



## Memorandum

To: City Council  
From: Councilor Lisle Baker  
Subject: Proposed amendments to the firearms ordinance  
Date: June 1, 2021

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The following is an outline of proposed amendments to the proposed ordinance that I will offer again, in slightly modified form, to Council on June 2, followed below by the proposed language involved. I will defer specific comments on their merits until the Council meeting. This memorandum is simply to provide an explanation of them and some suggestions about our process for deliberating on them.

I suggest that these amendments be considered in the following order:

1. Presence of parent or guardian with minors in stores. This amendment would require a parent or guardian to be present when someone under 18 enters a firearm store, rather than simply an adult. (I understand that the Law Department has no objection to this amendment.)
2. Consider the location of nearby firearm businesses outside of Newton. This amendment would allow consideration of the location of a firearm business outside Newton, which is what occurs for adult entertainment. (The Law Department has not taken a position on this change.)
3. Clarify consideration of the affected neighborhood in the special permit process as including uses outside of Newton. This amendment would further clarify that, in assessing a special permit application on the neighborhood, the City Council can consider uses outside the City, as is already implicit (While not endorsing the policy, this language was suggested by the Law Department as preferable to a more specific recitation of protected uses.)
4. Treat Newton passive recreation conservation land the same as Newton passive recreation park land. The proposed ordinance already protects passive recreational parklands (like Cold Springs Park). This amendment would treat other passive recreational conservation land (like Webster Woods) the same. I understand that measuring 1000 feet from all such passive recreational land in Newton would remove some small but possible firearm business sites available within the City, such as a portion of Wells Avenue, the area near North Street, the movie theatre and restaurant end of The Street in Chestnut Hill on Route Nine, and some of the Rumford Avenue options. Even with those adjustments, however, a portion of The Street commercial area in Chestnut hill on Route Nine and some of the land near Rumford Avenue away from the Flowed Meadow conservation area would apparently still be available for locating firearm businesses. (This mapping is different from the one prepared by the Planning Department last week which would involve conservation land both within and without the City, essentially combining this amendment and a 5<sup>th</sup> amendment below. By Wednesday, we may be able to have more specific mapping that clarifies this result; in the meantime, you can go to

[\[https://www.newtonma.gov/home/showpublisheddocument/27791/637262371330300000\]](https://www.newtonma.gov/home/showpublisheddocument/27791/637262371330300000) to view the map of Newton's open spaces which has a scale on it that would allow you to do your own rough analysis.)

5. Include protected uses outside of Newton to create the buffer zones. This amendment that would make protected uses, whether within or outside Newton, places from which the applicable buffers would be measured. (Thus, child-care facilities, recreational open space or other protected uses outside Newton would be protected in the same way as if they were located within Newton.)

I view these amendments as potentially strengthening the ordinance in its protections for people in the protected areas while not constituting an outright zoning-based ban, which is the subject of a separate docket item. Because this is an important distinction about which the Law Department may have some views, I believe it is important to outline the distinctions in advance of our discussion to save time on Wednesday evening.

First, the first four amendments would leave some land and structures available for siting firearm businesses within the City. Second, unlike an outright ban, the effects on the siting of firearm businesses are grounded in protecting people in other specific uses of land by reasonable distancing requirements, a common feature of zoning ordinances involving other kinds of uses, such as recreational marijuana and adult entertainment. (See Section 6.10 of Newton Zoning Ordinances relating to Restricted Uses.)

Moreover, even if all five amendments were to be adopted, any of the buffer distances (existing or as may be amended) can be waived by the Council incident to a special permit application for a firearm business, as the proposed ordinance currently provides. (Please see the relevant text from the proposed ordinance below. This language is not found, for example, in our adult bookstore ordinance which has similar buffer zones.) In theory, even without my proposed amendments, it would be open to an applicant for a firearm business to seek to site it in any of the permitted zones and ask the Council to waive any or all of the applicable buffer zones, just as we often see other special permit applicants do for otherwise applicable requirements, like parking.

Finally, while it is open to the Council to vote by a three-quarters vote to suspend the Rules to hear further from the Law or Planning Departments about these amendments, I note that the City Solicitor has previously provided a written statement in addition to her oral comments at prior meetings of the Zoning and Planning Committee or the Council. Having also advised the Council that litigation about this ordinance was not imminent enough to qualify for Executive Session for her advice, it would be ironic if such litigation became more imminent because her further advice on June 2 might be offered in evidence in any litigation against the City involving the effect of the firearms zoning ordinance as ultimately adopted. Also, oral commentary is not as specific as written advice and takes more time from the Council deliberation itself.

Therefore, if the City Solicitor wishes to advise the Council further, I suggest it might instead be done by a memo subject to the attorney-client privilege and therefore not a public record. For similar reasons, if the Planning Department offers further guidance, I suggest it might also be in writing and be limited to the effects of the proposed amendments on siting firearm businesses and not opine on their legality, which is the province of the Law Department. These decisions, however, are up to the Council. In the meantime, I have copied both the Law and Planning Departments on this memorandum so that they will be aware of these suggestions.

**Amendment 1: To make sure minors having access to a firearm store are properly accompanied.**

16. No persons under the age of 18 shall have access into or within a Firearms Business Use, with the sole exception that minors age 14 and older may access a Firearms Dealer accompanied by ~~an~~ **adult a parent or guardian.**

**Amendment 2: To clarify that the 1000-foot buffer from firearm business uses includes those over the City line (as is the case with adult bookstores under Newton zoning).**

3. Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, or an existing Firearm Dealer or Firing Range at another location, **whether such firearm business use is located within or without the City's boundaries.** All distances in this Section shall be measured in a straight line from any point on the building containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein.

**Amendment 3: To clarify that special permit considerations of the welfare of the neighborhood can include parts of the neighborhood that may be over the Newton City line.**

G. Special Permit Criteria. In granting a special permit for a Firearm Business Use, in addition to finding that the general criteria for issuance of a special permit are met, the City Council shall find that the following criteria are met:

1. Criteria for all Firearm Business Uses:

- a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot.
- b. The establishment will have adequate and safe storage, security, and a lighting system.
- c. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- d. The establishment is designed to minimize any adverse impacts on abutters or pedestrians.
- e. The location and operating characteristics of the proposed use promotes, and will not be detrimental to, the public health, safety and welfare of the neighborhood, **which may extend into an adjacent municipality,** or the City.

**Amendment 4: To clarify that the passive recreational use of land is protected whether as park land or other open space.**

3. Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public ~~park~~ **land** intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, or an existing Firearm Dealer or Firing Range at another location. All distances in this Section shall be measured in a straight line from any point on the building containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein.

**Amendment 5: To clarify that protected uses can include those over the Newton City line.**

3. Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, or an existing Firearm Dealer or Firing Range at another location, **whether within or without the City's boundaries**. All distances in this Section shall be measured in a straight line from any point on the building containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein.

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(Note: No. 4 in the proposed ordinance special permit process provides for a waiver of buffer requirements.):

*4. In appropriate circumstances, the City Council may grant a special permit for a Firearms Business Use even if the location of the proposed use does not comply with the buffer requirements set forth in Sec. 6.10.4.E.1-3 herein, but only upon a finding that the proposed location is sufficiently buffered by existing conditions such that the uses enumerated in paragraph Sec. 6.10.4.E.1-3 will not be adversely impacted by the Firearm Business Use.*

Cc: Newton Law and Planning Departments