

## **Regulation of Firearms Dealers – FAQs**

**Updated April 23, 2021**

### **How can residents learn about developments concerning firearms dealers in Newton?**

The City's Department of Planning & Development Department has created a webpage with relevant information that is updated regularly and can be found by clicking [here](#). This FAQ document is located at the same link and will be updated periodically with the latest information in an effort to remain open and transparent.

## **ZONING AND REGULATION OF FIREARMS DEALERS**

### **Does Newton have any zoning regulations around firearms dealers?**

The City of Newton currently does not have any zoning regulations around firearms dealers. Firearms dealers fall within the general use category of "retail sales" that is currently allowed by right in all Business Use zoning districts, by special permit in the Limited Manufacturing District, and either by right or by special permit – depending on the size of the retail store – in the Mixed Use districts.

### **What options does Newton have to regulate firearms dealers through zoning?**

The City Council has broad authority to regulate all land uses in Newton, including the location of firearms dealers. That said, in light of the nature of the issues and the implications of Constitutional protections, it may be reasonable to expect that the more restrictively firearm sales are regulated, the more likely such regulations will be subject to a court challenge.

### **What steps are currently being taken by the City to address firearms dealers?**

On Friday, April 16, the Mayor and all 24 City Councilors jointly docketed an amendment to the City's zoning ordinance that would restrict all firearms dealers and related uses to the following zoning districts: Business Use 4, Mixed Use 1, Manufacturing, and Light Manufacturing. The proposed amendment also requires all firearm businesses to be approved by special permit by the City Council. It will create specific special permit criteria, including a buffer zone between a firearms dealer and residences and schools. A copy of the text of the proposed zoning amendment will be posted on the Planning Department website [here](#) on Friday, April 23.

### **What is the City Council process for reviewing the proposed zoning amendments?**

It is the role of the City Council, as the City's legislative body, to approve all zoning ordinances and amendments. The review and approval process is dictated by the State Zoning Act, Chapter 40A. In accordance with the required process, the City Council assigned the proposed zoning amendment to the Zoning and Planning Committee (ZAP). The Zoning and Planning Committee will hold a public hearing on the proposed amendment on Monday, May 10, 2021. At the public hearing, the Council will hear input from the public. It will then discuss the draft language, potentially make revisions, and ultimately recommend that matter to the full City Council for a final vote to approve the zoning amendments.

Prior to the opening of the public hearing, ZAP will hold a committee discussion of the proposed zoning amendments at its regularly scheduled meeting on Monday, April 26, 2021. There will not be an opportunity for public comment at that meeting.

**If and when the proposed zoning ordinances are passed, will they apply retroactively?**

In general, zoning is prospective and would not limit ongoing uses and businesses that are already operating. However, the State Zoning Act, does state that any approved zoning amendment will apply to any use/business that has not commenced prior to the publication of notice of the public hearing for the zoning amendment.

The City Council is providing the first required notice of the May 10 public hearing in the newspaper on Friday, April 23. Practically speaking, if there is a proposed firearm business that has not started operating by that date, it will be subject to the proposed zoning amendments whenever those amendments are passed.

**What is the current zoning status of the proposed firearms dealer that is seeking to operate at a location on Washington Street in Newton?**

While a firearms dealer is currently an allowed by right use at the current proposed location of 709 Washington Street, the City's Department of Inspectional Services (ISD) still requires new businesses to apply for and receive an occupancy permit before commencing operation in a new location. This review is necessary to ensure the building and the use are in compliance with the City's zoning ordinance, the State building code, and other applicable codes, such as the State fire code.

In addition, when a new business opens at a location that was not previously designed for that type of use (as in this instance the proposed location was previously a dry cleaner) interior improvements or renovations are often necessary and must be undertaken pursuant to a building permit issued by ISD. Recently, ISD learned that extensive interior renovations were being conducted at the proposed location without the benefit of a building permit. After observing the property on April 20, 2021, the Commissioner of ISD issued a Stop Work Order for violations under the State Building Code. As a result, no further construction work can continue at this location until a building permit is applied for and issued by ISD. As of today, ISD has not received any applications for a building permit or an occupancy permit concerning this property. ISD is required by state law to process building permits within 30 days of the filing of an application.

At this time, a firearms dealer cannot begin operating at this location until these issues are resolved. The business owner must apply for and be issued a building permit, the outstanding building code violations must be remedied, and an occupancy permit must be issued before any business can commence operation.

**Is a firearms dealer allowed to begin operating after the public notice date of April 23, 2021 but before the zoning amendments are passed?**

If the proposed firearms dealer receives all the necessary licenses and approval from local, state, and federal authorities, and also receives all necessary permits and approvals from the City's

Department of Inspectional Services, it may be allowed to operate for a period of time. The dealer, however, will still be subject to the new zoning whenever it is passed and could have to cease operation if the use is no longer allowed at that location. In other words, a firearms dealer could potentially open after the notice of the public hearing but at its own risk of being subject to the later approved zoning amendments.

**It is in the news that Salem recently rejected an application for a firearms dealer. Why can't Newton do the same?**

The situation in Salem is very different than what Newton currently faces. The proposed firearms dealer in Salem was located in a residential zoning district where retail was not an allowed use and was replacing a nonconforming industrial use. Like Newton and most Massachusetts communities, Salem does not regulate firearms dealers through zoning and treats the use as retail. As a result, the applicant had to apply to the Salem Zoning Board of Appeals for a special permit to change from one nonconforming use (industrial) to another nonconforming use (retail) as neither uses are allowed in that particular residential district. Under its discretionary review, the Salem ZBA denied the request for a special permit. The Salem ZBA vote took place on April 21 and a decision, which may be appealed, has not yet issued.

In contrast, the proposed firearms dealer on Washington Street in Newton constitutes a by right retail use in a business zoning district. The dealer does not require any zoning relief from the City Council or the ZBA. Therefore, under current zoning, there is no opportunity nor basis for the City or the City Council to reject this business. However, under the proposed zoning ordinance, all firearms dealer uses will require a special permit from the City Council, which will allow the City Council to engage in the same discretionary review recently undertaken by Salem ZBA. The proposed ordinance also restricts firearms dealers to certain zoning districts. The proposed firearms dealer on Washington Street will be subject to these zoning changes if the proposed zoning ordinance is adopted.

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**LICENSING OF FIREARMS DEALERS**

**What local, state, and federal licenses are required to operate a firearms dealer?**

To operate a business as a firearms dealer in MA, the dealer must seek and obtain a federal firearms license (FFL) to purchase firearms from the Bureau of Alcohol, Tobacco and Firearms (ATF) and a separate license to sell firearms from the Chief of Police, as the local licensing authority. The license to sell firearms is authorized by state law, M.G.L. c. 140 § 122, which lays out the criteria that the Chief must follow in reviewing applications for the license. The MA application for the license to sell firearms is also reviewed by the MA Firearms Records Bureau.

**What is the local review process for the Newton Chief of Police to issue a firearms dealer license?**

The Chief and designees will conduct a background check consisting of a review of reports from the Department of Mental Health, the Board of Probation, the MA Warrant Management System and the National Instant Criminal Background Check System. The applicant is fingerprinted by the Newton Police Department and the fingerprints are reviewed by the MA State Police. The Chief and designees will conduct a site view of the proposed location to ensure that the building is properly alarmed, secured, outfitted with appropriate locked storage containers, and that the windows are appropriately screened to prevent being able to see any firearms from outside of the store. There is no notification or hearing requirement for a license to sell firearms.

**Can the Chief of Police deny an application for a license to sell firearms?**

The Chief of Police may deny a license to sell firearms if the applicant is prohibited by law to hold the license.

**What is the current licensing status of the proposed firearms dealer that is seeking to operate at a location on Washington Street in Newton?**

The applicant has met all state and federal statutory requirements and the license is in the process of being issued.

**Can the proposed firearms dealer operate at a different location?**

A firearms dealer must list a specific address on the application for a license to sell firearms and the license must be exercised at that location. If the dealer would like to move the business to a different location, the dealer must notify the Chief of Police of the new location so that the Chief can conduct a site plan and security review prior to allowing the business to relocate. If the dealer wishes to operate a second location, the dealer must submit a new application for review and approval.

**What operating restrictions apply to firearms dealers?**

Firearms dealers license holders are held to a series of restrictions and requirements outlined in M.G.L. c. 140 § 123. Among the twenty-one conditions on the license are the following:

- Every item sold must be recorded in a log, which must be made open to inspection by the Chief of Police at any time
- Firearms may not be sold to a person who does not have MA issued License to Carry or a MA issued Federal Identification card
- Dealer is required to verify the license status of purchasers through the state licensing system, MIRCS (MA Instant Record Check System)
- Dealer must display a required placard from the MA Dept of Health about suicide prevention and a separate placard about the storage requirements for firearms in MA
- Dealer may not possess or sell any firearms that are illegal in MA

- Firearms that are stolen from the store must be reported immediately to the Chief of Police and to the MA Criminal Justice Information Services

In addition to the conditions on the license, in MA firearms dealers are also required to demonstrate how to safely load, unload and store handguns, how to operate the handgun's safety devices, and provide specific written safety warnings to purchasers of handguns.

A firearms dealer must perform a CORI background check on prospective employees.

Firearms dealers may not operate out of a residence or dwelling.

### **What is the oversight role of the Chief of Police?**

Dealers are required to have their transaction records open for inspection at all times to the police. In addition, the license holder must provide the Chief with a yearly accounting of sales records.

### **What firearms may be sold in MA?**

The Executive Office of Public Safety and Security (EOPSS) maintains a [list of approved firearms](#) that may be purchased from a duly licensed dealer in MA. The list is updated as needed and includes rosters for Olympic competition firearms, large capacity firearms, formal target shooting firearms and other approved firearms. Handguns must meet all consumer protection regulations including childproofing and protections against accidental discharges. 940 CMR 16.00

### **Can someone buy firearms online?**

Yes, but they may not be delivered directly to the buyer. The firearms must, instead, be delivered to a federal firearms license (FFL) holder who must certify that the firearms are compliant with all applicable MA gun control laws prior to transferring the firearms to the buyer. The transfer of the firearms must take place at the FFL's place of business.

### **Are Firearms Dealers in MA allowed to sell assault weapons?**

Since 1998, Massachusetts has had an assault weapons ban in place that prohibits the sale, transfer or possession of assault weapons, including some semi-automatic weapons. In 2016, the MA Attorney General issued a [Notice on Enforcement](#) which provides a description and list of banned firearms. Firearms dealers must comply with all requirements of the law and violations will result in a revocation of the license to sell firearms.

### **What safety and security measures are a firearms dealer required to take at its business place?**

Dealers and gun owners are all required to secure their firearms either by keeping it in a locked container or by equipping the firearm with a tamper-proof locking mechanism that renders the firearm inoperable when the firearms are not under their control.

A firearms dealer is also prohibited from displaying firearms in the window of a store.

**Who makes sure that a dealer has the proper security measures in place?**

The Massachusetts Gun Control Advisory Board, along with the Executive Office of Public Safety and Security (EOPPS), provide guidance on appropriate safety and security measures to support and implement the gun control laws in MA. The Newton Chief of Police, as the local licensing authority, investigates and enforces the gun control laws to ensure that all required safety measures are in place for all license holders.

**How often does the Chief of Police perform inspections of firearms dealerships?**

The Chief of Police is required to perform annual inspections of a dealer's sales records but is permitted to conduct inspections at any time.

**Can the City of Newton completely ban guns in Newton?**

No. Under the current status of federal law, possession of firearms is protected by the Second Amendment and any effort on the part of the City of Newton to ban the possession of firearms would be struck down by a Court as unconstitutional.

**What are some other resources on gun control in MA?**

License to sell firearms: [M.G.L. c. 140 § 122](#)

License to sell ammunition – [M.G.L. c. 140 § 122B](#)

Conditions of Licenses – [M.G.L. c. 140 § 123](#)

Consumer Protection Regulations for the sale of handguns – [940 CMR 16.00](#)

Information on the MA Assault Weapons Ban – [MA FAQs about the Assault Weapons Ban](#)