



## City Council Actions

### In City Council

**Monday, November 19, 2018**

**Present:** Councilors Albright, Auchincloss, Baker, Brousal-Glaser, Ciccone, Cote, Crossley, Danberg, Downs, Greenberg, Grossman, Kalis, Kelley, Krintzman, Lappin, Leary, Lipof, Markiewicz, Noel, Norton, Rice, Schwartz and Laredo.

**Absent:** Councilor Gentile

**The City Council discussed the following item on Second Call:**

#### **Referred to Zoning & Planning Committee**

**#376-18      Zoning amendment to regulate marijuana establishments**

THE PLANNING DEPARTMENT requesting amendments to the Newton Zoning Ordinance, Chapter 30, to regulate the use of land, structures and buildings for the operation of marijuana establishments; to determine in which zoning districts and under what conditions marijuana establishments will be allowed; and to establish minimum standards and criteria.

**Zoning & Planning Approved as amended 6-0-1 (Brousal-Glaser abstaining)**

**Motion to Amend section 6.10.3.E.11 to read as follows so as to reduce the allowable square footage from 5,000 to 4,500: 11. No RMD or Marijuana Retailer or co-located facility shall exceed 4,500 square feet of area Failed to Carry 20 Nays, 3 Yeas (Councilors Auchincloss, Baker and Cote), 1 Absent (Councilor Gentile)**

**Item Chartered by Councilor Schwartz**

Clerk's Note: The item was presented by the Chair of the Zoning & Planning Committee. She noted that the City currently has a moratorium until December 31, 2108. The Zoning and Planning Committee worked on it before the election but waited until after the election to complete its review of the Planning Department's recommendations. The City must provide the opportunity for 8 establishments. There is a map showing the districts where they would be allowed. The maximum square footage would be 5,000 sq. ft. and the façade has to have at least 25% transparency. There is a buffer of ½ mile between stores. There is a security plan which has to be approved by the Police. Councilor Baker placed the item on second call. The State Cannabis Control Commission says under the definition of the law, local laws cannot be so difficult to comply with that they would subject licensees to unreasonable risk or require such a high investment of risk, money, time, or other resources or an asset, that a reasonable prudent business person would not operate a marijuana establishment. The question then is what is the size that makes sense? There have been two proposals that we have seen so far; Garden Remedies and Cypress Tree site? Garden Remedies will be about 2,000 sq. ft on the first floor and approximately another 2,000 sq. ft. in the basement for staff and include vault storage and administrative areas. Cypress Tree is a little over 4,000 sq. ft. total. There seems not to be need of anything quite as large as 5,000 sq. ft. but for a margin of safety, how would 4,500 sq. ft work? Councilor Baker offered an amendment to reduce the

space to 4,500sq. ft. If we have eight facilities in the city, he felt they should be on the smaller size rather than large. Brookline's size is 5,000 sq. ft. and it was indicated that Amherst has a limit of 2,500 sq. ft. for recreational that excludes areas that are only accessible to staff. The question is what is a reasonable number that would allow these facilities to go forward but not be so large to make them too large? The Chamber that we sit in plus the area in which the public sits is under 4,500 sq. ft. That seems to be a reasonable size for any facility of this type which is going to be dealing with different versions of one product. The motion was seconded by Councilor Auchincloss.

Councilor Cote felt that 5,000 sq. ft. was a significant size for any store. He noted that Garden Remedies will be both a medical and recreational operation. He noted that Councilor Baker was more generous in the areas he would allocate. He said we don't have to deliver eight permits; we have to have space where they can be built. Maybe there should be a limitation on retail floor space; maybe only 2,000 sq. ft. of retail floor space. He has concern that the big operators will take over the little people and would move that the zoning be changes so that only one owner can have that number of square feet.

Councilor Albright felt a private consultation area was needed as some people do not know what they are buying. Councilor Albright called Garden Remedies and talked to the Manager to be sure that she was giving the right list to the Council. The proposal is to reduce by 500 sq. ft. which is very small amount. The problem is nobody is going to build a building to sell marijuana. They will look all over the city to find a building that will suit their needs. There was a building that was looked at that was 4, 560 sq. ft., but this would not be eligible under this proposal. It was 60 sq. ft. too big. The problem is there may not be enough spaces in this city to house the eight marijuana establishments that the Zoning Code allows if limited. It is not that everybody is going to have a 5,000 sq. ft. facility; it is just that flexibility is needed to find a building that is the right size and in the right place to do this work. Councilor Albright's recommendation is that we not reduce this amount. Flexibility is needed for those kinds of locations to allow eight facilities.

Councilor Crossley feels the chamber is one big room unlike the facility that would have other rooms. She is concerned that the Council not unfairly limit the opportunities within the City and wasn't sure whether doing this would or would not. Since there is a limited amount of commercial space available, and she does not see how it makes any substantive difference to what it is that our city has voted twice to do and will not support the amendment.

Councilor Leary also was not sure about the merits of the amendment. When you compare some of buildings that are 5,000 sq. ft., they do not seem large. She is concerned about giving these establishments some flexibility so that they could locate in different areas of the City and was not sure that lowering the 5,000 sq. ft. would be in the Council's interest. A medical facility would need private spaces and didn't see lactation rooms on the list. All of this is by Special Permit and we are not requiring marijuana facilities to be in huge spaces.

Councilor Brousal-Glaser asked if a friendly amendment would be accepted that just the retail part, not including the offices be limited to 2,500 sq. ft. as Amherst does? Councilor Baker said he had not been able to talk this over with the Planning Department and was not willing to accept the amendment at this time.

Councilor Schwartz stated that if a proposal comes in with 5,000 sq. ft. store, the Council cannot say that is too big if our ordinances say that it can be up to 5,000 sq. ft.

Councilor Cote stated that the Planning Department based their measurements on the two applications they have received from well-financed individuals. Garden Remedies was asked if they could give the sq. footage of the

national average for retail operations and it was ignored and never provided. What we have is the Planning Department's recommendations and background knowledge that comes from the two applications they received that included medical marijuana dispensaries that would turn into retail operations.

Councilor Crossley said what she understood was that if there is a retail and medical facility, the total sq. footage is still limited to 5,000 sq. ft. Councilor Albright stated that was accurate and 5,000 sq. ft. is the entire operation.

The vote to amend the ordinance to reduce the size of the operation to 4,500 sq. ft. failed to carry, 20 yays, 3 yeas, 1 absent.

Councilor Schwartz spoke on the original docket item. He noted that his concern throughout has been that the zones are pretty large and they are pretty diffuse; so they are varied. One of the zones, BU2, allowed medical marijuana in and allowing recreational in allows places such as Newton Four Corners as well as Newton Center which in the corners of them where these potential sites are located, there is quite a bit of residential very close to them. If we had a Zoning Code that was a little more surgical and, more discreet in its separations we could potentially limit this to village centers, for example or purely commercial areas unfortunately we are not able to do that if we include something like the BU2 zone. We have heard a lot of public comment with expressions of concern about the impact and the closeness to residential areas and uses. Councilor Schwartz is still a little disappointed that our Zoning Code, at least in its current form, does not allow us to be more specific as far as where these potential sites will be. He appreciates where the limitations have been added like 500 ft. from schools and places where children will congregate as well as the half mile radius. He pointed out that when you look at a map and you see that half mile radius, it is not two half-mile radiuses, but it is right at the edge of that half mile radius is where the center of the next circle would be. Sometimes people will think that it is going to be two radiuses, it is not, it is one half mile. Councilor Schwartz still feels very uncomfortable and would be open to some discussion and thinking about whether limiting it somehow within a zone to link it to some other use like within a certain amount of feet of a liquor store would be a way to keep it closer to the commercial parts of the zone and away from the residential parts or at least closer to those parts of districts that people have come to expect to have this kind of commercial activity in.

Councilor Kelly also has concerns over the limitations put on the districts. She feels it is now an obligation to accommodate up to eight and does not understand why some of the manufacturing districts would not be appropriate.

Councilor Albright said in order to make the eight sites, BU2 had to be included. She noted that this is a primarily residential city. No matter where the locations would be including manufacturing, there is nothing in the city that is not near residential. When the new Zoning Code comes in, most likely there would be an overlay, and that means we can be more surgical in where marijuana is located.

Councilor Auchincloss said that within the constraints set by the state and with the mandate established by the voters, this is a reasonable plan being put forward for retail marijuana. In his opinion, welcoming industrial THC to the city is poor policy and not a benefit to Newton.

Councilor Markiewicz has a concern that it will be difficult to adequately distribute the dispensaries. There is an economic opportunity to all of this, and given the types of sites available, they could be clustered in a certain part of the city. He feels more work needs to be done.

Councilor Cote has discomfort and unease about passing this at this time in the current form. About 40,000

residents voted. 18,000 voted to "Opt-Out" and 18,000 also voted for limitations on the sale to two to four establishments. Out of 40,000 about 36,000 plus voters wanted two to four or none. Now there are eight and we should be mindful of that.

Councilor Schwartz's said once the moratorium is over, people can make their applications and then there would be no going back and saying no, the rules are different. He wondered how that would work with changing the zoning after this has been passed and people have already put in applications. He doesn't see how legally there could be an overlay after the fact if some recreational facilities have already been applied for and even approved that are not where we have the overlay in the future. In response Councilor Albright said that the ones that are already here by the time we change zoning, would not be told to close. Whatever is approved in the next year will be here. It is quite legal to do an overlay so the zoning will change in the whole city and this is what the Planning Department has proposed. President Laredo asked for a clarification regarding whether something passed cannot be changed. Anything that had not been formally docketed, is fair game. If an application for a Special Permit is pending, can the rules be changed? In response Councilor Albright said she believes the sequence is something that has to be docketed, once that element is docketed, and someone applies after that, the zoning would apply. Once something is docketed it would apply to anyone opening a shop.

Councilor Laredo said you would want to give fair notice to applicants. An applicant who knew that there was a proposal to change the zoning ordinance during the course of their application would be on notice of that. Councilor Baker clarified that the normal rule is once an item has been advertised, even if it has not been passed, you can't move forward with any comfort because it relates back to the moment of advertising.

Councilor Brousal-Glaser said the north side of the city seems unduly burdened with more shops than the south side.

Councilor Schwartz chartered the item.

**The City Council voted without discussion 23 Yeas, 1 Absent (Councilor Gentile) to Approve the Committee recommendations on the following items:**

**Referred to Land Use Committee**

Thursday, November 8, 2018

- #496-18**      **Petition to amend Special permit #19-15 to allow veterinary hospital on Needham St**  
**VETERINARY EMERGENCY GROUP/WELLFORD CORP./NEWTON TECHNOLOGY PARK**  
**LLC./CROSSPOINT ASSOCIATES** petition for **SPECIAL PERMIT/SITE PLAN APPROVAL** to  
amend Special Permit #19-15 to locate a veterinary hospital in an existing Newton Nexus  
building at 131-181 Needham Street, Ward 5, on land known as Section 51 Block 28 Lots  
10, 11, 12, 13, 14, and 15, containing approximately 11 acres of land in a district zoned  
MULTI USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1 of the City of Newton Rev Zoning Ord, 2017.  
**Land Use Approved 7-0; Public Hearing Closed 11/8/2018**

**#514-18** **Special Permit Petition to allow garage in excess of 700 sq. ft. at 244 Dudley Road**  
RUIHUA GU petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story detached garage, greater than 700 sq. ft. containing accommodations for ten vehicles at 244 Dudley Road, Ward 8, Newton Centre, containing approximately 267,786 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3, 7.4, 3.4.2.B.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.  
**Land Use Approved 6-0 (Crossley not Voting); Public Hearing Closed 11/8/2018**

**#513-18** **Petition to exceed FAR at 43 Kenwood Avenue**  
MARK AND MARTHA FISHMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 161 sq. ft. second floor addition, in the existing footprint of the house, exceeding the maximum allowable FAR of .37 where .42 exists and .44 is proposed at 43 Kenwood Avenue, Ward 6, Newton Centre, on land known as Section 64 Block 20 Lot 22, containing approximately 10,652 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3, 7.4, 7.8.2.C.2, 3.1.9 of the City of Newton Rev Zoning Ord, 2017.  
**Land Use Approved 6-0 (Crossley not Voting); Public Hearing Closed 11/8/2018**

**Referred to Land Use Committee**

Tuesday, November 13, 2018

**#562-18** **Request for an Extension of Time for Special Permit at 19-21 Beaconwood Road**  
LENTO DEVELOPMENT, LLC/KENNETH LENTO petition for an EXTENSION OF TIME to EXERCISE SPECIAL PERMIT COUNCIL ORDER #129-17 to raze and replace a two-family structure and allow a 4% reduction to the required lot area after combining lots at 19-21 Beaconwood Road, Ward 8, on land known as Section 54, Block 22, Lot 0044 and Section 54, Block 022, Lot 0047, containing approximately 9,602 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3, 7.4, 7.8.4.D.4, 7.8.4.D.5, 7.8.4.A of the City of Newton Rev Zoning Ord, 2017.  
**Land Use Voted No Action Necessary 8-0**

**Referred to Public Facilities Committee**

Wednesday, November 7, 2018

**#556-18** **Granting of an easement in Washington Street**  
HER HONOR THE MAYOR requesting authorization to grant underground easement containing 737 sq. ft. to Mark Newtonville, LLC in Washington Street along the site of the Washington Place development project for underground footings, as noted on Drawing No. 2 of 3 a plan entitled "Easement Plan for Underground Footing", dated October 25, 2018, prepared by Control Point Associates.  
**Public Facilities Approved 7-0 (Danberg not Voting)**

**#557-18**      **Acceptance of a sidewalk easement abutting Walnut Street**  
HER HONOR THE MAYOR requesting authorization to accept a sidewalk easement granted by Mark Newtonville, LLC with a length of approximately 220' and area of 2099 sq. ft. abutting Walnut Street, as noted on Drawing No. 3 of 3 a plan entitled "Easement Plan", dated October 25, 2018, prepared by Control Point Associates.  
**Public Facilities Approved 7-0 (Danberg not Voting)**

**Referred to Public Facilities and Finance Committees**

**#535-18**      **Appropriate \$500,000 for interior improvements at the library**  
HER HONOR THE MAYOR requesting authorization to appropriate five hundred thousand dollars (\$500,000) from bonded indebtedness for the purpose of funding the design, procurement, and construction of the interior improvements at the Newton Free Library.  
**Finance Approved 7-0 on 11/14/18**  
**Public Facilities Approved 6-0-1 (Danberg abstaining, Kelley not Voting)**

**Referred to Public Facilities and Finance Committee**

**#560-18**      **Appropriation window replacement and accessibility designs at Lincoln-Eliot School**  
HER HONOR THE MAYOR requesting authorization to appropriate one hundred fifty thousand dollars (\$150,000) from Free Cash for the purpose of funding the Lincoln-Eliot Elementary School window replacement and accessibility improvements design.  
**Finance Approved 7-0 on 11/14/18**  
**Public Facilities Approved 7-0 (Kelley not Voting)**

**Referred to Public Facilities and Finance Committee**

**#561-18**      **Appropriation of \$300,000 for building upgrades at Fire Stations 1 & 2**  
HER HONOR THE MAYOR requesting authorization to appropriate three hundred thousand dollars (\$300,000) from Free Cash for the purpose of funding upgrades at Fire Stations 1 and 2 including isolation of apparatus bay from living quarters and pole rehab/replacement.  
**Finance Approved 7-0 on 11/14/18**  
**Public Facilities Approved 7-0 (Kelley not Voting)**

**Referred to Finance Committee**

Wednesday, November 14, 2018

**#472-18**      **Selection of external auditor for FY 19 –FY 23**  
COMPTROLLER requesting that the City Council select a qualified public accounting firm to complete the City's annual financial audit for fiscal years 2019 to 2023.  
**Finance Approved 7-0**

- #558-18 Mayor's reappointment of Antonio Bianchi as a constable**  
HER HONOR THE MAYOR reappointing ANTONIO BIANCHI, 15 Colonial Avenue, Newton, reappointed as a Constable for the City of Newton for a term of office to expire November 1, 2021. (60 days 01/04/19)  
**Finance Approved 7-0**

**Referred to Public Facilities and Finance Committees**

- #535-18 Appropriate \$500,000 for interior improvements at the library**  
HER HONOR THE MAYOR requesting authorization to appropriate five hundred thousand dollars (\$500,000) from bonded indebtedness for the purpose of funding the design, procurement, and construction of the interior improvements at the Newton Free Library.  
**Public Facilities Approved 6-0-1 (Danberg abstaining; Norton not voting) on 11/07/18**  
**Finance Approved 7-0**

**Referred to Public Facilities and Finance Committee**

- #560-18 Appropriation window replacement and accessibility designs at Lincoln-Eliot School**  
HER HONOR THE MAYOR requesting authorization to appropriate one hundred fifty thousand dollars (\$150,000) from Free Cash for the purpose of funding the Lincoln-Eliot Elementary School window replacement and accessibility improvements design.  
**Public Facilities Approved 7-0 (Kelley not voting) on 11/07/18**  
**Finance Approved 7-0**

**Referred to Public Facilities and Finance Committee**

- #561-18 Appropriation of \$300,000 for building upgrades at Fire Stations 1 & 2**  
HER HONOR THE MAYOR requesting authorization to appropriate three hundred thousand dollars (\$300,000) from Free Cash for the purpose of funding upgrades at Fire Stations 1 and 2 including isolation of apparatus bay from living quarters and pole rehab/replacement.  
**Public Facilities Approved 7-0 (Kelley not voting) on 11/07/18**  
**Finance Approved 7-0**

**A Motion to Suspend the Rules to allow the Chair of the Finance Committee to Report out the following item without a written report was approved by Voice Vote.**

- #563-18 Request for approval of FY 19 Property tax levy distribution percentages**  
DIRECTOR OF ASSESSMENT ADMINISTRATION submitting for City Council review and approval the FY 19 Municipal Property Tax Levy Distribution Percentages among residential, open space, commercial and industrial classes of Real Property.  
**Motion to approve a shift of 175% (174.9%) for a residential factor of .916381 Approved by Voice Vote in the Committee of the Whole**

**A request by Councilor Markiewicz to adjust the language of the following docket item and to refer the item to Zoning & Planning and Finance was Approved on First Call.**

**#576-18 Discussion of a visioning process for Riverside MBTA station**  
COUNCILORS KRINTZMAN, GENTILE, MARKIEWICZ, LAREDO AND AUCHINCLOSS requesting a discussion with the Director of Planning on conducting a visions process for the potential development of the land around the Riverside MBTA station.

**Motions to Suspend the Rules to Accept to the Docket and Refer to Committee the following late filed docket items were Approved by Voice Vote.**

**Referred to Public Safety & Trans. and Programs & Services Committees**

**#589-18 HRL to allow the Fire Chief to continue beyond the mandatory retirement age**  
HER HONOR THE MAYOR requesting Home Rule Legislation to allow Fire Chief Bruce Proia to continue employment as the Fire Chief of the City of Newton beyond the mandatory retirement age.

**Referred to Finance Committee**

**#590-18 Transfer of \$350K to fund the FY 19 MOA ratified by the IAFF**  
HER HONOR THE MAYOR requesting authorization to transfer the sum of three hundred fifty thousand dollars (\$350,000) from Wage Reserve to the Fire Department's Full-time Salaries Fire Rescue account to supplement funding required for the settlement of the FY 2019 Memorandum of Agreement that was recently ratified by the International Association of Fire Fighters.

***Public Hearings were assigned for the following items:***

***Public Hearing assigned for December 10, 2018:***

**#572-18 Zoning Amendment to delay effective date of garage ordinance**  
DIRECTOR OF PLANNING proposing to further amend Chapter 30, Section 3.4.4 of the Revised Ordinances, as amended by Ordinance B-6, to implement a deferred effective date for the Ordinance of December 31, 2019 or such other appropriate date, for the purpose of allowing the Planning Department to complete a comprehensive study thereof.

***Public hearing assigned for January 8, 2019***

**#564-18 Petition to allow nine-unit multi-family dwelling at 39 Herrick Road**  
STUART ROTHMAN/HERRICK ROAD REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a 36' three-story nine-unit multi-family dwelling with accessory parking for nine cars, to allow multi-family residential use on the ground level in a BU1 district, to allow a reduction to one parking stall per unit, to allow off-site parking facilities, to allow parking in the side setback, to allow a reduced minimum aisle width, to locate



end space with reduced maneuvering aisle, to waiver perimeter screening requirements and to waive lighting and surfacing requirements at 39 Herrick Road, Ward 6, on land known as Section 61 Block 36 Lot 7, containing approximately 12,979 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 4.1.2.B.3, 5.1.4, 5.1.13, 5.1.6.A, 5.1.6.B, 5.1.8.A, 5.1.8.B.6, 5.1.8.C.2, 5.1.9.A, 5.1.10 of the City of Newton Rev Zoning Ord, 2017.

***Public hearing assigned for January 8, 2019***

**#565-18** **Special Permit Petition to amend Council Order #217-16 at 50-52 Rowe Street**  
NEW NEWTON, LLC./DANIEL SZETO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Order #217-16 to construct a detached carport for the existing single-family dwelling at 50-52 Rowe Street, Ward 4, Auburndale, on land known as Section 44 Block 23 Lot 06, containing approximately 19,321 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

***Public hearing assigned for January 8, 2019***

**#566-18** **Petition to allow multi-family dwellings at 424-432 Cherry Street**  
DENNIS CAMERON/CRM MANAGEMENT, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert an existing single-family dwelling to construct a six-unit residential dwelling with, to construct a second three-story 34.5' residential dwelling with three units, to allow ground floor units, to allow a reduction in the parking requirements to 1.25 per dwelling unit, to waive minimum stall width requirements, to reduce the minimum aisle width requirements, to waive the minimum driveway width, to waive perimeter landscape screening requirements and to waive lighting requirements in Ward 3, West Newton, at 424-432 Cherry Street, Section 33 Block 11 Lot 2, containing approximately 14,204 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 4.1.2.B.3, 4.1.3, 5.1.4.A, 5.1.13, 5.1.8.C, 5.1.8.B.1, 5.1.8.D.1, 5.1.9.A, 5.1.10.A of the City of Newton Rev Zoning Ord, 2017.

**The City Council voted without discussion 22 Yeas, 1 Nay (Councilor Lappin), 1 Absent (Councilor Gentile) to Approve the Committee recommendation on the following item:**

**Referred to Land Use Committee**

**#421-18** **Special Permit to amend Special Permit for Kessler Woods**  
KESSELER WOODS, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #102-06(15) at Kessler Woods to allow off-site relocation of the inclusionary zoning units as well as 24 additional units at 219 Commonwealth Avenue (Section 63 Block 08 Lot 19), containing approximately 10,347 sq. ft. of land in a district zoned MULTI RESIDENCE 1 from the approved site at 200 Estate Drive, Ward 8, on land known as Section 82 Block 37 Lot 95, containing approximately 640,847 sq. ft. of land in

a district zoned MULTI RESIDENCE 3. Ref: 7.3, 7.4, 5.11.4, 5.11.6, 7.8.2.C of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Land Use Approved Withdrawal without Prejudice 5-2 (Crossley, Kelley Opposed)**