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PUBLIC HEARING MEMORANDUM

DATE: March 5, 2021

TO: Councilor Crossley, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Marie Lawlor, Deputy City Solicitor

RE: #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.

MEETING DATE: March 8, 2021

CC: City Council
Planning and Development Board
Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani
John Lojek, Commissioner of ISD

In December 2018, the City Council adopted zoning for marijuana establishments, including recreational marijuana uses. At the time the state Cannabis Control Commission (Commission) had not created license types or regulations for the delivery of recreational marijuana. On January 8, 2021 the Commission filed updated regulations for both medical and recreational marijuana, which can be found here: <https://mass-cannabis-control.com/the-laws/>. Included in the new regulations are updates to address inconsistencies in the prior regulations, amend definitions, change some terminology, clarify measurements, and add two new delivery license types. Most of the changes are relatively minor but require updates to the ordinance to remain consistent with state regulations.

Examples include renaming Registered Marijuana Dispensaries (RMD) to Medical Marijuana Treatment Centers (MTC), revising the buffer requirements for medical marijuana (MTCs) to be consistent with those for marijuana retailers (500 feet from k-12 public or private schools), and clarifying how that buffer distance is to be measured.

The most significant change is the addition of two new types of delivery licenses, marijuana courier and marijuana delivery operator. A marijuana courier is defined as an entity licensed to deliver marijuana and marijuana products directly to consumers from a marijuana retailer or medical marijuana treatment center but is not authorized to sell directly to consumers. A marijuana delivery operator is defined as an entity licensed to purchase at wholesale and warehouse finished marijuana products acquired from a marijuana cultivator, product manufacturer, microbusiness or craft marijuana cooperative and to sell and deliver directly to consumers but is not authorized to operate a storefront. A marijuana courier will partner with retailers or MTCs to deliver to their customers but cannot store any products while a delivery operator can buy marijuana products wholesale, store onsite in a warehouse, and then deliver to customers under their own brand. Neither entity will allow for public access at their physical location. Delivery operators are not considered retailers and are not subject to the cap on the number of licenses a municipality must issue.

For a period of three years (starting with the issuance of the first license), both marijuana courier and marijuana delivery operator licenses will be limited to applicants who qualify under the Commission's Social Equity or Economic Empowerment programs. The Social Equity program provides training and technical assistance to applicants who have been disproportionately impacted by the War on Drugs, marijuana prohibition, arrests and incarceration and meet certain income and residency requirements. The Economic Empowerment program applicants have to meet criteria such as living in an area of disproportionate impact; holding a position where the primary population served were disproportionately impacted; the majority of ownership is made up of individuals from Black, African American, Hispanic, or Latino descent; the majority of employees live in areas of disproportionate impact; the majority of employees have drug-related CORI; and owners can demonstrate significant past experience in economic empowerment in areas of disproportionate impact.

Zoning Updates – Minor technical changes

The attached redline of the 2018 marijuana zoning ordinance (Attachment A) represents the changes necessary to stay consistent with state regulations. These changes include:

- Registered marijuana dispensaries (RMDs) are now called Medical Marijuana Treatment Centers (MTCs). An MTC is still limited to the sale of medical marijuana and the definition is largely unchanged. MTCs, formerly regulated by the Department of Public Health, are now regulated by the Cannabis Control Commission.
- Marijuana Product Manufacturing definition has been updated to clarify that it includes packaging and transferring products to other marijuana establishments.
- The buffers for Medical Marijuana Treatment Centers have been revised to be consistent with those for Marijuana retailers. Previously medical marijuana RMDs could be required to

maintain a buffer of at least 500 feet from a school, daycare center, preschool or afterschool facility, or any facility in which minors commonly congregate. Marijuana retailers are only required to maintain a 500-foot buffer from public and private k-12 schools. The MTC buffer has been revised to match the marijuana retailer buffer. The City may reduce this buffer requirement or eliminate it but may not require a greater buffer.

- The measurement for this buffer distance has also been clarified and new definitions have been added. The buffer zone distance is to be measured in a straight line from the geometric center of the marijuana establishment entrance to the geometric center of the nearest school entrance, unless there is an unpassable barrier within those 500 feet, in which case it is measured along the center of the shortest publicly accessible pedestrian travel path from entrance to entrance. An impassible barrier is defined as a highway, public or private way or path, inaccessible structure, body of water, or other obstruction that renders any part of the 500-foot straight line inaccessible by a pedestrian or automobile.
- The school buffer updates do not impact the City's required half-mile buffer between MTCs/marijuana retailers.
- The requirement for medical marijuana RMDs to be located in an area that currently does not have reasonable access to medical marijuana or an area that has been established by the Department of Health as needing supplemental service has been removed.
- For clean up purposes we are also striking Section 6.10.4 from the ordinance. This section is the moratorium that was in place in 2018 prior to adopting zoning for recreational marijuana.

Zoning Recommendations for New License Types

The two new delivery license types are defined as follows:

- Marijuana courier is an entity licensed to deliver marijuana and marijuana products directly to consumers from a marijuana retailer or medical marijuana treatment center but is not authorized to sell directly to consumers.
- Marijuana delivery operator is an entity licensed to purchase at wholesale and warehouse finished marijuana products acquired from a marijuana cultivator, product manufacturer, microbusiness or craft marijuana cooperative and to repackage, sell and deliver directly to consumers but is not authorized to operate a storefront. Delivery operators are not considered retailers and are not subject to the cap on the number of licenses a municipality must issue.

New zoning is needed for the two new license types. The zoning allows for the courier or delivery operators to physically locate here, it does not affect the ability of Newton residents to receive deliveries from operators within or outside of Newton. Newton must allow for couriers and delivery operators to locate in the city or ban the use through a ballot referendum. Either way, Newton residents may still receive deliveries from couriers or delivery operators located in other communities. Marijuana couriers will need a site that allows for parking of the delivery vehicles and likely some office space. The delivery operators will require parking for delivery vehicles and space for a storage

warehouse and office. The courier will never have marijuana products onsite as they will pick up from the retailer/MTC and deliver directly to the customer. The delivery operator will require a secure location to store products.

Planning staff have evaluated the current zoning districts for compatibility with these new uses as well as reviewed proposals from surrounding communities. Both couriers and delivery operators will need sufficient parking for their delivery vehicles and delivery operators will also need a secure warehouse to store products. In preliminary conversations with delivery operators, they tend to be looking for warehouse space ranging from about 1,000 square feet to about 10,000 square feet. Parking needs are likely fairly high, though it will be a fixed amount based on the number of delivery vehicles and applicants can be expected to only select sites that meet their parking needs.

Staff do not anticipate external impacts from either couriers or delivery operators. All products stored in the warehouse for delivery operators must be packaged so odors are unlikely. Drivers are able to make multiple stops per trip (the cash value of product carried in the vehicle is limited to \$10,000), reducing the number of vehicular trips to and from the site. However, neither use is compatible with the vibrant, pedestrian friendly vision for village centers and commercial areas. For this reason, Planning Staff recommends limiting marijuana couriers and marijuana delivery operators to the manufacturing and limited manufacturing zoning districts (see map in Attachment B). Other zoning districts were considered, but not recommended for the following reasons:

- BU1 and BU2 – these districts represent the core of village centers and the areas just on the edge of village centers. These commercial and mixed-use areas should be preserved for more active uses.
- BU4 and BU5 – these districts are extremely limited and primarily include the Marriot hotel in Auburndale, the Street and Chestnut Hill Square along Route 9, and Northland (once the rezoning is in effect).
- Mixed Use 1 and Mixed Use 2 – MU1 and MU2 encompass Needham Street and contain a mix of predominantly retail, office, and industrial uses. The courier and delivery operator uses would not be out of place along Needham Street, but they also do not contribute towards the vision for Needham Street in the Needham Street Area Vision Plan.
- Mixed Use 4 – the MU4 district has only been applied in conjunction with development projects receiving a Special Permit for a mixed use building with residential units above ground floor retail. These buildings are not appropriate locations for this type of use, and it is not in line with the MU4 regulations.

Given the emphasis on parking and security, and for the reasons above, staff recommends limiting these uses to manufacturing and limited manufacturing zoning districts. This is also consistent with initial recommendations from Cambridge and Natick, both of which have recommended limiting these new delivery uses to industrial areas. However, given these uses will be similar to other uses allowed by-right in manufacturing and limited manufacturing districts, Planning staff recommend that both couriers and delivery operators be allowed to locate by-right. Operators will be heavily regulated by

the Cannabis Control Commission (far more so than other warehouses) and as discussed above external impacts would be extremely limited. All applicants for marijuana establishments, including couriers and delivery operators, must also secure a Host Community Agreement from the Mayor.

The relevant criteria from Section 6.10.3 E will also still apply, including:

- Marijuana establishments are prohibited from locating in a building containing a residential use and all marijuana establishments must be located in a permanent building.
- Deliveries may not occur before 8 am or after 9 pm.
- All marijuana establishments must submit state approved emergency response plans and security plans to the Newton Police Department and Newton Fire Department for review and approval.
- All marijuana establishments must submit a state approved operation and management plan to Inspectional Services Department and Planning and Development for review and approval.
- No odors may be detected at the exterior of the building.

In addition, signage is subject to the regulations issued by the Commission which includes a prohibition on any images of marijuana or marijuana products. Signage would additionally be reviewed by the Urban Design Commission.

Eliminating the requirement for a Special Permit would also benefit Social Equity and Economic Empowerment entities who may be challenged in terms of being able to “hold” potential properties while proceeding forward with a Special Permit process and timeline.

Responses to operational questions raised by the Committee at the January 25, 2021 meeting can be found in the Planning Department’s February 8, 2021 memo [here](#) (starting on page 20).

ATTACHMENT A: Proposed Ordinance - Redline

ATTACHMENT B: Proposed Marijuana Courier and Delivery Operator Zoning Map