



# **Zoning & Planning Committee Report**

## **Part 2**

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

**Monday, April 26, 2021**

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

Also Present: Councilors Bowman, Kelley, Laredo, Lipof, Markiewicz, Lucas, Noel, Norton, Malakie, Greenberg, Kalis and Oliver

City Staff: Jonathan Yeo, Chief Operating Officer; Andrew Lee, Assistant City Solicitor; Jini Fairley, ADA Coordinator; Jen Caira, Deputy Director, Zachery LeMel, Chief of Long Range Planning, Barney Heath, Director; Cat Kemmett, Planning Associate, Nevena Pilipovic-Wengler, Community Planning/Engagement Specialist; Planning & Development Department; Jonah Temple, Assistant City Solicitor; Alyssa Giuliani, City Solicitor and Maura O'Keefe, Assistant City Solicitor

Others Present: Treff LaFleche, NewTV, WBZ-TV

Planning Board: Peter Doeringer (Chair), Chris Steele, Jennifer Molinsky, Kevin McCormick, Sonia Parisca and Barney Heath

Utile Consultants: Tim Love and Lisa Hollywood

**#88-20**      **Discussion and review relative to the draft Zoning Ordinance**  
**DIRECTOR OF PLANNING** requesting review, discussion, and direction relative to the draft Zoning Ordinance.  
**Zoning & Planning Held on 01/27/20, 02/10/2020, 02/24/2020, 03/09/2020, 03/23/2020, 04/13/2020, 04/27/2020, 05/19//2020, 06/01/2020, 06/15/2020, 06/29/2020, 07/09/2020, 07/16/2020, 08/13/2020, 09/14/2020, 10/01/2020, 10/15/2020, 11/05/2020, 11/09/2020, 12/14/20, 02/22/21, 03/08/21**

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

**Note:**      Tonight's discussion focused on village center districts.

Tim Love and Lisa Hollywood, Utile Consultants; Nevena Pilipovic-Wengler, Community Planning/Engagement Specialist and Director Barney Heath joined the Committee for discussion on this item.

Director Heath stated that the City desires a thoughtful, deliberate approach to village center districts including regulations that will allow village centers to continue to thrive and serve the community well into the future.

Mr. Love provided a PowerPoint presentation, attached. The PowerPoint addresses Village Center Rezoning: Phase 1, describing Newton's unique village centers, the mix of uses, goals for village centers in recent plans, zoning redesign schedule through to September 2021. Ms. Pilipovic-Wengler continued with a description of the spring/summer community engagement plan, including the proposed "Vision kit" for staff and Councilor guided walking tours, how to use "Polis" surveys to draw consensus, plans to engage a wide variety citizens and groups who well represent the community, and the redesign schedule.

Mr. Love stated that the changing landscape of retail and e-commerce must be front of mind as we plan for village center commercial districts. He noted Newton is does not have a single downtown, but rather 13 - to 16 - village centers, depending on how we define them, and they play a very important role in the city. The map shows neighborhood/s around each village center. Village centers have performed a wide range of social, cultural, and civic functions, providing community gathering spaces, small local retail and offices. In most cases, they are perceived to be pedestrian friendly; many are served by public transit.

It is important to note that many of the past planning documents identify these kinds of softer social and cultural qualities of village centers. There are four examples that get at the qualities that centers have. Newton Villages can provide a sense of place and community identity (many Newtonians identify with their village), promote an active environment and pedestrian experience, maintain a physical character and unique feeling of village scale while supporting economic vibrancy, and build dynamic and very cultural spaces a that promote art, music and other cultural activities.

It is important to point out that the village centers need to be reconsidered in the context of zoning (what we allow) because there are certain economic development forces that put them at risk. One is that e-commerce is becoming the retail solution of choice for a wider range of goods and services, and COVID has trained more people to order online. Another consideration is how people will make decisions post COVID, about commuting to work. Will there be more folks who will seek to work from home, a co-working space or from a third place in the village center. There may be opportunities in the village centers to think about providing office space that does not require commuting. We should as well consider retail trends and leisure/recreational spaces such as gyms, as we consider land use and regulatory frameworks.

Mr. Love then stated that he will attend future Committee meetings to discuss progress made. In May or June, community engagement discussions will begin to determine what residents think about the village centers that they identify or have the closest relationship with or know the best. There will also be engagement meetings to hear from the Economic Development

Commission about where commercial space and retail are headed. Discussions with urban planners and urban designers will also take place.

Mapping analyses will illustrate things like walk sheds to existing village centers to understand what is accessible within two, four and five-minute walks. We will examine the relationship between ridership counts at the different public transit stops and how that may influence the health and success of the village centers as they exist. We will seek to frame what the ideal mixed use program looks like for a village center moving forward.

Ms. Pilipovic-Wengler presented a community engagement plan. She stated the City wants to understand how community members relate to their village centers, as well as what they envision for the future of village centers. The City is discussing different options but the bones of it are really based on a "Vision kit" and a "Polis" survey. The vision kit is to encourage residents to reflect on and think about the village centers. The Polis surveys intend to capture folks' reflections and ideas and are designed in such a way as to allow feedback among participants. The City will be hosting neighborhood focus groups to address equitable community engagement and will create a community engagement process for the business communities in collaboration with the Economic Development Commission.

Spot surveys will also be performed by staff, using the vision kit and polis survey at dog parks and playgrounds, as well as busy bus and train stops. The vision kit prompts questions leading with some historical and zoning-related facts, as well as asking what people want to see in the future. The City is going to new community members to forward their photos, drawings and stories that have surfaced during their use of the bucket.

The Polis survey is structured to be an ongoing conversation. It is a way to crowdsource a wide range of people's opinions, disagreements, and reveal consensus as well as areas of uncertainty. Polis surveys also can help identify patterns of how people respond to a statement by anyone else in the participant group. This is the kind of information that can guide staff in terms of specific areas including research and policy proposal analysis.

Ms. Pilipovic-Wengler then stated that the bones of the vision kit, polis survey and the City holding equitable engagement discussions for equitable engagement. We will solicit participants representative of Newton's demographic by seeking outreach assistance and engagement from many entities, including the Youth Commission, Commission on Disability, Housing Authority, Newton Community Development Foundation (NCDF), Cultural Development Department. Ms. Pilipovic-Wengler said that she is also asking the Human Rights Commission, Council on Aging and the Newton Cultural Council to participate.

The completed Vision Kit and Polis survey will be released on May 20, when the City will host a first public information session. You can find information and register for this event on the Zoning Redesign website now. It was noted that it would be beneficial for Councilors to host walking tours using a vision kit.

Chair Crossley suggested that Ms. Pilipovic-Wengler include neighborhood associations in the discussions. Ms. Pilipovic-Wengler said that she is planning to reach out to the Area Councils, neighborhood associations and school parent groups in the next week to explain the program and invite them to attend the public information session.

Committee members suggestions, comments, questions and answers.

Suggestions:

It would be helpful to know what the differences are between Utile contract versus what the City is organizing.

Please include the Economic Development Commission in community engagement discussions.

It may be worthy to look at the village study performed approximately 25 years ago which resulted in little to no change.

Comments:

It is important to have a variety of perspectives, it is hopeful that this process does not leave out interested parties, but do not really know and do not have a group somehow to participate in. It is important to make sure that the different points of view are heard.

Regarding the previous comment, Ms. Pilipovic-Wengler stated that the City will aim to have a better press presence (and use the mayor's extensive email list) so that people who are not tied to a community group can also see this. A goal of the vision kit is to have material that allows anyone to participate, regardless of whether they are part of a group or not.

Questions and Answers:

**When you refer to village centers are you referring to village commercial centers, because Chestnut Hill was omitted, but represented?**

**Regarding the Planning Department memo of April 23, which references that the City wants to hear voices on disapproval, proportionately, underrepresented and previous zoning redesign outreach. Can I assume that the list of people on page 13 of your presentation is in the engagement plan to focus on groups listed?** Ms. Pilipovic-Wengler answered yes, the two groups that are not completely aligned with the results we had from the December events. One is that for the older adults, we are opening that up to 65 and older. The group the City heard from the most was from age 65 through 84. But we still felt like those are still really important populations to carve out space for as well as the creative communities, because we were not pulling for whether someone identified as part of the creative community or not in December.

**How will the City reach out to renters?** Ms. Pilipovic-Wengler answered that is one reason why she is co-hosting with the Commissions and Councils that have people who represent these populations on those commissions and councils and have access to folks. For example, the

Housing Authority and Community Development Foundation have already confirmed their interest in co-hosting focus groups accessing their renters. But in addition to that, there are renters in a lot of other places. She then said that she is trying to think creatively about how to get outreach through large apartment complexes, to also have a focus group for renters who are not directly renting through those entities. It is also building relationships with people and asking them to spread the word. Ms. Pilipovic-Wengler then stated that because of Covid, she has met many people who do not have cable TV or the internet and is making copies of the documents and dropping off at their house every week making them aware about how the City will reach out to these people. The City plans to think critically about how printed material and maybe a volunteer based system on how the City can assist folks who do not have digital access and can still provide their input. Phone surveys will be used for business communities.

**When does the City plan on concluding the relationship with these visions, data and the surveys?** Ms. Pilipovic-Wengler answered by the end of the first week of July. The data synthesis goal is to have survey work complete by the middle of July and technical work ongoing in August.

**Other than sandwich boards are there other marketing tools to locate renters making them aware?** Ms. Pilipovic-Wengler answered that along with sandwich boards, mayor's, schools, school committee and church newsletters she is hopeful people will be made aware.

**Has the City considered hosting outdoor meetings?** Chair Crossley answered that Councilors could host walking tours of village centers inviting residents to join. Ms. Pilipovic-Wengler answered that the City could host possible hybrid meetings prioritizing safety and comfort.

#### **Councilor's suggestions, comments, questions and answers.**

##### Suggestions:

Please involve Newton Housing Partnership, Fair Housing Committee, environmental and transportation advocates in community meetings.

Perhaps businesses may allow the City to have a table set-up for flyers.

##### Comments:

It is important to understand the demographics of the people who are answering the surveys. Please consider and include the Comprehensive Plan in your final report.

##### Questions and Answers:

**What is the cost to the City to implement this plan?** Mr. Heath answered that Utile is under contract for this phase at \$25,000 through the end of June. The City anticipates continuing the contract after the fiscal year, this price has not been discussed or determined.

**How can the City prevent people from answering the surveys multiple times and so counted multiple times?** Ms. Pilipovic-Wengler answered that there are several ways. In December, people were asked for their demographics influencing focus groups that were identified. There is an ability in the polis survey to ask people if they choose to tell us more about their demographics. Mr. Love answered that by using polis surveys some statements are generated by the team. They are all agree or disagree questions. After you go through the survey, you as a respondent can also add a statement. Much better numbers are received with this format of a survey than with other types, because the statements are in a way more engaging and allow you to stop when you like. The survey tends to sort the order of questions.

**How will the City ensure that good representation is received on the polis surveys from businesses and employees?**

Ms. Parisca, Planning Board member said that we have talked a lot about the process and is interested in the content and would like to hear what is it that we are going to be discussing, and is there an (substantive) agenda?

Chair Crossley stated that we are trying to hear from the public about how they feel about their villages first – data collection.

Mr. Love answered that the simplest way to say this is that village centers, especially when they are successful, have an interesting mix of uses that attract people to them. The bedrock of Newton's village centers, and really any kind of main streets or small commercial corridors that are successful throughout New England, is about the alchemy of this mix of uses. In Newton, there is a whole set of economic development issues and issues around about those relationship of uses. It is important that the polis survey asks residents what village center do you go to now and why do you go there? Was there a business there that used to be there five years ago? Have you seen new businesses show up that you think, are advantages to the village center? These can be discussed in the focus groups that Ms. Pilipovic-Wengler will lead in her discussions with the Economic Development Commission and some of the experts. It would be interesting to learn how businesses in the village center have adapted to COVID. Are there some patterns that might be useful to learn from and even make more permanent? These are some questions we have raised with the Planning Department.

Without further discussion, Councilor Baker made a motion to hold this item. Committee members agreed 8-0.

**#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.

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

**Note:** Jen Caira, Deputy Director and Barney Heath, Director, Planning & Development Department; Jonah Temple, Assistant City Solicitor; Alissa Giuliani, City Solicitor; Maura O’Keefe, Assistant City Solicitor; Andrew Lee, Assistant City Solicitor joined the Committee for discussion on this item.

Chair Crossley stated that that notice of the gun store application came suddenly to Council. President Albright and the mayor’s office created and Council passed an emergency docket item that the entire Council co-sponsored. The Chair explained to attendees that this evening represents the first discussion of the Council on this topic, and there will be no public comment tonight. The Planning and Law Departments have been working diligently on this item. A draft ordinance was released to the public along with a public hearing that was first noticed on April 23 for **May 10 at 7:00 p.m.**

This item came to Council’s attention recently and suddenly as a gun shop was taking steps to locate in Newton. Like most other communities, Newton has not regulated firearms establishments in its zoning code. Gun shops are considered a retail establishment selling general merchandise, though heavily regulated by the State. The City Council has the authority to regulate the location and process by which such establishments may locate within the City, as framed by the docket item. Our task tonight is to focus on the metrics that we think we should be exploring/using to come up with a map that optimally locates these establishments. There certainly has been a clear call for a strict ordinance. Tonight, we will first hear from the Law Department why this is different from other uses, because of controlling Federal and other laws that protect the establishment of such facilities in our State. We will then hear from the Planning Department who will walk us through the ordinance and the decisions that we must make. Tonight, we will be providing our best guidance to the Planning and Law Departments

about how we feel this ought to work. The Planning and IT Departments are going to explore those metrics using mapping to help solve the puzzle.

City Solicitor Giuliani stated this ordinance is important to the City and the Law Department has been and will continue to be involved to advise the Planning Department, Mayor's office and the City Council to ensure that the City Council considers a zoning amendment that accomplishes our goals within the law. As we all know, the right for individuals to own and possess guns is protected by the Second Amendment of the Constitution. States may not place a complete ban on this constitutional right, **but they may reasonably regulate the sale, possession and use of firearms and ammunition within their boundaries.** Massachusetts has done enacted some of the most restrictive gun laws in the Country. The process for applying for licenses to sell firearms is completely regulated by the State, which we have briefly outlined in the frequently asked questions (FAQs) document that is posted on the Planning website. The FAQs have been updated once and we will continue to update them periodically as more information becomes available. Local governmental bodies also have broad authority to regulate all land use within the boundaries of a municipality, including the location of firearms dealers. Given this power, some have asked if the City can exercise that power in such a way to completely ban the sale of guns by basically zoning them out of existence. The protection granted by the Second Amendment, however, also includes an ancillary right necessary to realize the core right to possess a firearm. The courts have made clear, this includes a constitutional right to purchase firearms. Therefore, any act by this Council to prohibit the sale and purchase of firearms within the City will likely be held unconstitutional. It is the Law Department's recommendation that a ban is not pursued at this time because it would be deemed unconstitutional.

City Solicitor Giuliani then stated that the Council's authority to regulate where firearms may be sold within the City is still very strong. Tonight's discussion regards the zoning amendment that would limit areas in the City where gun retailers may operate.

Ms. Caira presented a PowerPoint (attached), which includes an overview, summary, firearm zoning examples, ordinance framework, additional firearm regulation, and questions for Committee members to help guide the Planning Department analysis for the public hearing and the next steps.

### **Summary**

Newton's zoning ordinance currently does not regulate firearm businesses differently than other retailers. They are therefore permitted anywhere where retail is permitted, which is in most business zones as well as mixed use in limited manufacturing zones. The proposed ordinance would always require a special permit, limit firearm businesses to certain zoning districts, add buffers from certain sensitive uses and include additional standards and criteria for approval of the special permit. The initial draft is intended as a starting point and to allow flexibility subject to additional analyses, discussions and public testimony. Due to constitutional protections, it is reasonable to expect that the more restrictive the firearms ordinance, the



more likely it would invite a legal challenge. As the City moves forward discussing this item, we must keep in mind the balance between providing opportunities and providing protection.

### **Firearm Zoning Examples**

The City explored examples of zoning regulations for firearm businesses both within and outside of Massachusetts, which seems to be relatively rare. Most neighboring communities do not regulate firearm businesses through zoning. Of the communities whose zoning ordinance do regulate firearms, they all require discretionary approvals. Most of them are limited to commercial zones, often highway-oriented commercial, or industrial zones. Most of them require buffers from sensitive uses. Those sensitive uses vary, but generally includes schools, daycares, parks and playgrounds. buffers from residential uses or districts are less common. Dedham, MA restricts firearm businesses to their adult use overlay district and requires 150 foot buffer from residential uses and districts, schools, libraries, religious uses, childcare facilities, parks, playgrounds, establishments selling alcohol for on-site consumption, and other firearm businesses. Westwood, MA limits firearm businesses to their local business districts, highway business and industrial districts, but does not require buffers or have specific regulations that were found. Worcester, MA only regulates shooting ranges and requires 1000 foot buffer to schools and a 100 foot buffer to parks and playgrounds. Framingham, MA excludes firing ranges from their definition of outdoor recreational facilities. Reading, MA prohibits gun and shooting clubs in highway business districts. Everett, MA used to regulate firearms businesses but after a large zoning rewrite it no longer does. Ms. Caira then provided examples outside of Massachusetts (see attached).

### **Regulated Uses**

The ordinance must add new definitions for firearms businesses, to include:

1. Retail or wholesale operations involving the purchase or sale of firearms, ammunition and or firearm accessories;
2. A firing range, which is a commercial facility designed for firearm training and/or shooting practice;
3. A gunsmith is any operation that provides repair, alteration, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm.

At this time, the DRAFT ordinance limits the firearm business uses to Mixed Use 1, Business 4, Limited Manufacturing and Manufacturing districts. Currently the sales are considered a general retail use, which are allowed today in most of our business districts, mixed use districts and the limited manufacturing district. However, as part of this process, the City Council may decide to remove districts from those proposed or add back districts where retail is currently allowed to find the right balance of opportunity and buffers from sensitive uses. Ms. Caira showed maps highlighting existing zones where retail is allowed today.

### **Special Permit requirement and limited zones**

Not all parcels in all the zones proposed? are going to work well, especially in some of the small manufacturing zones which tend to be scattered through some neighborhoods. However, once we apply buffers to various sensitive uses, some less desirable locations will be eliminated. In every case, applications will be subject to a **special permit** which is a discretionary process run by the Council Land Use committee and would consider such proximities.

**Buffer Zones**

Buffers require careful analysis along with limiting zones to balance the constitutional right to provide this opportunity while also ensuring sensitive uses are sufficiently buffered. That is, we must solve the puzzle without completely eliminating opportunity. The proposed ordinance identifies the following sensitive uses to buffer from firearms businesses: residential property, private or public K through 12 schools, daycare center, preschool, childcare facility, public park intended for passive or active recreation, playground, land or structure used for religious purposes, library and other firearm businesses. The actual buffer distances are what we must analyze.

**Existing Zoning Buffers for restricted uses.** Currently, the City requires a 500 foot buffer between adult businesses and the nearest religious use, public park, youth center, daycare, family daycare center for child counseling, great pond or navigable river. A 150 foot buffer is required between adult businesses and the nearest residential property line. 1000 feet is required between adult businesses and any other adult business within the city or an adjacent municipality. State regulations require A 500 foot buffer from public and private K through 12 schools to any marijuana retailers or medical marijuana treatment centers and. A half mile is required between marijuana retailers or medical marijuana treatment centers and other such businesses.

Though some may desire a large buffer from all residential uses, again we must be careful not to eliminate all possible opportunities. Newton has few commercial areas that are not immediately surrounded by residential uses. A 500 foot buffer from schools, parks and other non-residential sensitive uses seemed common in our review of other communities and is consistent with our adult business buffers. However, we do have a high number of parks and daycares in Newton. We may also want to consider tiers of buffers, which we saw in some other communities, where the largest buffers are typically around schools. And we may want to consider different buffers for the different types of firearm businesses.

**Additional Standards**

Compliance with all federal, state and local laws and regulations, a prohibition on graphic symbols or images of firearms or firearm accessories from being visible, and a limitation on hours of operations of 6:00 a.m. to 11:30 p.m. or as further restricted by Special Permit.

**Additional Special Permit Criteria** are criteria that Council must find are met in order to grant approval for a special permit. These may 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 is designed to minimize any adverse impacts on abutters and that the firearms business has satisfied all of the conditions and requirements of this ordinance.

**Additional Regulations**

Assault weapons are banned in Massachusetts. Firearms within shops must be secured, firearms may not be displayed in windows. The Police Department is required to review and approve any license to sell firearms and to ensure all safety measures are in place for a particular location. The Police Department must also perform annual inspections of dealer sales records. All other applicable local ordinances such as the noise ordinance would apply to any firearm business.

**Questions for Committee members to address to help guide analysis for May 10 meeting**

- Are there any sensitive uses identified in the ordinance that are not necessary?
- How should sensitive uses be prioritized? If residential uses are important to buffer a smaller buffer and/or expanded zoning district may be necessary.
- Should residential buffers be from residential zoning districts or residential uses?
- Should there be fewer zoning districts with smaller buffers or allow firearm business in more districts but with larger buffers?

**Committee members comments, suggestions, questions and answers.**

Comments:

It is unnecessary for a gun shop to open at 6:00 a.m.; a later opening time is more appropriate like other Newton businesses.

I support the largest possible buffer zones. Data will be necessary.

Window transparency (adult entertainment) should be at zero. Windows must be screened in such a manner as to prevent visual access to the interior of the establishment.

It is clear, after reading the case law, that we cannot constitutionally enact an all-out prohibition, but what we can do is draft zoning to limit the opportunities to locate gun shops. A problem with this docket item is that zoning gets interpreted as a determination that there are certain parcels or areas of the city where this is an appropriate use.

It is necessary to craft the most restrictive ordinance we can that would be constitutionally defensible.

The City should be careful that we do not make the buffer zone so big that there is no place to put a gun shop in a better location.

It appears that the cannabis stores are more regulated than the sale of gun shops. There are many (Manufacturing) zonings districts North of the Mass Pike, (which may allow more opportunity there than in southern areas of the city).

Suggestions:

Since the City cannot ban the sale of guns, it would be preferable to use the Dedham, MA example for the buffer zones.

Could the City add criteria specifying that the special permit granting authority should decide that the proposed use or the proposed shop would be more beneficial to the City than it would be detrimental. A petitioner would have to demonstrate the ways that their business would enhance the community or ways that it would bring benefits.

Please provide a map showing both 500 and 1000 feet buffers from sensitive uses.

Please consider adding colleges, schools, health care facilities, health departments, liquor stores, assisted living facilities and any business that has a liquor license to the sensitive area list.

Please consider regulating the size of the gun shop sign to reduce its presence and prohibit signs off site from directing where the gun shop is located (example was given of a billboard on the highway)

Buffer zones should include all residential uses, not just residential districts.

Perhaps limit the buffer zone to at least 150 feet from residential uses and discuss the possibility of limiting gun shops to fewer manufacturing zones, because there are so many manufacturing zones north of the pike.

Firing ranges should not be allowed to operate in a gun shop.

Questions and Answers:

**Has Needham Street been rezoned for the Northland project?** Ms. Caira answered the rezoning has not been mapped yet. Ms. Caira is working with the GIS analyst to identify those areas where we know there is a new residential use that has been proposed and permitted but have not yet been constructed.

**Are universities considered school buffer zones?** Attorney Lee answered that this ordinance draft was based on many ordinances that Ms. Caira reviewed in other jurisdictions, and they contemplate K through 12. Universities were not included, although there are several in Newton.

**Is Piscataway, New Jersey that had the largest buffers, is that a bigger city than Newton?**

Ms. Caira did not have that information available.

**Is the term broader when you use residential uses rather than residential properties?**

Ms. Caira answered yes. Newton has non-residential districts that have residential uses.

**In the past, lead has been used in firing ranges how will this be addressed or tested?**

**It is concerning to hear the many proposed sites being located North of the Pike. Equitable distribution is important. Could another business zone use be considered?**

**May the City cap the number of licenses that we could offer either for a particular user or the uses in general, sort of like we do with marijuana licenses?** Attorney O'Keefe answered that the question would be whether that is a reasonable restriction, and case law dictates that States can impose reasonable restrictions on licensing. She then stated that she did not know whether that translates to municipal zoning. Ms. O'Keefe stated that the question will be researched.

**Will the number of licenses be limited if it is constitutionally defensible?**

**Will the gun shops be allowed to sell guns online using their Newton address?** Attorney O'Keefe answered that a gun dealer may be a conduit for online sales. If you are a properly licensed gun dealer in Massachusetts, that would mean that you would also be required to have the Federal firearms license (FFL). This is the license required to allow an operator to be the conduit for online sales. The way online sales work is that a person who is properly licensed in Massachusetts, either with the LTC or with an FID card, would secure the purchase online, but the order would have to be picked up. Guns may not be delivered to your home. If there were a gun shop in Newton, that gun shop would have an FFL. Someone could buy a gun online, arrange for it to be delivered to that gun shop and then pick it up. The gun dealer would have to certify not just that the purchaser was properly licensed, but also that the firearms comply with all Massachusetts law.

**Do the 6:00 a.m. to 11:30 p.m. hours of operation are being proposed because those are the hours, we allow retail businesses to open?** Ms. Caira answered that the hours of operation come from our adult businesses, most of our retail uses do not have limited hours of operation.

**Did I hear you correctly that the City would allow a gun shop on Wells Avenue in Ward 8 where a private Jewish School, Solomon Schechter and JCC are located?** Ms. Caira answered yes, Wells Avenue is in the limited manufacturing district is included in the initial proposed list, But the buffers would still have to be applied.

**Does the State law prevent recognizable signage?** City Solicitor Giuliani answered that the State does regulate signage and what can be visible from the street. She will research the extent to which the state regulates such matters and will work with the Planning Department to help answer this question.

**Councilors comments, questions and answers.**

**Comments:**

It is important that we are fair to every resident and business in the City. The City must be equal and fair in terms of where the appropriate locations could be.

Perhaps additional zoning districts are necessary and will come to fruition when we see another draft.

The City should take a broader view of where a firearm dealer could possibly be decided in our State by looking at all the commercial spaces across our cities, businesses, in mixed use zones, narrowing the focus on possible firearm business locations. This would be a far more equitable and fair way to evaluate this type of zoning across the City.

Limit the permit to one gun retailer in the City, just as the number of cannabis retailers in the City are limited.

Balance is necessary regarding the number of gun shops.

Narrow the ordinance as much as possible.

Needham Street may not be an appropriate location for a gun shop. Needham street is poised to be a success story as the City's next village. The City is making it walkable and bikeable.

**Questions and Answers:**

**Regarding the special permits, will it take 2/3 majority of the City Council to approve it?**

Attorney Temple answered yes, that is correct.

**Councilors have received many emails stating "Do not put a gun shop in Newton" and asked how could the City let this happen? When did the City first learn of the proposed gun shop? Please provide an explanation when the administration learned about this.** It was noted that the particular circumstances of one gun store application is not before the committee, and the Chair noted that we have a lot of work to do quickly in drafting this ordinance; we should stay on task.

**Is information available regarding the taxing of gun sales? Can it be modeled after the cannabis host agreements?**

**Since the City cannot legally challenge the existence of gun stores in the City, is that a conclusion the City has reached based on looking at the case law elsewhere in the country? Is it the Law Department's view or professional judgment that to make that challenge would be**

**close to frivolous? Does it go that far? Or would it be more that you think it is unlikely the City would prevail?** City Solicitor Giuliani answered yes, the Law Department has looked at the case law all over the country. The conclusion is that a ban would be considered unconstitutional. She then stated that she cannot guarantee before filing anything that it is frivolous. Having reviewed, analyzed and considered how its application in the City, it would be highly likely that a full ban would be considered unconstitutional.

**Would a limit on the number of shops in the City pass constitutional muster?** City Solicitor Giuliani answered that the Law Department would like to review this. If it is possible, the City wants to look at how that might be analyzed legally and if the City has the authority to do it. The Law Department will provide their recommendation.

**Are safety considerations necessary in terms of location? For example, off a main street may not be a good location, because of safety concerns. Perhaps the Police Department can answer this question?**

**There are two philosophical questions. What is the best use of the land and is this for the public benefit? And conversely, is there a public detriment?**

**With our special permit process, can we ban someone from opening a store who has a history of violating our laws, such as doing work on their property without a building permit?** Attorney Temple answered the City is not allowed to deny a special permit because of a past zoning violation. There are other remedies for such violations. The City approach is that is not the right way to enforce such violations.

**Can the City ban firing ranges? It is not the same as a second amendment right to a gun.** Attorney Lee answered it is not the same as the second amendment to the right to a gun but is near the core principle of being able to possess a firearm. One of the recognized principles that are protected by the Second Amendment is the right to practice and train in firearm use. The courts are quite clear that firing ranges fall into that category.

**Could we request additional outside legal expertise? This is a very specific type of legal expertise. It would be valuable to receive additional opinions.** Attorney Lee said the case law is clear that a zoning ordinance that would effectively ban any of these gun shops would likely be deemed to be unconstitutional. In the California case cited, there were already 10 gun shops in the county at the time that a proposed gun store challenged the constitutionality of the zoning ordinance that stopped its establishment. In Newton there are currently zero. The cases look at the number of establishments that are within the jurisdiction of the authority that is being challenged.

**Has there been a case where a complete ban was overturned?** City Solicitor Lee answered that he would review this question.

**Is it possible to make gun shops open as appointment only?** Attorney Lee answered that he would review this question.

**Is there a way to make the gun shops out of sight by requiring them to be on an upper floor of an elevated building?**

**Planning Board Members comments questions and answers:**

**Comments:**

If a gun retailer moves into a location, that would presumably limit a childcare facility from moving in nearby. If the City does not have a gun shop, but three childcare centers move into a zone that we thought was a viable option, that place would become not viable. Over time, zones may have to be evaluated to make sure that we are still taking care of the constitutional side.

It is concerning to hear gun shops opening in the City when you support the reduction of guns in everyday lives.

The City can reduce the number of eligible locations down to a number that is constitutionally minimum.

**Questions/Answers:**

**Is there a way to get around the current zoning map or use an overlay district in some productive way where portions of other zones that may be zoned to widen the geographic distribution and deal with the equity issue?**

**Can the City require additional security on site as part of the special permit process, like marijuana dispensaries?**

**Can the City impose a cost of delay by taking a chance that tighter set of regulations may get overturned by the courts? Are there other adverse outcomes by losing the case?**

**Can we impose things that might make it less desirable economically for a gun shop to locate in the City?** City Solicitor Giuliani answered that the more restrictive the ordinance is, regardless of how we decide to impose those restrictions, the more likely it is that the City will be on the receiving end of a challenge that may not be successful.

**If the City loses a case by delaying entry by a year or two. Is there a cost to this delay other than the legal expenses? Can the City err on the side of being overly restrictive in terms of the Constitution?** City Solicitor Giuliani answered that there is a lot to weigh if the City went into litigation.



Without further discussion, Councilor Danberg made a motion to hold this item. Committee members agreed 8-0.

At approximately 10:30 p.m., the Committee adjourned.

**Respectfully Submitted,**

**Deborah J. Crossley, Chair**