning Committee, the EDC, NHP, and Committee discussed some of the advantages of hotel development. Hotels have a positive fiscal impact, generating revenue for a host community and providing a variety of jobs with a low impact on services. By their nature, hotels draw visitors to the City, so there is an economic multiplier associated with these guests who will dine, shop, and patronize Newton’s village centers and commercial corridors.

In Massachusetts, cities and towns may levy a tax of up to 6% of the taxable rents of hotels, motels, lodging houses, and certain bed and breakfast establishments. Newton, like most of our neighbors including Needham, Waltham, and Brookline, has adopted this Local Room Occupancy Tax of 6%, which hotel operators collect and remit to the State, along with the 5.7% State room occupancy excise tax. According to the Massachusetts Department of Revenue, in FY2013, Newton received revenue of \$2,051,414 from the Local Option Rooms Tax. Additionally, in FY2013 Newton received \$1,407,804 in

revenue from the Local Option Meals Tax, which Newton has adopted at 0.75%. While raising revenue through taxes is not the principal reason for amending the Inclusionary Zoning ordinance, it is true that hotel development generates revenue for the City through Local Option Rooms and Meals Taxes.¹

There are hotels at a variety of price points in neighboring communities, and these municipalities are constructing new hotels to meet continued demand. For example, Needham recently hosted a grand opening for the Residence Inn Marriott Boston-Needham, which is located in the New England Business Center/Needham Crossing and poised to attract business guests visiting the Highland Avenue/Needham Street Corridor.

Newton's location and demographics make it a very attractive location with a high demand for hotels. According to the 2010 Census, the City of Newton has a population of 85,146 and a median household income of over \$100,000. Newton is home to several colleges, including Boston College, the Boston College Law School campus, Lasell College, Mount Ida College, the Andover-Newton Theological Seminary, and Hebrew College, and the many parents, visiting scholars, conference attendees, and sporting event attendees for these colleges and the others in surrounding communities generate significant demand for hotels in the area. Additionally, businesses in and around Newton hosting conferences and Newton residents hosting out-of-town guests seek out Newton-based hotels.

The EDC and NHP suggested that the unfairness of the ordinance by singling out hotels alone as non-residential development subject to this fee sends a negative message to the business community. This requirement negatively impacts economic development in Newton by imposing a financial barrier on hotels, which have the potential to be a net tax contributor and a business type that is uniquely suited to attracting other businesses and improving the quality of life in Newton. While any new hotel would still be subject to review through the special permit process, the proposed change to eliminate the link between hotels and Inclusionary Housing may yield short-term results that will enhance the tax base and quality of life in Newton through the creation of new hotels.

PROPOSED TEXT AMENDMENT

1. Delete the entire paragraph in Sec. 30-24(f)(11) Hotels.

~~“(11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction, as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4).”~~

¹ <http://www.mass.gov/dor/local-officials/municipal-data-and-financial-management/data-bank-reports/local-options.html>

NEXT STEPS

If the Zoning and Planning Committee wishes to eliminate the current requirement for a cash payment towards inclusionary housing from new hotels, staff recommends this item be scheduled for a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee define what additional data and analysis it may need to inform further discussion.



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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning

RE: #64-12: ALD HESS-MAHAN requesting an amendment to Newton Revised Ordinances **Sec. 30-24(f)(8)(b)** to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

The purpose of this memo is to discuss a proposed amendment to the Inclusionary zoning ordinance to give preference to households that are displaced from their homes as a result of a residential development. For units that are designed to be accessible for persons with disabilities, it is suggested that these be given preference for households where a member of the household has a disability.

BACKGROUND

The Newton Fair Housing Committee, and its predecessor Fair Housing Task Force, developed guidelines for resident selection preferences applicable to housing developments that are subject to oversight by the City of Newton through either funding or regulation (not including housing developed

or administered by the Newton Housing Authority, which is subject to a different set of Federal requirements). In 2009, the Board of Aldermen adopted amendments to the City's Inclusionary Zoning provisions making them consistent with these guidelines. In 2010, the Guidelines were revised in order to provide more clarity regarding preferences for units to serve households that include a person with disabilities. In 2012, the Guidelines were revised to add a provision for those cases in which an Inclusionary Housing development results in the displacement of households that are currently living in affordable units on that site. The intent is to ensure that residents who are displaced and who are eligible for the new affordable units created through the development receive first preference for those units. The proposed language below suggests how to incorporate this criterion as the first in a series of criteria to determine preference for affordable units included in 30-24(f)(8)(b)(v).

ANALYSIS

There is considerable merit to maintaining continuity in neighborhoods and assisting households that currently live in Newton to remain in the community if they are displaced from their homes. The proposed language would work toward this goal. Additionally, a development that relies on Federal funds provided through the City of Newton is already subject to Federal requirements which aim to minimize displacement of eligible households.

It is unlikely that a proposal in Newton would displace more eligible households than it plans to accommodate. All projects that are subject to Inclusionary Zoning go through the special permit process, and if a proposed project would lead to a net decrease in affordable units, the circumstance would be discussed on a case-by-case basis as part of the special permit process.

PROSED TEXT AMENDMENT

1. The proposed language Recommends deletion of 30-24(f)(8)(b)(v) and (vi) and replacing it with the new text:

- ~~v) Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.~~
- ~~vi) Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants."~~

- v) Preference shall be given for qualified applicants as follows:
- a) Where a development results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference shall be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project.
 - b) Following that, preference shall be given to any other qualified applicants who fall within any of the following equally weighted categories: (1) Individuals or families who live in Newton; (2) Households with a family member who works in Newton or has been hired to work in Newton; and (3) Households with a family member who attends public school in Newton.
 - c) Following that, preference shall be given to other qualified applicants.
- vi) Preferences for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall be given for qualified applicants as follows.
- a) First preference for initial occupancy shall be given to applicants who are displaced as a result of the project and who need the features of the unit;
 - b) To households that include a family member needing the features of the unit and having preference under one or more of the three categories listed in 30-24(f)(8)(b)(v)(b);
 - c) To households that include a family member needing the features of the unit but that do not have a preference under one of the three categories listed in 30-24(f)(8)(b)(v)(b);
 - d) To households having preference under one or more of the three categories listed in 30-24(f)(8)(b)(v)(b);
To other qualified applicants.

NEXT STEPS

If the Zoning and Planning Committee agrees with these amendments, staff recommends this or similar language be presented at a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee describe what additional data and analysis it may need to inform its decision-making.



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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013


TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning

RE: #296-13: ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** by reorganizing and clarifying the provisions regarding purchase and renter income limits, and sale and rental price limits.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor



EXECUTIVE SUMMARY

The purpose of this memo is to review proposed revisions to the inclusionary zoning provisions of the Zoning Ordinance for clarity and simplicity; as well as specific measures to add predictability to the calculation of income limits; to specify how unit size and income limits are related; and to define "affordability" for rental and for-sale units.

BACKGROUND

In mid-2012, a small joint working group was formed by the Economic Development Commission (EDC) and the Newton Housing Partnership (NHP) to identify and draft proposals for improvement to the current Inclusionary Zoning regulations in Chapter 30 Section 24(f). As the EDC and NHP observed, the definition of "inclusionary units" in the Zoning Ordinance is lengthy and leaves certain sections open to interpretation. The suggested revisions aim to address the clarity issues and reorganize the section.

ANALYSIS

The proposed amendment below takes a significant amount of text from 30-24(f)(1)(b), where these items are sub-sections under “Definitions, Inclusionary Zoning,” and moves it to sub-sections under 30-24(3) “Inclusionary Units.” This reorganization enhances clarity without policy changes.

Some of the revisions, however, are more substantial and are designed to lead to greater predictability for both the City and for developers, particularly in setting prices for for-sale and rental units. Thus, a developer calculating the rental rate or sale price for inclusionary units must:

1. Identify household size appropriate to the units created;
2. Use household size to determine the correct Area Median Income (AMI) number; and
3. Use AMI to calculate affordable monthly payment based on the definition of affordability.

1. Tie Unit Size to Household Size

The ordinance currently uses two measures to calculate rent or sale prices based on the number of bedrooms in a unit. For for-sale units, the “household size” is defined as “the number of bedrooms plus one.” Thus, a two-bedroom unit equates to a three-person household and a three-bedroom unit equates to a four-person household. For rental units, the “household size” is defined as “1.5 times the number of bedrooms,” rounded up. Thus, a two-bedroom unit equates to a three-person household while a three-bedroom unit equates to a five-person household (4.5, rounded up). The proposed text would use the former method (number of bedrooms plus one) for both rental and for-sale units. This change brings the ordinance in line with Massachusetts practice, as it is the same methodology that the State uses to calculate appropriate household size. Furthermore, while the new policy uses this “unit size” figure to consistently determine “household size,” it does not explicitly tie “unit size” to “affordability” for the purpose of calculating rents or sale prices.

e.g., three-bedroom rental unit → assume four-person household

2. Use Household Size to calculate AMI and clarify which figure is used for AMI

The U.S. Department of Housing and Urban Development (HUD) publishes the industry standard figures for Area Median Income (AMI), which is an important piece of data in calculating inclusionary housing. For federal FY2013, HUD reports that the AMI for the Boston-Cambridge-Quincy Metropolitan Statistical Area (MSA) for a four-person household is \$97,800. Eighty percent of this figure is \$78,240. For this MSA, however, HUD has established a different figure as the official “80% AMI” number: \$67,350. Thus, whenever “80% of AMI” needs to be used in Newton, the official HUD number is used. Likewise, HUD publishes an official number for “60% of AMI” for the MSA, which is \$56,640.

The complication ensues when a different value needs to be calculated, for example, 70% of AMI. There has been inconsistency and confusion as to whether this is calculated as 70% of the true AMI (i.e. 70% of \$97,800 = \$68,460) or a number that is halfway between the HUD 60% and 80% figures (i.e.

halfway between \$56,640 and \$67,350 = \$61,995). The City calculates the figure using the latter method. As the EDC/NHP memo states, it is important to be clear that the dollar amounts of income limits to be used under Newton’s Zoning are to be based on income levels as published by HUD, and where HUD has no published figure, to be determined by the City. Clarifying that the City defines this number in the “Definitions” section of the Inclusionary Zoning ordinance is a step toward transparency and predictability for developers.

e.g., four-person household → 80% AMI for four-person household as published by HUD = \$67,350

3. Define affordability based on a percentage of Household Income

The proposed 30-24(f)(3)(b)(i) “Sales unit price limit” and proposed 30-24(f)(3)(b)(iv) “Rental unit price limit,” add language defining “affordability” that is not currently in the Inclusionary Zoning ordinance, but that is consistent with Newton’s goals. For for-sale units, the new language defines the price as affordable “if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner’s association fees, hazard insurance, and one parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38% of their income.” For rental units, the proposed language defines inclusionary units as those for which “the monthly rent payment, including one parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the Inclusionary Unit, adjusted downward for any of those services not included.”

e.g., 80% AMI for four-person household = \$67,350/(divided by 12) = \$5,613 monthly income
30% of monthly income = \$1,684 “affordable” monthly rent

As the EDC/NHP memo notes, the proposed text amendment uses “number of bedrooms plus one” consistently when calculating household size, but it uses a different calculation (30% of income) when referring to household income limit and, thus, defining “affordability” for rental charges or sales prices. Standardizing these three metrics in the Ordinance (as opposed to Inclusionary Zoning Guidelines) lends predictability to the process for the City and developers.

PROPOSED AMENDMENT

1. Revise terminology for clarity and predictability. Delete the content of 30-24(f)(1)(a) and replace with the new text as below.

‘Household income limit’ at any given percentage of the area median income (AMI) shall be defined as being the income limit adjusted by household size at that percentage as published by the U.S.

Department of Housing and Urban Development (HUD) for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City.

~~“Eligible Household” shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.~~

2. Revise and significant shorten 30-24(f)(1)(b) Definitions.

b) ~~“Inclusionary Unit(s)” shall mean any finished dwelling unit that meets the provisions of Section 30-24(f)(3) Inclusionary Units. required to be for sale or rental under section 30-24(f) of the zoning ordinances.~~

- ~~i) — For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.~~
- ~~ii) — The sales price of inclusionary units for sale shall be affordable to an eligible household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.”~~
- ~~iii) — Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.~~
- ~~iv) — Where three or more inclusionary units are provided in a development under section 30-24(f)(3), the eligible household income limit for at least two thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80% of the area median income at the time of marketing. The eligible household income~~

- limit for the remaining inclusionary units may be set at any level(s) up to 120% of the area median income at the time of marketing.
- v) ~~Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.~~
- vi) ~~Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:~~
- ~~a. The income eligibility for the unit exceeds 80% of the area median income, or~~
 - ~~b. The unit is exempted from this requirement by another provision of section 30-24(f),~~
~~or~~
 - ~~c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines."~~

3. Revise 30-24(f)(3)(a) and (b) Inclusionary Units, adding much of the language formerly in 30-24(f)(1)(b). This change also addresses the aforementioned inconsistency in how household size and bedroom count are related and adds the policy change to define "affordability."

~~(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of market rate units in the development."~~

(3) Inclusionary Units.

- a) Number required. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the

number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall comprise at least 15% of the units to have been offered for sale or rental at each point in the marketing of the development.

- b) Rent and sale price limits. Rent and sale price limits for inclusionary units shall be set based on the assumption that household size equals the number of bedrooms plus one, regardless of the actual number of persons occupying the unit, as may be further specified in guidelines provided by the City in its then-current Affordable Rent or Sales guidelines or, if not specified there, as specified by DHCD in its Local Initiative Guidelines for 'Maximum Sales and Rents,' as most recently revised at the time of marketing.
- i) Sales unit price limit. Inclusionary units for sale shall be priced to be affordable to a household having an income ten (10) percentage points lower than the income limit for that unit as provided in subparagraphs (ii) and (iii) below and the assumed household size based on paragraph b) above. The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and one parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38% of their income.
 - ii) Purchaser income eligibility limit: fewer than three for-sale units. Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), the household income limit for those units shall be 80% of the AMI and the Inclusionary Units shall be priced for affordability to households having incomes of not more than 70 per cent of the AMI at the time of marketing of the Inclusionary Units in question.
 - iii) Purchaser income eligibility limit: three+ for-sale units. Where three or more inclusionary units are provided in a development under section 30-24(f)(3), for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) the household income limit shall be not more than 80% of the AMI and the sales price shall be affordable at not more than 70% of the AMI at the time of marketing. The sales price for the remaining inclusionary units may be set based on any level(s) up to a household income limit of 120% and a sales price affordable at 110% of the AMI at the time of marketing.

- iv) Rental unit price limit. Inclusionary rental units are to be priced to be affordable to a household having an income at the household income limit for that unit as provided in subparagraphs (v) and (vi) below. For Inclusionary Units, the monthly rent payment, including one parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the Inclusionary Unit, adjusted downward for any of those services not included. For a household with a Section 8 voucher, the rent and income limits are to be as established by the Newton Housing Authority with the approval of the U.S. Department of Housing and Urban Development.
- v) Renter income eligibility limit: two+ rental units. Where two or more Inclusionary Units are provided for rental in a development under §30-24(f)(3), the percentage of AMI used for establishing rent and income limits for all inclusionary units in the development shall average no more than 65 percent of the AMI. Alternatively, where two or more Inclusionary Units are provided for rental in a development under section 30-24(f)(3), they may be provided such that at least fifty percent (50%) of such units are priced for households having incomes at 50% of the area median income, and all other remaining Inclusionary Units are priced for households having incomes at 80% of the AMI.
- vi) Renter income eligibility limit: one rental unit. Where only one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.

4. Add 30-24(f)(3)(c), which is a revision of 30-24(f)(1)(b)(vi), for clarity.

Existing 30-24(f)(1)(b)(vi), deleted above.

~~Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:~~

- ~~a. The income eligibility for the unit exceeds 80% of the area median income, or~~
- ~~b. The unit is exempted from this requirement by another provision of section 30-24(f), or~~
- ~~c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines."~~

New 30-24(f)(3)(c)

- c) Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:
- i) The household income limit for the unit exceeds 80% of the AMI, or
 - ii) The unit is exempted from this requirement by another provision of section 30-24(f),
or
 - iii) The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.

NEXT STEPS

If the Zoning and Planning Committee agrees with the analysis provided by the Planning Department, staff recommends this item be scheduled for a Public Hearing on November 13, 2013. If further consideration is necessary, staff requests the Zoning and Planning Committee provide direction to staff as to what additional data and analysis it may need to inform further its discussion.



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Mayor

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 11, 2013

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner, Long-Range Planning
Amanda Stout, Senior Planner, Long-Range Planning 

RE: #294-13: ALD DANBERG proposing amendment to **Sec. 30-24(f) Inclusionary Zoning** to clarify the limitation on use of public funds in constructing inclusionary units and to expand on where the use of public funds for inclusionary units will be allowed.

MEETING DATE: October 16, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

EXECUTIVE SUMMARY

It is expensive to build residential units in Newton, and developers must often seek creative financing solutions, particularly to build affordable housing units. The current inclusionary zoning provisions of the Zoning Ordinance precludes the use of public development funds for the creation of the affordable units required under the ordinance, presuming that these will be financed through the larger development project. The proposed amendment would define “public development funds” and incentivize developers to go beyond the required provision of affordable units by providing more units, providing units with a deeper level of affordability, or providing affordable units that are accessible to people with disabilities.

BACKGROUND

In mid-2012, a small joint working group was formed by the Economic Development Commission and the Newton Housing Partnership to identify and draft proposals for improvement to the current Inclusionary Zoning regulations in Chapter 30 Section 24(f). Subsection (9) states that developers may not use public funds to meet the affordable share of housing that is obligated by that requirement (15% of the dwelling units in developments exceeding two dwelling units), but where that minimum requirement is exceeded or when a non-profit developer proposes that half or more of the units will be affordable, the use of public funds is permitted. Public development funds in this context include Community Preservation Act (CPA) funds, HOME funds, tax exempt bond financing, and others.

As the EDC and NHP observed, it has become so expensive to build any residential development in Newton that all developers must seek creative approaches to financing affordable housing. By incentivizing developers to go beyond the requirements of the inclusionary zoning provisions of the ordinance, through clearly allowing the use of public development funds, the City may be able to achieve more affordable units through private development projects.

ANALYSIS

Public development funds

The Inclusionary Zoning ordinance neither permits the use of public funds nor defines the term. Since the term is only used in this one paragraph, it need not be called out in a separate “Definitions” section. It is recommended that a definition of “public development funds” be included within the proposed text amendment to 30-24(f)(9) to provide general clarity and to specifically clarify that tenant-based rental assistance (also known as “Section 8”) is not included in the landscape of public funds that cannot be used for the creation of affordable units required by the inclusionary zoning provisions of the Zoning Ordinance. Thus, it is recommended that the definition specify that “public development funds” refer to programs that are eligible to qualify as a “subsidy” under the Massachusetts Comprehensive Permit Statute, *760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing*:¹

760 CMR 56.02 Definitions.

Subsidy – means assistance provided by a Subsidizing Agency to assist the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, and other supportive services. A leased housing, tenant-based rental assistance, or housing allowance program shall not be considered a subsidy for the purposes of 760 CMR 56.00.

Applicability of public development funds to housing development

The current inclusionary zoning ordinance prohibits the use of public development funds for the purpose of creating the required affordable units. However, it also states that it is not the intent of this

¹ <http://www.mass.gov/hed/economic/eohed/dhcd/legal/regs/760-cmr-56.html>

section of the ordinance to prohibit the use of such funds to exceed the minimum number of required units and it specifically allows nonprofit housing developers to be exempt from the public funds prohibition in cases where 50% or more of the proposed units will be affordable. This current language is unclear and confusing, as a statement of intent is not generally considered a rule and therefore, the proposed amendment seeks to clarify and expand the situations in which public development funds may be used and removes the unnecessary references to intent in this section

The proposed amendment would create an incentive for developers to build additional affordable units while maintaining the prohibition on using public development funds for the required portion of affordable housing. If a project proposes the creation of more units (i.e., in excess of the required 15%), units that are more affordable (i.e., to people at 70% of Area Median Income rather than the usual 80%), or a greater level of accessibility than that which is required by law for persons with disabilities, then the for-profit or nonprofit developer would be eligible to use public development funds. The intention of this proposed change is to acknowledge that projects that go “above and beyond” and create more affordability, which is something that the City wishes to encourage, require a greater array of financing sources.

At the September 9, 2013 meeting of the Zoning and Planning Committee, members of the Board of Aldermen suggested that the prohibition on public funding might be dropped entirely and the circumstances under which a developer might use public development funds be reviewed as part of the special permit process. Staff recommends against this approach. For a developer, leaving the question of the availability of public funds open until after the resolution of the special permit process would increase risk and uncertainty in contradiction to the intent of incentivizing the creation of more affordable units than are currently required. Staff suggests that the availability of public development funds as it pertains to inclusionary housing remain regulated through this ordinance and reviewed by the Director of Planning and Development to ensure that a proposed development project is in fact “going above and beyond” and meeting the City’s affordability goals.

There remain a number of issues that require further investigation in order to fully understand the implications of this policy change. For example:

- What would be the impacts on the use of City-controlled public development funds generally?
- How would this policy change affect the Newton Housing Authority?
- The proposed change would remove the current exemption for non-profit affordable housing developers. What are the implications of this change? Have there been projects built that have taken advantage of this exemption?
- Can we anticipate other outcomes than the ones intended?

PROPOSED TEXT AMENDMENTS

1. Revise Chapter 30, Section 24, (f) Inclusionary Zoning (9) Public Funding Limitation

~~The intent of section 30-24(f) is that an~~ An Applicant is shall not to use public development funds to construct Inclusionary Units required under this section. Public development funds shall mean funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing. However, the Applicant may use public development funds to construct those Inclusionary Units that are found by the Director of Planning and Development to be consistent with any of the following:

- a) Those that represent a greater number of affordable units than are otherwise required by this subsection;
- b) Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least ten percentage points below that stipulated in §30-24(f)(1);
- c) Those that exceed regulatory requirements in providing for persons having disabilities.

~~; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing at least 50 per cent of which is affordable to Eligible Households, it is exempt from this limitation.~~

NEXT STEPS

The Planning Department will continue to do additional research and seek the answers to questions raised in this memo. If the Zoning and Planning Committee would like additional information to inform its assessment of this proposal, staff requests the Committee define what additional data and analysis it may need. Alternatively, if the Committee is satisfied with the proposal as written, it has the option of scheduling it for Public Hearing at an upcoming meeting.