

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 25, 2013

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

Absent: Ald. Kalis and Sangiolo

Others Present: Dori Zaleznik (Commissioner, Health and Human Services), Candace Havens (Director, Planning & Development), James Freas (Chief Planner, Long Range Planning), Amanda Stout (Senior Planner), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (City Clerk)

#309-13(4) DEPT. HEADS HAVENS AND ZALEZNIK requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, to create new zoning regulations allowing the use of land, structures and buildings for registered marijuana dispensaries in certain business and mixed use zoning districts within the City by special permit, and to establish minimum standards and criteria for the granting of such special permits.

**ACTION:** **APPROVED 6-0**

**NOTE:** James Freas addressed the Committee. He began by noting that two changes were made to the proposed ordinance since the previous discussion in Committee. The following sentence was added to (d) (2): *The RMD shall provide the Newton police department with the names and contact information for all management staff and shall immediately notify the police department of any changes.* The second change was adding the following sentence to (e)(4): *The context map shall include the measured distance to all uses described in section 30-36 (d)(1).*

**Clerk's note: It was discovered that there was an unclear use of wording in (d)(1) and language has been changed as follows:**

*(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 minors commonly congregate, or from a house of worship or religious use, ~~or~~ **but may be located within** 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.*

A Committee member asked why only management staff would be included in the notification process. Mr. Freas explained that since management staff was less likely to change as often, the police would have consistent persons to contact if there were any problems with the property.

The purpose was not to check criminal backgrounds as that would already have been done through the state. This was an issue of having contact information in case of any issues.

Ald. Baker had thought about requiring advanced notice of hours of operation so that it was not out of step with other businesses in the area. He felt if the hours were unusual to the area, it would draw attention to the facility in perhaps a negative way. It was determined that this may be part of the special permit conditions. Boston requires an annual community meeting with a presentation by the licensee about their operation. This gives the community an opportunity to address any problems that may have arisen, such as traffic concerns. This could also be addressed in the special permit conditions and the community meeting is not really something that would work with Newton's regulations. Commissioner Zaleznik reported that the state is renewing the licenses not the City. The state is providing several pages of instructions for filing complaints with the state. The dispensary is also under obligation to notify the local police and the Department of Public Health if there are any problems. They are also required to make a corrective action plan, so there are mechanisms for reporting problems. Ald. Baker said he would still like to look at some possible non-zoning regulations in the Programs & Services Committee and that discussion will continue.

It was noted that 2 applicants were accepted by the state into Phase 2 of the process. There were 5 in Lowell, 5 in Framingham, 2 in Ayer, 1 each in Cambridge, Everett and Billerica. Two are in Phase 2 for Brookline, although it is a different county than Newton.

Ald. Yates moved approval of the draft ordinance as amended. The Committee voted in favor by a vote of 6-0. **Please see approved language, attached.** (In addition, please note the change that was made as described above in section (d)(1).)

#407-13      HIS HONOR THE MAYOR requesting discussion relative to establishing a Regional Technology Center in Newton under the state's Economic Development Incentive Program. [11/12/13 @ 4:47 PM]

**ACTION:**      **HELD 6-0**

**NOTE:** James Freas explained that the Economic Development Incentive Program (EDIP) is a program to promote job growth and stimulate business and investment in the Commonwealth. Newton's Comprehensive Plan laid out an economic development program that is based on flexible, moderate growth. There is a balance of maintaining the residential quality of the City while encouraging some amount of new growth and tax revenue. The idea is to provide incentives to businesses that complement Newton's highly educated workforce, location, and provide high-tech, high-quality jobs. This forms the baseline of what the City is trying to accomplish by applying to join the EDIP.

### **Definitions**

The following definitions and explanations are provided as background to the discussion of Newton's application to the State as a Regional Technology Center:

**Massachusetts Office of Business Development (MOBD)** – part of the Massachusetts Executive Office of Housing and Economic Development, this office aims to strengthen the

economy and increase job growth throughout Massachusetts by providing a highly responsive, central point of contact that facilitates access to resources, expertise, and incentive programs available in the Commonwealth to businesses that are seeking to expand or locate in the Commonwealth.

**Economic Development Incentive Program (EDIP)** – a tax incentive program designed to foster job creation and stimulate business growth throughout the Commonwealth. Participating companies may receive state and local tax incentives in exchange for job creation, manufacturing job retention, and private investment commitments.

**Economic Assistance Coordinating Council (EACC)** – representatives of MOBD who meet quarterly to review applications for ETA, RTC, EOA, TIF, and other economic incentive programs.

**Economic Target Area (ETA)** – a designation that enables a city or town to offer tax incentives to companies locating in areas of the Commonwealth exhibiting high unemployment, poverty, or recent major job losses.

**Regional Technology Center (RTC)** – a sub-component of ETAs, RTCs are designed to target large areas of commercial or industrial space suited to high-tech, high quality jobs regardless of the economic status of the surrounding area. The Towns of Needham, Lexington, Burlington, and Westwood are among the 17 RTCs in Massachusetts.

**Economic Opportunity Area (EOA)** – a site within an ETA or RTC that meets the city or town’s criteria for EOA designation and that meets the State’s criteria as hosting an “Expansion Project.” At the municipal level, the project requires city approval and negotiation of a TIF, and at the State level, the project must meet new job creation and retention thresholds for five years and generate significant out-of-state sales.

**Tax Increment Financing (TIF)** –Massachusetts' version of Tax Increment Financing (TIF) allows municipalities to provide flexible, targeted incentives to stimulate job-creating development. It is a negotiated agreement between a business, property owner, and host municipality. The business pays the full tax rate on the “base value” of the property while a percentage of the increased value (the increment) is untaxed for a specified length of time. The untaxed percentage may range from 5% to 100% of this increased value and the timeline may range from 5 years to 20 years. The property would not be paying less in taxes in the future than they are today. When negotiating a TIF, the City would review a company’s proposal against the criteria the City established during the RTC application process. A TIF agreement requires Board of Aldermen approval.

**District Improvement Financing (DIF)** -Note that in every other state in the country, a “TIF” refers to a more complicated multi-party financing relationship to support infrastructure investments. In Massachusetts, this concept is referred to as District Improvement Financing (DIF).

Mr. Freas went on to say that ETAs are designated by the state and the municipality together for the purpose of fostering job creation and stimulate business growth. Typically ETAs are designated towards communities that show high levels of unemployment and poverty. The subset of the ETAs are the RTCs are targeted more towards communities like Newton that have the potential to accommodate new technology companies and industrial spaces. There is a requirement of a minimum aggregate 200 acres with the capacity to support the build-out of 3,000,000 square feet of commercial or industrial space. The City needs to look citywide in

order to meet this requirement. An EOA then needs to be established for a project and that project would require Board approval and negotiation of a TIF. Some other communities with RTC designation are Needham, Lexington and Burlington. Establishing an ETA does not commit the City to offering any tax incentives it just makes the opportunity available. Waltham has had the ETA designation for 20 years and has never exercised it.

TIF is a partnership between a company, a property, the state and the City. The Board would have to approve both the EOA and the TIF. It allows the City and state to target incentives towards specific development projects that show significant growth potential. The company pays the full tax rate on the base value and there is a partial exemption available for the increment between the base value and the future value of the property. It can range from 5%-100% and range over the course of 5-20 years. So if the project doesn't reach the value that was anticipated at the time of the agreement, the City is not at risk. The agreement is the company is always obligated to pay the taxes on the assessed base value. Even if the property value drops, they are still obligated to pay on the base value.

Committee members asked if this was a limited exemption and it would not be taking the revenue that was generated and earmarking it for public improvement. Mr. Freas said the tax value above and beyond the base value would be used to incentivize job creation and other things that fit the program's criteria. The reason for having this framework is so that some of the money can go back to the developer, but the developer is being expected to provide other public values beyond the jobs they're creating.

The City on behalf of the Mayor is submitting the final application to become an RTC this week. This is a function of the Executive Office and not the Board. Review of applications and final decisions will be made on December 18th. Newton will be looking to designate the entire City as an RTC, as have all but one of the communities (Watertown) which have applied and will include EOC criteria in its application. The proposed application language is:

*“When considering areas within the proposed ETA as possible candidates for designation as EOAs, Newton will consider how that area contributes to the City’s economic development goals and Newton’s pivotal location in the Commonwealth:*

- 1. To facilitate existing Newton companies’ continued growth in the City.*
- 2. To support the Commonwealth’s goal of attracting innovative companies to Massachusetts to play a role in maintaining a sustainable and growing economy, and specifically, to help enhance the N2 Innovation Corridor and the Route 128 region’s ability to provide quality jobs and career options to residents of Newton and the surrounding towns and cities.*
- 3. To support office development that demonstrates significant increase in jobs in locations with a high potential for secondary economic benefits.*
- 4. To support projects that include a permanent improvement to the City’s economic competitiveness, such as those that include infrastructure enhancements on the redevelopment of important commercial/industrial parcels.*

5. *To promote redevelopment of existing industrial and commercial properties and effective reuse of obsolete or vacant industrial or commercial buildings in the Needham Street Corridor, the Wells Avenue Office Park, Nonantum, and Newton Corner.*
6. *To assist companies that are interested in locating in Newton that are deemed strategically valuable or that demonstrate a strong connection to locations or industries consistent with Newton's economic development strategy.*
7. *To encourage the redevelopment of sites in a manner that is consistent with the Commonwealth of Massachusetts' Sustainable Development Principles, including advancing smart growth and multi-modal transportation options and featuring principles of green design."*

Mr. Freas said the goal would be to form an RTC jointly with Needham and the state is encouraging that to happen. With the deadlines however, the application will be going in for Newton alone, but the state said they would be happy to see an application for the two to merge at some point in the future. While Needham and Newton would work together to form an RTC, they would each have their own criteria to which the other would not be held. Ald. Johnson asked that the Committee be provided with some examples of criteria from surrounding communities.

Ald. Yates asked how the City could avoid having companies poached by neighboring communities. Mr. Freas noted that poaching is very active in the area said that building a close working relationship with Needham is a means of avoiding that type of situation and is the biggest advantage of eventually partnering in an RTC with them.

Mr. Freas explained that in the RTC application, Newton must explain the potential areas that might be designated as EOAs in the future. The following language is proposed:  
*"The Needham Street corridor has some of the greatest potential for near-term redevelopment activity. The City is currently creating a Master Plan for the corridor, coordinating with the Massachusetts Department of Transportation on roadway design and future reconstruction, and partnering with the Town of Needham on planning and marketing for the entire corridor (Needham Street in Newton and Highland Avenue in Needham) as a high-tech, life sciences, and innovation economy center as part of the greater metro Boston economy. The location and accessibility of this corridor translates into a significant opportunity for new private investment. It is an historic innovation center and it is currently the focus of plans to enhance multi-modal transportation infrastructure. Needham Street is already home to many innovative companies, and it has great potential for increased investment and density in an already mixed-use environment.*

*There are potential redevelopment sites that would be possible candidates for designation as an EOA in other areas of the City. The Wells Avenue Industrial Park, composed of 108 acres originally intended for light industrial use, has been the subject of recent discussion about how to best redevelop and reposition this unique area of the City. Areas on the northern side of the City, such as California Street in Nonantum, Newton Corner, and parts of West Newton, contain older mill buildings, warehouses, and other industrial and commercial spaces, some of which is underutilized and all of which is located in close proximity to mixed-use commercial centers and*

*transit access. These areas might be strong candidates for EOAs should there be a significant project that meets the City's criteria."*

Ald. Baker said this is a tax subsidy back to a specific use in return for an unspecified "something". It would seem the areas in Newton that are underserved would be more ideal than other places in the City. And while the Mayor has the authority to send in an application, he had concerns about including the entire City. The Board approves an EOA, but not the designation of Newton as an RTC. His other concern was the particular recipients of the property tax incentives are generally large users whereas there are small users in the City who will maintain the commercial tax rate. There is a good deal of questioning about tax equity even within the commercial sector for this kind of arrangement. In his mind, this does not have an automatic positive outcome and he has misgivings.

Ald. Swiston said having these incentives at the City's disposal did not necessarily change the environment in which companies make communities compete for them. It would give Newton the same tool as other communities who also have this available to them however. She reminded the Committee that the City can use the program if they like, but do not have to exercise it at all. Ald. Johnson thought this item should be heard in Finance Committee as well..

The Committee voted to hold this item.

#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]

**ACTION:**      **HELD 6-0**

**NOTE:** Ald. Albright joined the Committee. She said over the years she's become more aware of the City's conservation land by walking her dog. Last year during budget review and approval, she noted there was a standard \$25K for conservation and Ald. Baker had pointed out that had been increased by another \$25K. She said it was unclear what the conservation lands needed to be managed well and to become most useful to the citizens of Newton. There is an open space plan and it is a great inventory of projects but it is not an implementation plan and has no detail relative to cost and project timelines, management and funding. It would be useful to look each year to see what projects might be undertaken with an action plan and funding to do so. These projects aren't all expensive. It could be something as simple as signage on trails. The conservation acquisition projects are not in the Capital Improvement Plan (CIP) at all. The new conservation planner is now in place and it seems like the time to be more organized about this.

Some Committee members felt that capital investment should be spent in the recreation areas and not the conservation areas. These are areas that already exist and should be well maintained.

Ald. Albright said she would just like a large project to be added to the CIP for consideration at some point, but was not necessarily focusing on the CIP. Mr. Freas said the new conservation planner just came on board and is doing a wonderful job. Developing management plans for all the conservation areas is one of the things they had in mind when hiring her and she has started looking at that. This will take some organization and sorting out of some basic information before plans can be made. Short and easily implementable management plans for each of the conservation areas that speak to the unique condition of each will then be the next step. Primarily, the focus would be protecting and enhancing the natural habitats of the properties. She is also looking at developing a volunteer corp to help steward the many areas and report any problems or concerns and to network with her. The Conservation Commission controls the conservation areas and this is being done in conjunction with them.

Mr. Freas said they are not looking at creating a 10-year plan at this time, but instead short specific plans for each area that will be updated continuously. They will focus on areas of maintenance and gradual upgrade and working with the volunteer base. They are not anticipating any projects over the \$75K mark. The conservation planner is still collecting all the necessary information and materials so they are very early in this process.

#### Follow Up

Ald. Johnson said she would like the Committee to meet the new conservation planner. Mr. Freas said they were planning on having her join the Committee in January or February when she has some progress to report.

The Committee voted to hold this item.

#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]

**ACTION:**      **REFERRED TO 2014-2015 BOARD OF ALDERMEN 5-1-0 (Ald. Johnson opposed)**

**NOTE:** Ald. Yates explained that this item came out of concern from an incident at 295 Upland Road. A new owner acquired that lot and cut down 90 trees saying he was going to live there for the required one-year timeframe in order to make that action legal. However, the tree cutting and subsequent work led to problems on the lot and into the neighborhood. Ald. Yates reported that Commissioner Lojek said he felt it was a mistake to give up the 3-foot grade change and the City needed some tool to control and monitor major topographic changes. Ald. Yates would like to refer this item to the next Board with the hope that the Planning & Engineering Departments could provide some new language that Inspectional Services and Engineering could enforce.

The Committee voted to refer this item to the next Board with 5 in favor and 1 opposed.

Respectfully Submitted,

Marcia T. Johnson

**LANGUAGE APPROVED AT 11/25/13 ZONING & PLANNING COMMITTEE****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 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. The RMD shall provide the Newton police department with the names and contact information for all management staff and shall immediately notify the police department of any changes.



(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. The context map shall include the measured distance to all uses described in section 30-36 (d)(1).

(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 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.