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Barney S. Heath  
Director

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### PUBLIC HEARING MEMORANDUM

**DATE:** May 6, 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:** May 10, 2021

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

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## Executive Summary

The City of Newton does not currently regulate the zoning for firearms business (or related uses). A firearm dealer 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 firearm 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. Firearm businesses represent another use that warrants specialized zoning regulations.

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 firearm businesses developed by the Law and Planning Departments, both a redlined version showing changes from the April 26<sup>th</sup> version and a clean version (**Attachments A and B**), and an updated frequently asked questions (FAQ) document from the Law Department, including responses to questions raised at the April 26<sup>th</sup> ZAP meeting (**Attachment C**). More information, including the maps showing zoning and buffer alternatives, can be found here: <https://www.newtonma.gov/government/planning/plans-policies-strategies/firearms-zoning-amendment>. 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 currently regulate firearm businesses through zoning that staff has found are Dedham and Westwood.

The key elements of the proposed ordinance are limiting firearm businesses to the certain zoning districts; always requiring a special permit (a discretionary approval from the City Council requiring a public hearing); requiring buffers from sensitive uses; and applying additional operational standards and criteria for approval. Based on feedback from the April 26<sup>th</sup> Zoning and Planning (ZAP) Committee meeting, City staff have analyzed various options including variations in the proposed zoning districts, the proposed buffer distances, and the sensitive uses to be buffered. Based on this analysis, Planning staff recommend allowing firearm businesses in the Business 2 (BU2), Business 4 (BU4) and Manufacturing (M) districts and requiring 150-foot buffers between all firearm businesses and properties containing a residential use, and a 1,000-foot buffers between all firearm businesses and k-12 schools, childcare facilities (including daycares and preschools), colleges and universities, parks and playgrounds, libraries, nursing homes and any existing firearm dealers or firing ranges. We have found these to be the most restrictive buffers that can be applied while still allowing for the opportunity for firearm businesses. The Mixed Use 1 (Needham Street) and Limited Manufacturing (Wells Avenue) districts were proposed in the draft ordinance presented at the April 26<sup>th</sup> ZAP meeting. These districts have been removed from the draft as they are fully covered by the recommended 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 related to firearm business uses not currently included in our zoning ordinance, such as ammunition, firearm, firearm accessory, firearm dealer, firing range, and gunsmith and proposes that the uses only be permitted by special permit and only in certain districts. In the prior draft, firearm sales were defined as a firearm business. To avoid confusion with the larger use category of firearm business uses, firearm sales are now defined as a firearm dealer. The ordinance also identifies sensitive uses from which a firearm business use should be buffered from, the minimum distances required between sensitive uses and firearm businesses, 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 dealer 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 recommends limiting firearm business uses to the BU2, BU4, and Manufacturing (M) zones. The initial proposal discussed at the April 26<sup>th</sup> ZAP meeting recommended the BU4, MU1, LM, and M zoning districts. Several City Councilors recommended expanding the zoning districts but applying more restrictive buffers. Planning staff added in the BU2 district as it provided additional opportunity and removed the MU1 and LM districts because once the recommended buffers are applied there are no areas remaining within these districts. This combination of zoning districts provided the ability to apply the most restrictive buffers from sensitive uses.

Other zoning districts were also considered but not ultimately recommended. The BU1 district is typically limited to the core of village centers, which are not considered appropriate locations for firearm businesses. The BU3 district is not mapped and the BU5 district only exists in a couple locations and would be largely eliminated by buffers. The MU2 district is a small portion of Needham Street that immediately abuts residential properties and a park. The MU3 district is only located at Riverside Station where the proposed development includes retail spaces on the ground floor of buildings with residential units above. The MU4 district is only mapped at locations where there has been a rezoning in conjunction with a mixed-use multifamily building in a village center, such as 28 Austin Street and Trio at Washington and Walnut Streets. The MU4 district also requires active, transparent uses on the ground floor and residential units above.

Planning staff considered the suggestion to explore an overlay district for firearm businesses. An overlay was not considered in the docket or public hearing notice for this item and would require a new public hearing notice. The City of Newton does not currently have any overlay districts so introducing a new tool could also take additional time. Additionally, an overlay district does not solve the problem of Newton having very few commercial areas and even fewer that are not immediately surrounded by residential or other sensitive uses. The proposed districts along with the buffers represent a balance of providing opportunities while also distributing those across the City as much as possible given the locations of commercial zoning districts and providing sufficient buffering from sensitive uses. The zoning districts also represent a starting point and are not an indication that every remaining building located outside of a buffer would be an appropriate location for a firearm business. Any firearm business will still require a Special Permit and the City Council has the authority to determine whether the proposed business is appropriate in the given location.

## Standards

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;
- Requiring all firearm businesses to be located within a fully enclosed building;
- Giving the City Council authority to review and impose restrictions on signage;
- Limiting hours of operation to 9 a.m. to 9 p.m. with the ability to further restrict as part of the Special Permit review;
- Requiring the submittal of a security plan for review and approval by the Newton Police Department, including security provisions, physical layout of the interior, how firearms will be secured outside business hours, number of employees;
- Requiring submittal of an operations and management plan for review and approval by the Newton Police Department;
- Requiring the firearm business to conduct criminal background checks for all employees.
- Restricts unaccompanied minors from entering a firearm business; and
- Requires all firearm dealers to videotape the point of sale of all firearm transactions and maintain videos for six months.

At the April 26<sup>th</sup> ZAP meeting several City Councilors expressed a desire to restrict or prohibit transparency into firearm businesses as well as to limit businesses to the upper floors of buildings. Planning staff consulted with the Newton Police Department, who strongly advised against any restrictions on transparency or locations other than the ground floor. The police recommended that firearm businesses, particularly firearm dealers, be located in visible locations and that visibility into the business be maintained for safety purposes. Maintaining visibility increases safety as there are more eyes on the business and police can more easily monitor the store and can see into the store prior to entering if they are ever called to the scene, such as for a robbery. State law also prohibits firearms from being visible from the street, so it is unnecessary to put restrictions on visibility.

### *Additional Firearm 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.](#)

### Special Permit Application

#### *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 the following:

- Narrative providing a description of the proposed activities;
- Lighting analysis;
- Context map showing all properties and land uses within a 1,000-foot radius;
- Description of ownership, management and employees
- Comprehensive sign plan.

Depending on the nature of the application the City Council may also request additional information through the special permit review process. Firing ranges are required to show they will not result in adverse impacts due to noise, hazardous materials, or air quality, which will likely require the submittal of additional studies and analyses. Additional plans such as those showing landscaping, screening, and/or loading areas may also be requested.

### Special Permit Criteria

All firearm businesses will require a Special Permit from the City Council. A Special Permit is a discretionary approval, meaning even if a business is located in an allowed district, outside of the buffers, and meets all of the standards listed above, the City Council still has the discretion to deny the request if they find the business does not meet the required criteria.

All Special Permits require the City Council to make a finding that the proposed application meets all of the following criteria:

- The specific site is an appropriate location for such use, structure;
- The use as developed and operated will not adversely affect the neighborhood;
- There will be no nuisance or serious hazard to vehicles or pedestrians; and
- Access to the site over streets is appropriate for the types and numbers of vehicles involved.

In addition to the standard criteria for all Special Permits, the draft ordinance adds the following additional criteria for all firearm businesses:

- 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;
- The location will have adequate and safe storage, security, and a lighting system;

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

Firing ranges will also need to meet this additional criterion:

- The use will not result in adverse impacts due to noise, hazardous materials, or air quality.

### Buffers

In addition to restricting the number of zoning districts where a firearm business may locate and requiring a Special Permit for all firearm businesses, establishing reasonable buffers are another tool to help ensure compatibility between a proposed firearm business and surrounding uses.

#### *Buffer Comparisons*

Most of the firearm zoning regulations reviewed contained buffers from sensitive uses. The buffers reviewed 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 school, 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.

#### *Buffer Analysis*

Based on feedback from the April 26<sup>th</sup> ZAP meeting, staff analyzed different combinations of sensitive uses and buffer distances. The following buffer distances and sensitive uses were analyzed:

- 100-foot, 150-foot, 250-foot, and 500-foot buffers from properties containing a residential use
- 500-foot and 1,000-foot buffers from k-12 schools, daycare centers, preschools, child-care facilities, land or structures used for religious purposes, libraries, nursing homes, marijuana retailers, and establishments with a liquor license

Staff reviewed different iterations in order to find the most effective combination of buffer distances and sensitive uses. Residential uses and schools were prioritized first then other uses where children would be expected to congregate. Given the residential nature of the city, the residential buffers had the largest effect of eliminating potential properties. In the ordinances reviewed, residential buffers were not very common and were typically smaller than other buffers. Several residential buffers were analyzed ranging from 100 feet to 500 feet and both 500-foot and 1,000-foot buffers were analyzed for all other sensitive uses.

The first draft of the ordinance required that buffer distances be measured from the property line of the firearm business to the property line of the sensitive use. When doing the mapping analysis, we found that under all scenarios there were few, if any, entire parcels that remained outside of the buffers. The attached draft ordinance has been revised to require the measurement be taken from the building containing the firearm business to the property line of the sensitive use. As currently written, this would mean that even if there are multiple tenants in a building, no point on the building could be within the minimum buffer distance from a property containing a sensitive use.

### Recommendation

After careful analysis of various combinations of zoning districts, buffer distances, and sensitive uses the Planning Department recommends including the BU2, BU4 and M districts with a 150-foot buffer between any firearm business and any property containing a residential uses and a 1,000-foot buffer from between any firearm business and any public and private k-12 school, daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home or existing firearm dealer or firing range. The only suggested sensitive uses not included are marijuana retailers and establishments with a liquor license. When those uses are added they eliminate all possible opportunities (see Alternative 3 below). The recommended proposal limits firearm businesses to a portion of Route 9 in Chestnut Hill and part of the area near the Waltham border at Rumford Avenue and Riverview Avenue and provides for the largest buffers of any of the firearm zoning ordinances reviewed. The map illustrating the recommended zoning districts and buffers can be found [here](#).

### Alternatives Analysis

The maps linked below illustrate several of the alternatives analyzed by the Planning Department but ultimately not recommended.

Alternative 1: <https://www.newtonma.gov/home/showpublisheddocument/69406>

Alternative 1 provides the most opportunity for firearm businesses and most closely aligns with the buffers required for adult businesses in Newton. This alternative is not recommended as a more restrictive option is feasible.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use

- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 2: <https://www.newtonma.gov/home/showpublisheddocument/69408>

Alternative 2 is the same as Alternative 1, except the BU2 zone is not included and the proposed zoning districts align with those in the April 26<sup>th</sup> proposal. Alternative 2 provides fewer opportunity areas than Alternative 1 (and the number of existing buildings that are fully outside of buffers would further reduce the available areas) while providing smaller buffers than the recommended alternative.

- BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 3: <https://www.newtonma.gov/home/showpublisheddocument/69412>

Alternative 3 is the same as Alternative 1, except marijuana retailers and establishments with a liquor license are included in the list of sensitive uses. When buffers are applied to these additional sensitive uses only small slivers of sites are left and no existing buildings are fully outside of the buffers, making this alternative unfeasible.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, marijuana retailer or establishment with a liquor license

Alternative 4: <https://www.newtonma.gov/home/showpublisheddocument/69414>

Alternative 4 is the same as Alternative 1, except a larger residential buffer is included. While there are still a few areas that are outside of the buffers, with the larger residential buffer far fewer buildings are located outside of the buffers and the buffer around the other sensitive uses is still smaller than the recommended alternative.

- BU2, BU4, M, LM, MU1 zoning districts
- 250-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 5 – Recommended Alternative (also discussed above):

<https://www.newtonma.gov/home/showpublisheddocument/69410>

Alternative 5 is the same as Alternative 1, except a 1,000-foot buffer is used for all non-residential sensitive uses. Planning Staff recommend this alternative as it limits the possibility of a firearm business to just two areas of the city – part of Route 9 in Chestnut Hill and part of the area near the Waltham border at Rumford Avenue and Riverview Avenue. In this alternative there are fewer locations shown across the city than Alternative 4 (with the larger residential buffer but smaller buffer from all other uses) but within those areas there are an adequate number of buildings located outside of the buffers.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 1,000-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

### Summary

Planning staff finds that the revised draft ordinance, including the zoning districts and buffers shown in Alternative 5 balance the Constitutional protections for firearms, the Police Department’s desire to have firearm businesses be as visible as possible, and the community and City Council’s desire to restrict firearm businesses as much as possible from sensitive uses. It is unlikely that further zoning or buffer restrictions would withstand a legal challenge. The recommended proposal draws from ordinances and best practices from across the country and if adopted, would be the most robust firearm zoning ordinance in the region. It also is still only a starting point, and any firearm business seeking to locate in Newton would still require a Special Permit. As part of the Special Permit process the City Council would hold at least one public hearing, would have the ability to ask for more specific studies and analysis, and would have the discretion to deny an application if it did not meet the required criteria or add conditions to any potential approval of an application.

### Next Steps

A public hearing will be held by the Zoning and Planning Committee at 7 p.m. on May 10, 2021.

ATTACHMENT A: Proposed Draft Firearm Business Ordinance Redline  
 ATTACHMENT B: Proposed Draft Firearm Business Ordinance Clean  
 ATTACHMENT C: Firearm Frequently Asked Questions – May 6, 2021