

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, OCTOBER 28, 2013

Present: Ald. Johnson (Chairman), Baker, Yates, Danberg, Kalis, Swiston, Sangiolo and Lennon
Also Present: Ald. Hess-Mahan and Albright
Other Present: Dori Zaleznik (Commissioner, Health & Human Services), James Freas (Chief Planner, Long Range Planning), Amanda Stout (Housing Planning), Rob Muollo (Housing Planner), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#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]

ACTION: **HELD 5-0 (Ald. Swiston, Sangiolo and Lennon not voting)**

NOTE: Amanda Stout, Senior Planner addressed the Committee. She reviewed that this proposed amendment to the Inclusionary Zoning ordinance gives preference to households that are displaced from their homes as a result of a residential development. It is also designed so that preference is given for households where a member has as disability for units that are designed to be accessible. The recommendations from the October 22, 2013 discussion of this item have been incorporated into the amendment, which was in the Planning Memo.

A public hearing has been assigned for November 13, 2013. The Committee voted to hold this item.

#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]

ACTION: **HELD 8-0**

NOTE: Amanda Stout, Senior Planner explained that this amendment was a recommendation from the Economic Development Commission and Newton Housing Partnership working group. They observed that the definition of inclusionary units is both lengthy and vague, leaving it open to interpretation. There is a fair amount of re-organization of this amendment and the draft ordinance was in the Planning Memo.

In addition to adding clarity through re-organization, the amendments will add greater predictability to assist developers in setting their rental and sale prices. A developer needs to calculate the rental rate or sale price for inclusionary units by identifying housing size

appropriate to the unit; use household size to determine the correct Area Median Income (AMI) number; and use that AMI to calculate an affordable monthly payment based on the definition of affordability.

Household Size

The proposed text would define household size as “the number of bedrooms plus one” for both for-sale and rental units. For example, a three-bedroom unit would equate to a four-person household. This definition would bring the ordinance in line with state practice.

AMI Calculation: Four-person household example

The household size would then be used to calculate AMI. The U.S. Department of Housing and Urban Development (HUD) publishes the industry standard figures for AMI. Newton is included in the Boston-Cambridge-Quincy Metropolitan Statistical Area (MSA) and HUD reports that the federal FY2013 AMI for this MSA is \$97,800 for a four-person household. Eighty percent of this figure is \$78,240. However, HUD has established a different figure as the “official 80% AMI” number for this MSA, which is \$67,350. Therefore, when “80% of AMI” needs to be used in Newton, the official HUD number of \$67,830 is used. HUD also publishes an official number for “60% of AMI” for this MSA, which is \$56,640. When calculating a different value, for example, 70%, the City will calculate using the HUD published numbers as the criteria (i.e. halfway between \$56,640 and \$67,350 = \$61,995). The state uses these numbers as well and using these numbers will ensure that the state recognizes the units in Newton as “affordable”.

Affordability

The AMI is then used to calculate an affordable monthly payment based on the definition of affordability. While the “number of bedrooms plus one” criteria is used to calculate household size, a percentage of income criteria is used to calculate an affordable monthly payment limit for the assumed household size. For buyers and renters it is no more than 30% of income. (These figures have to include mortgage principal and interest, private mortgage insurance, property taxes, condo and/or homeowners’ association fees, hazard insurance and one parking space for purchased units. It has to include rent, heat, hot water, electricity and one parking space for rented units.)

It was recommended that if any Committee members had any proposed changes, they be sent to the Planning Department for review. Ald. Danberg moved to hold this item and the Committee voted in favor.

#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]

ACTION: **HELD 8-0**

NOTE: Amanda Stout addressed the Committee. She explained that this amendment is to incentivize developers to go beyond the required provision of affordable units. Building in Newton is very expensive and developers have to be creative in their funding sources. The amendment will also better define “public development funds” and include that definition in the text of the ordinance and not in a definitions section. This will provide clarity and also specifically point out that Section 8 is not included in the public funds that cannot be used for the creation of affordable units. It is recommended that public development funds refer to programs that are eligible to qualify as “subsidy” under 760 CMR 56. The draft ordinance was in the Planning Memo.

Currently a for-profit developer is not allowed to use public development funds to meet their required 15% affordable units. It is not the intent of the current ordinance to prohibit the use of these funds if the developer is exceeding that minimum number of affordable units. The Law Department has interpreted that as meaning the developer may use the funds if exceeding the 15% requirement, but it is ambiguous. In the current ordinance, a non-profit developer may use public development funds if they are proposing 50% or more affordable units. The new ordinance is proposing that for both for-profit and non-profit developers, no public development funds may be used to meet the required 15% affordable units, however, if the developer goes above and beyond that, the developer may use public development funds for those units that represent a greater number of affordable units than the 15%; or are at least 10% less than the maximum eligible income limit; or that exceed requirements for accessible units. This is to give developers incentives to create more affordable housing by offering additional financing options.

It was asked if the density would increase if developers took advantage of this, or just increase affordable units within the same density. Mr. Freas said the number of affordable units would increase within the same density as they would still be subject to the special permitting process.

Several questions were raised by the Planning Department in their memo. Mr. Freas offered some answers to those questions.

- In terms of the impact on the use of City-controlled public development funds, he said that it might bring more applications for City funds but it will not reduce the availability of those funds. It would still remain the decision of the City as to whether a particular application would be supported or not.
- As far as impact on the Housing Authority, it does not appear to have any negative effects and would have a positive effect. The Housing Authority has always exceeded the requirements as that is part of their job.
- As for the impact on non-profit developers, no developers have taken advantage of the 50% rule. In fact, many developers have chosen to go the 40B route instead of using the 50% subsidy because they can use public funds for the whole project.

The Committee would like a more complete set of answers to these questions and Mr. Freas will provide those for the next discussion. The Committee would also like to know what the impact would be if the prohibition was dropped completely.

The Committee voted to hold this item and take it up in the new term and schedule a public hearing then. There are only a few meetings left in the year to complete ongoing items and there are no pending projects that would necessitate a resolution to this issue in this calendar year.

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

ACTION: **HELD 8-0**

NOTE: Marie Lawlor, Assistant City Solicitor, explained that all the recommended changes from the October 22nd meeting have been incorporated into the draft that was included with the agenda:

The definition of Registered Marijuana Dispensary was deleted as the definition was already adopted in the moratorium item.

Ms. Lawlor explained that the state has stipulated a 500-foot buffer zone as a default should a municipality not designate one of their own. Language that was included in the Cambridge ordinance was added to the draft ordinance to allow discretion in lowering the 500-foot buffer if it was felt that there was sufficient buffering from facilities so as to not be adversely impacted by the operation of the RMD. Ald. Baker was not in support of allowing discretion in the 500-foot buffer zone. He preferred that there be a bright line in terms of the buffer zone. The majority of the Committee wanted to keep the ability to decide a lesser buffer zone in the ordinance.

The 500-foot distance would be measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility. There was a suggestion that it might make sense, in the special permit process, to allow the measurements to take place from where the actual facilities (daycare, house of worship, school) might be to where the RMD is as one or both may be in the middle of a large lot.

It was asked if the discretion in the buffer zone were removed from the ordinance after the public hearing, would that be considered more restrictive than what was in the advertising language and therefore, have to be re-heard at public hearing. Ms. Lawlor felt that the advertising language was flexible enough to allow the change should that be decided.

The question of using the terms “children” and/or “minor” still remains. This will be left in at this point for further discussion at the public hearing. It was thought that they would probably end up using “children” as it used in the state regulations.

The Site Plan and Building Elevations and Signage sections were deleted from the draft. Current site plan review requirements which include all that information are part of the application for a special permit.

It was asked that the RMD should inform the City of its original registration and any annual renewal.

It had been suggested that the general criteria of special permits be reproduced in the ordinance. Ms. Lawlor recommended against that as duplicative, not mention, any future changes to the general criteria would prompt a change to this section as well.

The references to light, sign, tree and noises ordinances could be conditions of a special permit, but are not criteria. Ms. Lawlor suggested removing that reference. The DPH regulations already require any RMD to comply with all local ordinances. The Committee would like to add that hours of operation will have no significant adverse impact on nearby uses. Ms. Lawlor will try to determine the proper wording and placement of that criteria.

The recommended revisions have since been made to the draft ordinance and are attached to this report.

The Committee voted to hold this item. The public hearing is scheduled for November 13, 2013.

All other items were held in Committee with no discussion.

Respectfully Submitted,

Marcia T. Johnson

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 or minors commonly congregate, or from a house of worship or religious use, or a lesser distance if the board of aldermen finds that the RMD is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD’s operation. 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 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, public safety code regulations and all other applicable state and local laws, ordinances, 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. The RMD shall file copies of its initial certificate of registration and each annual renewal certificate with the clerk of the board of aldermen within one week of issuance, and shall immediately notify said clerk if its registration is not renewed or is revoked.

(3) 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.

(4) 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.

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

(6) An RMD shall be subject to the number of parking stalls required in section 30-19(d)(10) unless a lesser or greater number of stalls is required by the board of aldermen based on the transportation analysis provided by the applicant

(7) All signage shall conform to the requirements of 105 CMR 725.105(L) and to the requirements of 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.

(8) The RMD's hours of operation shall not adversely impact nearby uses. The board of aldermen may, as a special permit condition, limit the hours of operation of an RMD to mitigate any adverse impact on nearby uses.

(e) *Special permit application and procedure*

The procedural and application requirements of section 30-24 shall apply. 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) *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:

(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 finds that the site is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation.

(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.

(4) Traffic generated by client trips, employee trips, and deliveries to and from the RMD shall not create a significant adverse impact on nearby 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 disabilities.
 - (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.
 - (10) The RMD's hours of operation will have no significant adverse impact on nearby 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.