



# **Zoning & Planning Committee** **Report**

## **City of Newton** **In City Council**

**Wednesday, May 26, 2021**

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

**Also Present:** Councilors Gentile, Kelley, Oliver, Lipof, Lucas, Noel, Bowman, Greenberg, Humphrey, Laredo, Malakie, Norton, Kalis and Downs

**City Staff:** Commissioner of Inspectional Services John Lojek, Chief Operating Officer Jonathan Yeo, Director of Planning and Development Barney Heath, CPA Program Manager Lara Kritzer, Deputy Director of Planning & Development Jennifer Caira, City Solicitor Alissa Giuliani, Assistant City Solicitor Maura O'Keefe, Assistant City Solicitor Andrew Lee, Assistant City Solicitor Jonah Temple

Planning Board: Peter Doeringer (Chair), Chris Steele, Kevin McCormick, Barney Heath

Others Present: NewTV

**#182-21**      **Request for Ordinance Amendment to prohibit firearm use(s) in Newton**  
COUNCILORS GENTILE, NORTON, GREENBERG, OLIVER, WRIGHT, KALIS, LUCAS, MARKIEWICZ, MALAKIE, GROSSMAN AND LAREDO requesting a new ordinance to prohibit the sale and manufacturing of firearms in Newton.

**Action:**      **Zoning & Planning Committee Approved 8-0**

**Note:**            The Chair read item #182-21 into the record and explained that it is the intent that the Committee hold a preliminary discussion and set a public hearing. The Committee was joined by City Solicitor Alissa Giuliani, Associate City Solicitors Andrew Lee, Jonah Temple and Maura O'Keefe, Director of Planning & Development Barney Heath and Deputy Director of Planning and Development Jennifer Caira for the discussion.

Atty. Giuliani addressed the Committee and reiterated her concern related to pursuing a full ban or any ordinance that by design would eliminate all potential for the sale of firearms in Newton. She emphasized the belief that a ban will be challenged and stated that it is not likely that a ban would withstand that challenge. Atty. Giuliani noted that if the ban was challenged, tying it to a

fallback/alternative provision is not the recommended course of action. She stated that if the City Council wishes to pursue a ban, the Council should first move to approve the restrictive zoning as proposed under docket item #145-21, which would offer the City the greatest protection now, as well as later, while allowing further investigation under subsequent docket items. Atty. Giuliani urged the City Council to act first on the restrictive zoning crafted under docket item #145-21 to enable protection now, even in the event a ban is pursued.

Councilor Gentile introduced item #182-21 and explained that the following draft language has been provided to the City Council and the City Solicitors office.

*“No person shall operate a business or commercial establishment in the City of Newton engaged in the sale of or manufacture of firearms, as defined under Massachusetts law; nor shall any person operate a firing range within the City of Newton. No permit shall issue for any such business. Any person violating this section shall be subject to penalties of \$1,000 per day and other enforcement action under the City Code.*

*If the foregoing prohibition should become unenforceable at any time, for any reason, the following provisions, which have been enacted in accordance with Chapter 40A of the Massachusetts General Laws, shall apply to any business involving firearms. [INSERT LANGUAGE OF ALTERNATIVE NO. 5 CURRENTLY BEFORE US]”*

Councilor Gentile explained that the second paragraph is in response to concerns that a ban could be determined unenforceable and/or struck down in court. He noted that some lawyers who reside in Newton have told him that “fallback zoning” could be effective. Councilor Gentile noted that the Law Department has confirmed that they have found no rulings that prohibit a municipality from banning gun stores from within their communities (from the following courts; US District Court, the First Circuit Court of Appeals, the Mass SJC, or the US Supreme Court).

Atty. Giuliani responded to Councilor Gentile’s question saying that the firearm zoning matter is a second amendment issue. *She explained that there are several factors that inform the Law Department’s opinion on how the courts might view such cases.* Atty. Giuliani noted that if an ordinance to ban gun stores is approved and then fails against a challenge, an overturned ban could result in long-term, widespread implications for other municipalities throughout the country. She assured Councilors that the Law Department’s goal is to advise the Council to get to a final place without risking adverse action, without violating the law and while helping to make decisions that are defensible.

A Councilor noted that the Supreme Court would not necessarily take the case and it is not certain how the case would be treated (by the courts). In response to a question from a Councilor, Atty. Giuliani confirmed that upon such a challenge, the City would welcome opportunities to work with outside attorneys with expertise in this area. She noted that the team of attorneys from the city law department has been working intensely on this matter for weeks, including consulting with national experts on regulating firearms. Law has also been in communication with the Town

of Wellesley, who have an item before them to consider a ban or restrictive ordinance. A Councilor suggested that the Law Department consider how the City might enact Home Rule Legislation and/or a general ordinance (as opposed to zoning amendment).

A Councilor requested that the Law Department provide an opinion on the court's decision that Governor Baker's firearm store shut down during the pandemic posed an improper burden to the constitutional rights to individuals seeking to purchase firearms.

Councilors acknowledged the importance of acting on the restrictive zoning ordinance (#145-21) as quickly as possible to provide some immediate protection for the City. Councilors noted that special permit criteria has been added to the language proposed under #145-21 to set a **very** high standard for operators/petitioners. It was noted that the City Solicitor's office will draft language for the public hearing notice for item #182-21. With that the Committee voted to hold a public hearing as soon as possible in June 2021. The Committee held the item without any further discussion.

Follow Up: A public hearing was subsequently scheduled to be held on June 21, 2021.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**