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Planning & Development

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Peter Doeringer, Chair  
Kelley Brown, Member  
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Jennifer Molinsky, Member  
Sonia Parisca, Vice Chair  
Chris Steele, Member  
Barney Heath, *ex officio*  
Kevin McCormick, Alternate  
James Robertson, Alternate

1000 Commonwealth Ave.  
Newton, MA 02459  
T 617-796-1120  
F 617-796-1142

[www.newtonma.gov](http://www.newtonma.gov)

# PLANNING & DEVELOPMENT BOARD JOINT MEETING WITH ZONING & PLANNING COMMITTEE MINUTES

March 8, 2021

#### Members Present:

Peter Doeringer, Chair  
Chris Steele, Member  
Jennifer Molinsky, Member  
Barney Heath, *ex-officio*  
James Robertson, Alternate  
Kevin McCormick, Alternate

Zoning and Planning Members Present: Councilors Crossley (Chair), Leary, Wright, Krintzman, Danberg, Baker, Albright and Ryan

Also Present: Councilors Kelley, Lipof, Malakie, Downs, Markiewicz, Bowman and Greenberg

City Staff: Jonathan Yeo, Chief Operating Officer; Marie Lawlor, Deputy City Solicitor; Andrew Lee, Assistant City Solicitor; Jen Caira, Deputy Director, Katy Hax Holmes, Senior Planner, Zach LeMel, Chief of Long Range Planning, Barney Heath, Director and Cat Kemmett, Planning Associate

Meeting held virtually by Zoom Meeting

#### **1. Public Hearing #41-21 Zoning Amendments for Marijuana Establishments THE DIRECTOR OF PLANNING AND DEVELOPMENT requesting amendments to the Newton Zoning Ordinance, Chapter 30, Sections 4.4 and 6.10, to amend the regulations for marijuana establishments to be consistent with the regulations put forth by the Cannabis Control Commission on January 8, 2021.**

The Planning and Development Board joined the ZAP committee for this item. Chair Crossley stated that tonight the Committee will be discussing proposed ordinance amendments in order to align the new the new regulations from the state Cannabis Control Commission (CCC), which now allows delivery and courier services.

Ms. Caira stated that no new information has been received since the last ZAP meeting on February 8, 2021, but to set the table for the public hearing, reviewed the key amendments necessary in a PowerPoint presentation, attached.

#### **New State Regulations**

The Cannabis Control Commission filed additional medical and adult use marijuana regulations on January 8, 2021. The new regulations make necessary updates to the City's Marijuana Zoning Ordinance, Chapter 30, Sections 4.4 and 6.10.3 first adopted in December 2018. Minor amendments include changes to terminology, changes to buffer zones around medical marijuana treatment centers to be consistent with retailers, clarification of buffer measurement, etc. The biggest change is to allow and regulate two new license types: marijuana courier and marijuana delivery operator.

### **Updates to Ordinance**

Ms. Caira explained that to stay consistent with State regulations, we must change the term “medical marijuana dispensary” to medical marijuana treatment center and update the product manufacturing definition to include packaging and transfer of products. Medical marijuana treatment centers must now be no closer than 500 feet from only public and private k-12 schools, which is the same as retail marijuana centers. Daycares, preschools and places where children commonly congregate are no longer included in the buffer. Section 6.10.4, the moratorium from 2018, will also be stricken from the Zoning Ordinance as it is no longer relevant.

### **Zoning Considerations for Delivery**

Ms. Caira stated that the biggest change is the regulation allowing for both marijuana couriers and marijuana delivery operators. The courier picks up from retailers or medical marijuana treatment centers and delivers directly to the customers. The delivery operator can store product on site, deliver and sell under their own brand. The marijuana courier may only transport marijuana, they may not sell marijuana. These kinds of uses are typical in manufacturing and limited manufacturing districts. These uses have a high and predictable parking need. It is expected drivers will generate minimal traffic, because they will pick up product only a few times a day, enough for a delivery route. The delivery operator will need a warehouse, requiring some level of security. After discussing these uses with potential applicants, the City feels that the parking and security needs and lack of public interface are not compatible with village centers and commercial districts. Licenses will be restricted to Social Equity and Economic Empowerment Applicants for 3 years beginning with the issuance of the first license.

### **Zoning Districts Considered**

Ms. Caira stated that the Planning department considered commercial and manufacturing districts as potential locations. Most of Needham Street is zoned Mixed Use 1 with limited Mixed Use 2. While marijuana delivery operations may be compatible with some existing uses there, it is not compatible with the Needham Street Vision Plan. Mixed use 4 is only applied in conjunction with a development project, requires active retail or commercial uses on ground floor with high transparency with housing above, therefore these uses are not appropriate for Mixed Use 4.

### **Zoning Recommendations for Delivery**

Ms. Caira stated the proposed ordinance would allow Marijuana Courier and Marijuana Delivery Operators by-right in Manufacturing (M) and Limited Manufacturing (LM) districts. This is consistent with uses allowed in these districts. These areas tend to be less pedestrian oriented, and residential uses are prohibited. This provides opportunities on both the north and south sides of the City. It is consistent with preliminary recommendations from nearby communities to locate delivery in industrial areas. The City is recommending by-right because eliminating the need for a Special Permit will benefit Social Equity and Economic Empowerment applicants by reducing the costs associated with the process and with “holding” a property while seeking local and state approvals. These uses are already highly regulated both by City Ordinance and the State CCC.

### **Proposes Marijuana Courier and Delivery Operator Zoning Map**

Ms. Caira noted on the map that the dark purple areas are the manufacturing zoning districts which are primarily north of the Mass Pike with a few sites south of Route 9. The light purple is a limited manufacturing district at Wells Avenue. Ms. Caira noted that the limited manufacturing area is greater than the sum of all of the manufacturing districts.

### **State Regulations**

Ms. Caira stated that the Cannabis Control Commission requires inspections to assure building and parking areas are secure. Vehicles must be owned or leased by the courier or delivery operator and must be unmarked. Vehicles must have separate secure, locked compartments for product and cash

value of product contained in the vehicle limited to \$10,000. Two agents staff each vehicle, and one must always remain with the vehicle. Deliveries may not occur before 8 a.m. or after 9 p.m. and no product may be visible from outside of building. When discussing with potential applicants they agree the building should be low profile for security reasons.

### **Additional City Regulations**

Ms. Caira stated that the uses must be in a permanent building and may not be in the same building as residential. The applicant must submit state approved emergency response, security, and operations and management plans for review and approval. No odors may be detected at the exterior of the building. Signage must be approved by UDC (though signage is unlikely for security purposes) and must comply with the State signage regulations which prohibit the use of marijuana imagery.

### **Host Community Agreement Process**

Ms. Caira stated that as with any cannabis facility, a host agreement signed by the Mayor is required before an operator may receive a license. In summary, Marijuana Courier and Marijuana Delivery Operator are like other uses allowed by- right in Manufacturing and Limited Manufacturing Districts. Under Cannabis Control Commission regulations and licensing processes, City ordinance, and Host Community Agreement, the use is well regulated, so a Special Permit is not necessary. Eliminating the need for a Special Permit provides greater opportunity for Social Equity and Economic Empowerment applicants.

Board, Councilor, and Committee members questions, answers and comments are below.

### **Q. The City recommends that the use not require a special permit. Do you know what nearby communities have done; are they doing this as a by-right? Could there be a regional facility rather than local facility?**

A. Ms. Caira answered that we don't know because neighboring communities are working on this now as well. She is not aware of a community who has passed their regulations. Ms. Caira then said that it is possible and is up to the individual operator whether they wish to deliver to other communities. Most applicants desire a 1,000-5,000 square feet for storage.

### **Q. What does a secure parking lot mean? Will fences or locks be required?**

A. Ms. Caira answered that she is not sure. Initially, applicants thought the State would require a fence, but there may be some flexibility if they prove to the State that parking is secure. It is required the facility pass an on-site inspection and all security plans must be approved by the CCC.

### **Q. Is there a limit to the number of delivery and transport facilities that may open in the City?**

A. Ms. Caira answered no, these facilities are not subject to the same retail cap. There are no solid proposals yet.

### **Q. Would the delivery operator sell for wholesale or retail?**

A. Ms. Caira answered that they would buy wholesale, store it, rebrand the product and sell retail directly to customers.

### **Q. Are the prices fixed for the product?**

A. Ms. Caira answered that the delivery operator would set the prices, market will dictate the prices. Prices are not regulated by the State.

### **Q. How are the operators licensed? Does the City or State prepare their license?**

A. Ms. Caira answered that the City and operator would have to complete the Host Community Agreement process. The operator would be licensed through the State.

**Q. Are potential delivery operators or delivery couriers looking specifically in manufacturing districts in Nonantum?**

A. Ms. Caira answered no, at this time most applicants seem to be looking at Wells Avenue.

**Q. The manufacturing districts in Nonantum are transforming. Has Planning considered the traffic increase and potential negative traffic impacts these vehicles may bring to neighborhoods in Nonantum?**

A. Ms. Caira answered that this will be like a small warehouse use, you will not know what is being stored there because the vehicles and building must remain unmarked. The public cannot visit the physical site. Parking will be important; vehicles will have to be stored on site. Potential applicants are mostly eyeing Wells Avenue because those sites have significant parking. She then said she has not heard of applicants desiring other locations, at this time. Regarding traffic, Planning thinks local traffic will be minimal. The City cannot regulate companies making deliveries in Newton from other areas.

**Q. Are we making any effort for delivery vehicles to be electric? If not, please encourage the companies to purchase electric vehicles.**

A. Ms. Caira answered that she did not think the City has the authority to regulate the type of vehicles.

**Q. Would the courier be independent? Can the courier use their personal vehicle?**

A. Ms. Caira answered no, individual drivers must be employees of the facility and may not use their own vehicle.

**Q. Is Rumford Avenue considered a manufacturing district?**

A. Ms. Caira answered it depends what part of Rumford Avenue. Part of Rumford Avenue is manufacturing, and part has business districts near Riverview Avenue.

Chair Crossley then opened the public hearing.

Scott Rodman, 28 Salisbury Road, Newton asked if the City would receive the 3% sales tax revenue from the delivery operators.

Ms. Caira answered that the State is determining where the 3% sales tax will go, communities where they are physically located or where the customer is located, and the delivery is made. Ms. Lawlor clarified and stated that the regulations make clear that although delivery operators are not retailers, they are subject to the state tax and 3% municipal tax for municipalities that opted into the local tax option. What is unclear is whether the municipal tax will be paid to the community in which the facility is located or the community in which the delivery is made. The CCC is consulting with the Department of Revenue who has not determined if it is the host community who will receive the tax revenue or if it will be shared with the communities to whom the product is being delivered. Mr. Rodman then said that the revenue would be an advantage to the City

Terry Sauro, 44 Cook Street, Newton, expressed her concern with the traffic due to (the existing marijuana retailer) Garden Remedies. She then asked if the couriers will be making deliveries to Garden Remedies?

Chair Crossley answered that there is no connection between delivery operators and retail shops, they are in a way competitors. Ms. Caira answered that the delivery operators are independent sellers that may be more like competition to existing retailers, but the courier will partner with retailers to deliver products for them. Planning expects the delivery services to cut down on the number of people waiting at the retailers because they will be getting a delivery instead.

Chris Jacobs, 244 Jackson Street, Newton, a representative from The Emerald Turtle, a potential cannabis delivery operator, said that the delivery companies do not want residents to realize they are in the City and they want to be a good neighbor.

Councilor Krintzman made a motion to close the public hearing. Committee members agreed 8-0.

**Q. Through the Host Community Agreement can the City ensure the City receives the (impact fee) revenue?**

A. Ms. Lawlor answered that the City can negotiate a community impact fee in the HCA. However, the CCC will and DOR will determine and let municipalities know which municipalities will be eligible to collect the 3% tax, which is separate from the impact fee. At this time, the City is hopeful they will be the recipient of the 3% local option tax.

**Q. There is difficult traffic at the traffic signal into the Wells Avenue area. What times will these services operate?**

A. Ms. Caira answered that deliveries cannot happen before 8 am or after 9 pm. It is necessary for a resident to be home to accept delivery. Perhaps evenings and weekends might be a more popular time. The City does not anticipate much traffic because the couriers make many deliveries before returning to the warehouse to pick up more product. Both ward 8 Councilors agreed that there would be minimal increased traffic in this area.

**Q. Does the City know when the CCC will decide how the tax revenue will be allocated? If not, perhaps we should wait to pass this item until a definitive answer is given.**

A. Ms. Lawlor answered that she did not yet have this information. She is hopeful a decision will be made soon. Couriers and operators are beginning to be licensed. She then said that once a license is granted, without zoning in place you do not have control over where they can locate. Ms. Caira added that these are social equity and economic empowerment applicants, who the City wants to help secure a location. The City has one economic empowerment applicant for retail. The City wants to get zoning in place to allow them to get up and running.

**Q. Is there the potential for couriers to charge commission or will the law stop this from happening?**

A. Ms. Lawlor answered that the City cannot regulate charges. The CCC regulations state that couriers and retailers must have a contract and deal 'at arm's length' and believes the contract must be submitted to the CCC. Delivery operators will set their own prices.

Councilor Albright made a motion to approve this item. Committee members agreed 8-0.

Upon a motion by Mr. Steele and seconded by Mr. McCormick, the Planning and Development Board also voted to close the public hearing and approve this item, with Mr. McCormick and Mr. Robertson serving as voting members. Board members voted 5-0-1 in favor of the item, with Mr. Heath abstaining.

## **2. Adjournment**

The Planning and Development Board meeting was concluded at 7:55 p.m.