

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, OCTOBER 28, 2013

7:00 PM – PLEASE NOTE EARLY START TIME

Room 202

- #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]
- #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]

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.

ITEM 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.
- #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]
- #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]
- #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.
- #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]
- #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]
- #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]
- #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]
- #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]
- #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.
- #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]
- #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



Setti D. Warren
Mayor

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Candace Havens
Director

PUBLIC HEARING MEMORANDUM

DATE: October 25, 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.

PUBLIC HEARING: November 13, 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.

PROPOSED 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 in the following order:
- 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, has been hired to work in Newton, or has a bona fide offer of employment in Newton; and (3) Households with a family member who attends public school in Newton.
- 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 to qualified applicants in the following order:
- 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).



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: #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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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.



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Mayor

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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 25, 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 28, 2013

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

Please find attached an updated version of the proposed Zoning Ordinance amendment allowing the registered marijuana dispensary use in certain districts of the City. Below are answers to some of the questions raised during the October 22nd Zoning and Planning Committee meeting.

Would medical marijuana cultivation sites be included in the State agricultural exemption from local special permit requirements?

The qualification of medical marijuana cultivation sites for the agricultural exemption is unclear. The issue is not addressed in the Act allowing for medical marijuana nor in the State regulations. However, the exemption only pertains to commercial agriculture sites of at least five acres or at least two acres where the sale of products produced on site generates at least \$1000 an acre. It is unlikely that there are any sites in Newton that would meet these criteria.

Should Newton consider adopting an ordinance limiting the sale or use of marijuana and create a local permitting program for registered marijuana dispensaries?

There are a number of pros and cons to this issue. A local ordinance would appear to be unnecessary based on the strict regulation already in place from the State. The existing regulations make medical marijuana the most strictly regulated medical treatment in Massachusetts. The only potentially reasonable restrictions that could be placed on the use of medical marijuana, based on the Act and regulations, would be those consistent with existing limitations on smoking, where the product is in a smokeable form, in certain public spaces and prevention of the use of medical marijuana in schools and school-related facilities. The DPH regulations make clear that no accommodation is required of any on-site medical use of marijuana in any place of employment, school grounds, school bus, youth center, correctional facility or of smoking med marijuana in any public place. The regulations do prohibit operation of a motor vehicle under the influence of med marijuana.

A local ordinance of this nature might allow the creation of a permit program that could defray whatever additional local police costs might arise as a result of hosting a RMD. With no more than one site to permit though, the revenue that might be derived from such a permit would likely be quite limited. It is also unclear what actual additional costs might arise given the strict state regulation governing security procedures relative to the handling, dispensing, storing, and transporting of medical marijuana products. If additional costs are identified after a RMD is sited in the City, an annual permit program and fee could be introduced concurrent with the State's annual re-licensing of each RMD.

Ultimately, local regulation of marijuana would not be incorporated into zoning and would therefore need to be considered separately from the proposed zoning amendment. Further, as public safety and security concerns are specifically identified in the special permit criteria, any particular issues raised by the police or other public safety personnel relating to a particular RMD, which might otherwise be covered by such an ordinance, could be addressed in the conditions placed on the special permit.

Next Steps

The proposed zoning amendment will be introduced in a public hearing on November 13. If additional information or analysis from the Planning Department or other members of the Working Group is necessary in advance of the public hearing, staff requests that the Zoning and Planning Committee identify those questions.

Enclosures

Attachment A Proposed Ordinance Language to allow Registered Marijuana Dispensaries in Newton

Item # 309-13 10/10//2013 DRAFT FOR DISCUSSION PURPOSES

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.

Comment [m1]: This definition was already adopted with the moratorium

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, or from a house of worship or religious use, measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility or a lesser distance as the board of aldermen may determine if sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the RMD. Such distance shall be 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.~~

(32) 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.

(43) 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.

(54) 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.

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

~~(76) An RMD shall be subject to the number of parking stalls required in section 30-19(d)(10). Notwithstanding anything to the contrary in section 30-19, the required number of parking spaces for an RMD unless a lesser or greater number of stalls is deemed appropriate shall be determined required~~ by the board of aldermen based on the transportation analysis provided by the applicant

(87) All signage shall conform to the requirements of 105 CMR 725.105(L) state regulations and to the requirements of this section 30-20 of these ordinances. No graphics, symbols or images of marijuana or related paraphernalia shall be displayed or clearly visible from the exterior of an RMD. 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 procedural and application requirements of section 30-24(a), (b) and (c), 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 [and the director of transportation](#), 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.~~

Comment [m2]: After looking current site plan review requirements for consistency, Law and Planning recommend deleting as redundant because site plan with this info is already a requirement of the application in 30-24 Special Permit.

~~(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.~~

Comment [m3]: Same reason as above.

~~(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 [finding that](#) the general criteria for issuance of a special permit as set forth in section 30-24(d) of this ordinance [are met](#), the board of aldermen shall find that the following criteria are met:

Comment [m4]: I understand that the Committee requested that the general criteria of Section 30-24(d) be reproduced here. I recommend against that – not only is it unnecessarily duplicative, but in the event the general conditions on 30-24 are amended, this section would also have to be amended. To be consistent with all other “stand alone” special permit sections containing specialized additional criteria, we should simply cross-reference to the general criteria in 30-24(d).

(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 or minors commonly congregate, or from a house of worship or religious use, or the site is located at a lesser distance if the board of aldermen determines -the site is sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the RMD

(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, whether driving, bicycling, walking or using public transportation. 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/significant 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(ies).

(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 and other code enforcement personnel for health and public safety purposes.

(10) The RMD complies with City of Newton noise, light, sign, and tree preservation ordinances.

(11) The board of aldermen may limit hours of operation to mitigate any adverse impact on surrounding uses.

(g) *Severability.* If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

Comment [m5]: I have redlined in (10) and (11) as requested by the Committee, but recommend against them. These are conditions, not criteria. The land use committee (and ultimately the Board) could certainly condition the issuance of a special permit on the promise to comply with the listed ordinances and to limit hours of operation as they deem appropriate for the location. They are not criteria upon which the Board could make a finding. In addition, the DPH regulations (105 CMR 725.600(A) already require an RMD and other registered persons to comply with all local rules, regulations, ordinances and by-laws.

