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Barney S. Heath
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PUBLIC HEARING MEMORANDUM

DATE: April 23, 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
Zachery LeMel, Chief of Long Range Planning

RE: #145-21 Request for Chapter 30 Amendment to establish regulations for gun establishments
HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, KRINTZMAN, LEARY, OLIVER, GREENBERG, NORTON, LUCAS, KELLEY, WRIGHT, MALAKIE, MARKIEWICZ, GENTILE, DOWNS, CROSSLEY, HUMPHREY, DANBERG, NOEL, BOWMAN, LAREDO, GROSSMAN, BAKER, LIPOF, KALIS AND RYAN requesting amendments to the Newton Zoning Ordinance, Chapter 30, including, but not limited to, the addition of definitions of "Firearm" and "Firearm Businesses", and amendments to Section 4.4.1 Allowed Uses and Section 6.10 Restricted Uses to regulate the use of land, structures and buildings for the siting and operation of gun ranges or the retail or wholesale operation involving gunsmithing, the purchase or sale of firearms, the sale of ammunition, or firearms accessories, and to restrict such uses to the Business 4, Mixed Use 1, Manufacturing, and Light Manufacturing Districts only and only upon the granting of a special permit, and to establish minimum standards and criteria for the granting of such special permits.

MEETING DATE: April 26, 2021

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

Executive Summary

The City of Newton does not currently regulate the zoning for firearms business (or related uses). A firearms business would be considered a general retail use and would be allowed either by-right or by special permit in most business and mixed-use zones as well as the limited manufacturing zoning district. The City Council has broad authority to regulate all land uses in Newton, including the location of firearms dealers. Currently, the zoning ordinance identifies certain uses that are to be treated differently than other retail uses such as adult businesses and marijuana retailers. However, due to 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.

The subject docket item is a request to amend Newton's current zoning ordinance to restrict firearm businesses only to certain zoning districts, to require a special permit, and to provide minimum standards for those uses. Attached to this memo is a draft zoning ordinance for firearms businesses developed by the Law and Planning Departments (**Attachment A**), a map of the proposed zoning districts for firearm businesses (**Attachment B**), as well as a frequently asked questions (FAQ) document from the Law Department (**Attachment C**). Staff reviewed a sampling of zoning ordinances and bylaws for firearm businesses from other municipalities both in and outside of Massachusetts. Zoning regulations for firearm businesses are not common and the only nearby communities that regulate firearms businesses through zoning that staff has found are Dedham and Westwood.

The key elements of the proposed ordinance are limiting firearm businesses to the Business 4, Mixed Use 1, Limited Manufacturing, and Manufacturing zoning districts; always requiring a special permit; requiring buffers from sensitive uses; and applying additional operational standards and criteria for approval. The most complicated element is the buffer distances from sensitive uses. At this time the distances are left as to be determined in the draft ordinance. This is to allow flexibility for the Council in the ultimate decisions but is also to allow staff time to clean up our data and analyze potential buffer distances. Planning staff are working with the City's GIS analyst to understand the data we have and ensure it is up to date and in the format that is needed. At the public hearing on May 10th Planning staff will provide recommendations for buffer distances as well as maps illustrating those buffers.

Firearm Zoning Examples

Staff reviewed a sampling of zoning ordinances for firearm businesses in other municipalities in Massachusetts and beyond. Almost all ordinances require special approval for firearm businesses (a special permit in Massachusetts or a conditional use permit elsewhere). Below is a summary of the key points from other ordinances:

- Dedham, MA - Dedham recently passed a by-law regulating firearm sales.
 - Firearms businesses are limited to the Adult Use Overlay District

- 150-foot buffer from a residential use or residential zoning district, school, library, church or other religious use, child-care facility, park, playground, recreational areas where large numbers of minors regularly travel or congregate, establishments selling alcohol for on-site consumption, and other adult use and firearms businesses.
- Westwood, MA
 - Firearms/Explosives sales and service are limited to the Local Business Districts, Highway Business District and Industrial District
 - Westwood does not appear to require specific buffers between firearms businesses and other uses, however most uses in the Highway Business and Industrial districts are required to provide a buffer from adjacent residential properties.
- Bloomington, MN – Bloomington regulates primary and incidental firearms sales and firing ranges.
 - Firearms sales are permitted in certain commercial districts; firing ranges are only permitted in some industrial districts.
 - 250-foot buffer from residential zoning districts, daycares, and k-12 schools.
 - Primary firearm sales must also be 1,000 feet from another primary firearm sales facility.
- Piscataway, NJ
 - Firearm sales to certain commercial districts.
 - 1,000-foot buffer from nursery schools, preschools, child, adult and special needs day care centers, schools, colleges and universities, funeral homes, health services facilities, other firearms sales dealers, assisted living facilities, places of worship, liquor stores, establishments selling alcohol for onsite consumption, and parks, playgrounds and commercial recreational facilities.
- Contra Costa, CA
 - 500-foot buffer from schools, daycares, parks, establishments that have on-site or off-site alcohol sales, places of worship, and existing firearm sales facilities.
- Windsor, CA
 - 500-foot buffer from parks, libraries, churches, personal services, and preschools.
 - 1,000-foot buffer from all schools.
- Healdsburg, CA
 - 500-foot buffer from churches, chapels, places of worship, schools, libraries, youth centers, commercial day care establishments, parks, and other locations with firearm sales.
- McCordsville, IN
 - Firearm sales limited to a medium intensity industrial district.
 - 200-foot buffer zone from any school.
- Worcester, MA – Worcester only regulates shooting ranges
 - 1,000-foot buffer from schools and a 100 foot buffer from a public park or playground. Worcester does not appear to regulate firearm sales.

Notably, zoning regulations for firearm businesses are rare and we have found few examples in Massachusetts so far. Most of our neighboring communities do not appear to regulate firearm businesses through zoning. Staff reviewed zoning ordinances for the following Massachusetts communities: Acton, Arlington, Ashland, Bedford, Belmont, Beverly, Bolton, Boston, Boxborough, Braintree, Brockton, Burlington, Carlisle, Cambridge, Chatham, Chelsea, Concord, Danvers, Dedham, Dover, Essex, Everett, Fall River, Fitchburg, Framingham, Gloucester, Hamilton, Holliston, Hudson, Ipswich, Lexington, Lincoln, Littleton, Lynn, Lynnfield, Malden, Manchester-by-the-Sea, Marblehead, Medfield, Medford, Medway, Melrose, Middleton, Milton, Nahant, Natick, Needham, North Reading, Norwood, Peabody, Quincy, Reading, Revere, Rockport, Salem, Saugus, Sherborn, Stoneham, Stoughton, Sudbury, Swampscott, Topsfield, Wakefield, Watertown, Waltham, Wellesley, Wenham, Weston, Westwood, Weymouth, Wilmington, Winchester, Winthrop, Woburn, and Worcester. Of these communities, the only ones that regulate firearms sales were Dedham and Westwood. Framingham excludes firing ranges from the definition of outdoor recreational facilities and North Reading prohibits gun and shooting clubs in their Highway Business zoning district. Everett appears to have regulated gun shops previously, but they are no longer included after a big rezoning in 2020.

Ordinance Framework

The proposed draft ordinance draws from firearms zoning regulations from other municipalities as well as the City's existing ordinances regulating adult businesses and marijuana uses. The draft ordinance defines terms not currently included in our zoning ordinance, such as ammunition, firearm, firearm accessory, firearm business, firing range, and gunsmith and proposes that the uses only be permitted by special permit in certain districts. The ordinance also identifies sensitive uses from which a firearm business use should be buffered from, provides additional operational standards, includes required application materials, and identifies new special permit criteria which must be met in addition to the general special permit criteria.

Zoning Districts

Currently in Newton, a firearm business would be classified under zoning as a retail use. Retail uses are currently permitted, either by-right or by special permit in the Business 1 (BU1), Business 2 (BU2), Business 3 (BU3), Business 4 (BU4), Mixed Use 1 (MU1), Mixed Use 2 (MU2), Mixed Use 4 (MU4), Mixed Use 3 (MU3), and Limited Manufacturing (LM) zoning districts. The MU1 district only allows for retailers with more than 5,000 square feet. The attached zoning amendment limits firearms business uses to the BU4, MU1, LM and Manufacturing (M) zones (see map in Attachment B). This initial proposal is meant to provide flexibility to the City Council in determining the appropriate locations and buffer distances. Zoning districts where the use is currently permitted could be added to the proposed zoning districts and the zoning districts currently proposed could be removed as a result of future analysis and public testimony. The initial zoning districts proposed were chosen as they are scattered throughout the City and are

generally districts with limited housing and with less foot traffic than other commercial zones. These districts are meant to provide an initial starting point for discussion.

Buffers

Why have recommended buffer distances not been identified or mapped?

As discussed above proposed buffer distances have not yet been identified. This requires careful mapping and analysis in order to understand whether the proposal will still allow for opportunity once buffers are applied to sensitive uses and to ensure that sensitive uses will be sufficiently buffered. Mapping and analyzing these buffers will first require reviewing existing data for each of the sensitive uses to make sure it is up to date and in a usable format. For example, some sensitive uses such as schools or religious uses may just show up as a point on a map and the proposed ordinance requires the buffer be measured from the property line. When applying a buffer from a single point within a parcel the result may be very different than applying the buffer from the property lines of that parcel. Other recently approved or opened uses that fall within the identified sensitive uses may not be represented in our data. When balancing a constitutional requirement to allow for the opportunity to buy and sell firearms with a desire to ensure these uses are in the most appropriate locations and safe and sufficiently separated from other sensitive uses, these small changes may make a large difference and more time is needed to analyze the data. Responses to the questions at the end of this memo will also help inform Planning's analysis in advance of the public hearing on May 10th.

Buffer Comparisons

All of the firearm zoning regulations reviewed contained buffers from sensitive uses. Buffers range from 150 feet to 1,000 feet depending on the size of the community and the category of sensitive use. Sensitive uses also varied though all included schools, most included daycares, parks, and playgrounds, and some also included buffers from residential uses and/or residential districts. Buffers from residential uses or districts were the smallest at 150 – 250 feet. Newton's current zoning ordinance also requires a 500 foot buffer between adult businesses and the nearest religious use, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river and 150 feet from any residential property line. Additionally adult businesses must maintain a 1,000 foot buffer from any other adult business within the City or an adjacent municipality and from any zoning district that allows for an adult business in an adjacent municipality. Marijuana retailers and medical marijuana treatment centers are also required to be at least 500 feet from k-12 public and private schools and a half mile from other marijuana retailers and medical marijuana treatment centers.

Proposed Sensitive Uses

The attached draft includes a list of potential sensitive uses from which firearm businesses should be sufficiently buffered. Section 6.10.4.E.1 of the proposed draft includes a buffer requirement from the following sensitive uses: any residential property line, private or public k-12 school, daycare center, preschool, child-care facility, public park intended for passive or

active recreation, playground, land or structures used for religious purposes, library, and another Firearm Business, Firing Range, or Gunsmith, unless the City Council finds that such Firearm Business, Firing Range, or Gunsmith is sufficiently buffered such that these facilities or those uses within the buffer will not be adversely impacted by the Firearm Business, Firing Range, or Gunsmith's operation.

This list is intentionally broad, and the City Council could eliminate uses from this list if they determine a buffer is not necessary. The draft does not yet include a buffer distance for the sensitive uses. This is to permit flexibility for final policy decisions by the City Council and to allow staff time to analyze potential buffers. Careful analysis and mapping are needed in order to balance providing opportunities for firearm businesses within the city while also protecting sensitive uses.

Buffer Considerations

Planning is considering the following when analyzing potential buffer requirements:

- Newton is a residential city. Providing a buffer between firearm businesses and residences is important but challenging. Too large of a buffer may eliminate all potential parcels, unless additional zoning districts are permitted. The largest residential buffer that was used in the ordinances reviewed was 250 feet and while this is relatively small this may still be too high given the proximity of residential zones and uses to Newton's commercial and manufacturing districts. A buffer of 150 feet, such as in Dedham and in Newton's adult business zoning, may be feasible, however additional analysis is needed. Whether the buffer is from residential zoning districts, actual residential uses, or both is also an important distinction.
- 500-foot buffers from schools, parks, and other non-residential sensitive uses are the most common from the examples reviewed. This is also consistent with Newton's adult business buffer requirement. Newton has many childcare facilities and parks however, and additional analysis is needed to determine where opportunity remains if there is a buffer around all of the sensitive uses identified.
- The adult business regulations require a buffer from other adult businesses in adjacent municipalities as well as from zoning districts permitting adult businesses in adjacent municipalities. Applying this standard would be difficult in this instance as many of the areas that fall within the zoning districts currently proposed are near the city border with neighboring municipalities.
- The draft ordinance currently contains a placeholder for one buffer requirement for all sensitive uses. Similar to other regulations reviewed, it may be preferable, or necessary in order to still allow for opportunities, to vary the buffer distance based on the use. For example, schools might have the largest buffer and residential properties the smallest.
- Most of the ordinances reviewed focused just on the sale of firearms, however our proposed draft also includes gunsmiths and firing ranges. Different buffers may be desirable for the different firearm businesses as well.

At the public hearing scheduled for May 10th, the Planning Department will provide additional analysis of potential buffer distances as well as maps displaying the buffers and the proposed zoning districts.

Standards

In addition to the buffer requirement, the proposed draft ordinance includes additional standards for firearm businesses. These include requiring compliance with all federal, state and local laws and regulations; prohibiting graphics, symbols, or images of firearms or firearm accessories from being displayed or visible from the exterior of the business; prohibiting a firearm business from locating within a building containing a residential use; and limiting hours of operation to 6:00 a.m. to 11:30 p.m. (the same hours as adult businesses) and allowing further restriction of hours as part of the special permit.

Special Permit Application and Criteria

Application Requirements

Under the proposed ordinance, all firearm businesses will require a special permit from the City Council. As part of the application, and in addition to the standard application requirements, applicants for a firearm business will be required to submit a narrative providing a description of the proposed activities, a lighting analysis, and a context map showing all properties and land uses within a 1,000-foot radius. Depending on the nature of the application the City Council may also request additional information through the special permit review process, such as security information, noise analysis, landscaping or other screening, etc.

Special Permit Criteria

The draft ordinance also includes additional special permit criteria, in addition to the standard criteria, that must be met in order to approve a firearm business. These criteria include:

- 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.
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- The Firearm Business, Firing Range, or Gunsmith establishment is designed to minimize any adverse impacts on abutters.
- The Firearm Business, Firing Range, or Gunsmith establishment has satisfied all of the conditions and requirements in this section.

Additional Regulations

Firearm sales are highly regulated in Massachusetts and all state and Federal requirements will remain in effect. Some key aspects of firearm regulations include a ban on the sale of assault weapons, a requirement that all firearms within stores are secured in a locking container or by equipping the firearm with a tamper-proof locking mechanism, a firearms dealer is prohibited from displaying firearms in the window of a store, and the Police Department is the local

licensing authority and is required to review and approve any license to sell firearms and to ensure all required safety measures are in place as well as perform annual inspections of a dealer's sales records. All firearm businesses will be subject to all other applicable local and state ordinances and regulations as well, such as noise limitations, hazardous waste removal, parking requirements, etc. More information can be found in the attached FAQ as well as here: [Firearms Zoning Amendment | City of Newton, MA.](#)

Questions

In order to guide the Planning Department's analysis to be presented at the May 10th public hearing, the City Council should consider the following questions:

- Are there any uses in the list of sensitive uses that are not necessary to buffer?
- What is the prioritization of sensitive uses? If it is critical to buffer residential properties, a smaller buffer may be necessary as compared to other uses and/or the allowed zoning districts may need to be expanded.
- Similar to some of the examples reviewed should there be a tiered system of buffers with different distances for different uses? Which use should have the greatest buffer?
- Should there be fewer allowed zoning districts and smaller buffers or larger buffers and more expansive zoning districts?
- Are there any additional criteria or standards that should be considered?
- Should there be different regulations for the different types of firearm business uses (firearm sales, gunsmiths, firing ranges)?

Next Steps

Public hearing will be held by the Zoning and Planning Committee on May 10, 2021. In advance of that meeting the Planning Department will provide an updated memo with an analysis and mapping of buffer distances.

ATTACHMENT A: Proposed Draft Firearm Business Ordinance
ATTACHMENT B: Map of Proposed Zoning Districts
ATTACHMENT C: Firearm Frequently Asked Questions – April 23, 2021

Section 4.4. ALLOWED USES

4.4.1. Business, Mixed Use & Manufacturing Districts

| Business, Mixed Use & Manufacturing Districts | BU1 | BU2 | BU3 | BU4 | BU5 | MU1 | MU2 | MU3 | MU4 | M | LM | Definition/ Listed Standard |
|-----------------------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----|----|-----------------------------------|
| Firearm Business | -- | -- | -- | SP | -- | SP | -- | -- | -- | SP | SP | Sec. 6.10.4 |
| Firing Range | -- | -- | -- | SP | -- | SP | -- | -- | -- | SP | SP | Sec. 6.10.4 |
| Gunsmith | -- | -- | -- | SP | -- | SP | -- | -- | -- | SP | SP | Sec. 6.10.4 |

6.10.4. FIREARM BUSINESS USES

A. **Purpose.** To establish criteria for the establishment of Firearm Business Uses in the City that address safety concerns in operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This Sec. 6.10.4 provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare.

B. **Definitions.**

Ammunition. Cartridges or cartridge cases, primers (igniter), bullets, tear gas cartridges, or propellant powder designed for use in any Firearm.

Firearm. Any device designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including but not limited to a gun, pistol or rifle.

Firearm Accessory. Any device designed, modified or adapted to be inserted into or affixed onto any Firearm to enable, alter or improve the functioning or capabilities of the firearm or to enable the wearing or carrying about one's person of a Firearm.

Firearm Business Uses shall include the following:

1. **Firearm Business.** A retail or wholesale operation involving the purchase or sale of Firearms, Ammunition, and/or Firearm Accessories.
2. **Firing Range.** A commercial facility designed for Firearm(s) training and/or shooting practice.
3. **Gunsmith.** Any retail operation involving the repairing, altering cleaning, polishing, engraving, blueing or performing of any mechanical operation on any Firearm.

C. **Firearm Business Uses not allowed as-of-right.** Firearm Business Uses are not included within the definition of retail sales or services, manufacturing, or any other lawful

business permitted as of right or by special permit as provided in this Chapter.

D. **Firearm Business Uses allowed by special permit.** Use of land, buildings or structures for a Firearm Business, Firing Range, or Gunsmith shall be allowed only by special permit in the districts specified in Sec. 4.4.1 subject to the requirements and criteria of this Sec. 6.10.4.

E. **Minimum criteria and limitations on approval.**

1. A Firearm Business, Firing Range, or Gunsmith shall not be located within a radius of **TBD [SEE EXPLANATORY NOTE BELOW]**¹ feet from any residential property line, private or public k-12 school, daycare center, preschool, child-care facility, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, another Firearm Business, Firing Range, or Gunsmith, unless the City Council finds that such Firearm Business, Firing Range, or Gunsmith is sufficiently buffered such that these facilities or uses will not be adversely impacted by the Firearm Business, Firing Range, or Gunsmith's operation. Such distance(s) shall be measured in a straight line from the nearest property line of the proposed Firearm Business, Firing Range, or Gunsmith to the nearest property line of any of the designated uses set forth herein.
2. A Firearm Business, Firing Range, or Gunsmith shall obtain and maintain all necessary Federal, State and other required local approvals and licenses prior to beginning operations.
3. A Firearm Business, Firing Range, or Gunsmith shall comply with all applicable Federal, State and local laws and regulations in the operation their business.
4. A special permit granted by the City Council authorizing the establishment of a Firearm Business, Firing Range, or Gunsmith shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the Firearm Business, Firing Range, or Gunsmith has been authorized by the special permit.
5. No graphics, symbols or images of Firearms, Ammunition, or Firearm Accessories shall be displayed or clearly visible from the exterior of the Firearm Business, Firing Range, or Gunsmith. The City Council may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.
6. No Firearm Business, Firing Range, or Gunsmith shall be located within a building containing a residential use.
7. Firearm Business Uses shall not be open to the public between the hours of 11:30 p.m. and 6:00 a.m. The City Council may, as a special permit condition, further limit

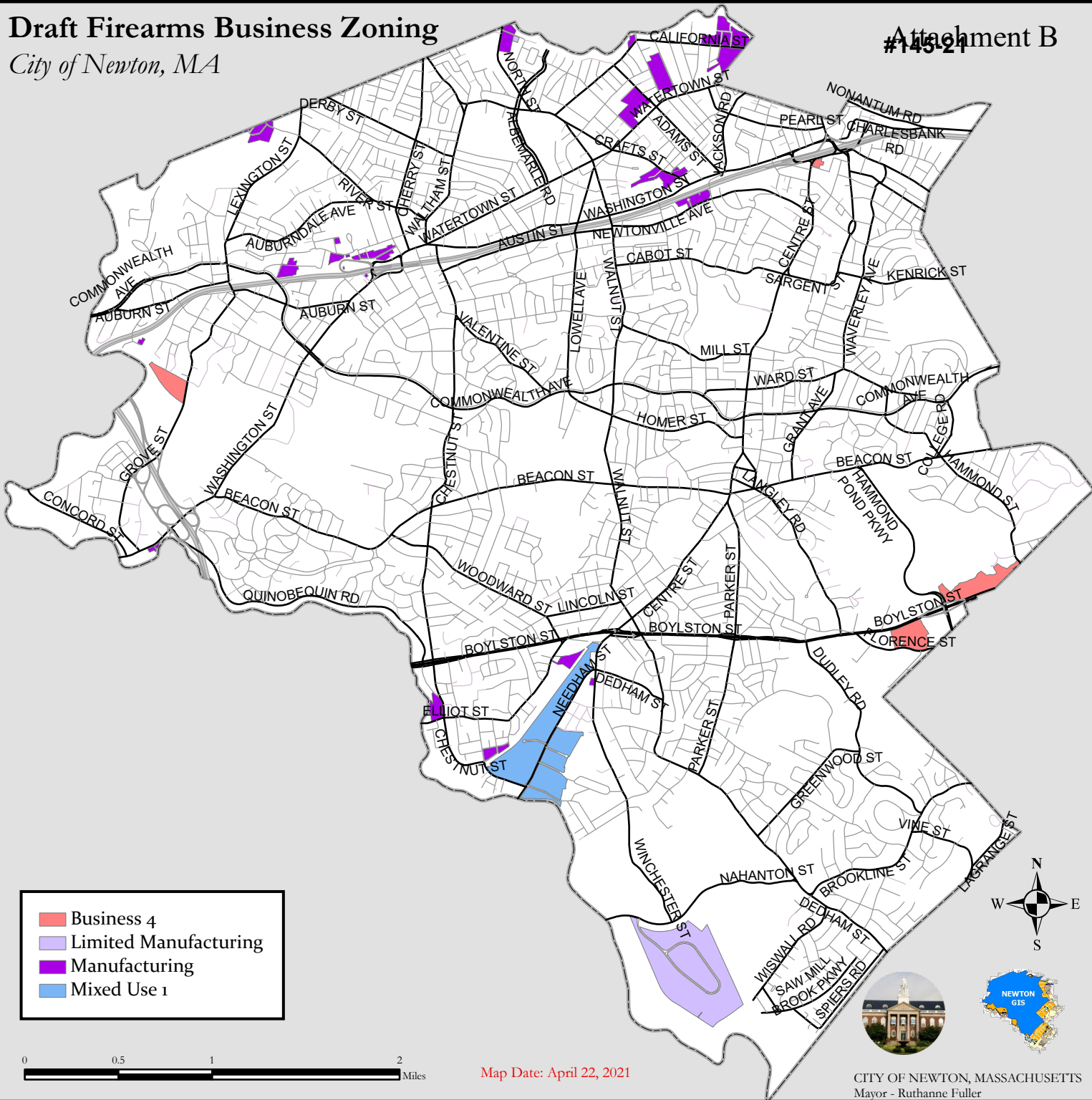
¹ **EXPLANATORY NOTE** – The Planning & Development Department is compiling and analyzing geographical and land use data and will submit recommendations for the optimal buffer distances between Firearm Business Uses and the other enumerated land uses in the proposed Sec. 6.10.4.E.1 for the Zoning and Planning Committee's consideration. Such recommendations will be set forth in the Planning & Development Department's forthcoming memorandum for the public hearing scheduled for May 10, 2021 for this docket item.

- the hours of operation of a Firearms Business Use to mitigate any adverse impacts on nearby uses.
8. A special Permit for a Firearm Business, Firing Range, or Gunsmith shall not be granted if such business is owned by or to be managed by any person or persons convicted of violating the provisions of G.L. c. 140, §§ 122B, 130, 131N, or similar laws in other states.
- F. **Special permit application and procedure.** The procedural and application requirements of Sec. 7.3 shall apply. In addition to the procedural and application requirements of Sec. 7.3, an application for special permit shall include, at a minimum, the following information:
1. **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site.
 2. **Lighting Analysis:** A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.
 3. **Context Map:** A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot, whether such uses are located in the City or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs. The context map shall include the measured distance to all uses described in paragraph E.1 above.
- G. **Special Permit Criteria.** In granting a special permit for a Firearm Business, Firing Range, or Gunsmith, 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. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
 - c. The Firearm Business, Firing Range, or Gunsmith establishment is designed to minimize any adverse impacts on abutters.
 - d. The Firearm Business, Firing Range, or Gunsmith establishment has satisfied all of the conditions and requirements in this section.
- H. **Severability.** If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

Draft Firearms Business Zoning

City of Newton, MA

Attachment B
#145-21



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.

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](#)