



Zoning & Planning Committee

Report

City of Newton In City Council

Monday, June 21, 2021

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

Also Present: Councilors Gentile, Kelley, Oliver, Lucas, Noel, Bowman, Greenberg, Laredo, Malakie, Norton, Kalis, Greenberg, Humphrey and Downs

City Staff: Director of Planning and Development Barney Heath, Assistant City Solicitor Andrew Lee and Assistant City Solicitor Jonah Temple

Planning Board: Peter Doeringer (Chair), Chris Steele, Kevin McCormick, Barney Heath, Jen Molinsky, and Sudha Maheshwari

Others Present: NewTV

#182-21 Request for Ordinance Amendment to prohibit firearm use(s) in Newton
COUNCILORS GENTILE, NORTON, GREENBERG, OLIVER, WRIGHT, KALIS, LUCAS, MARKIEWICZ, MALAKIE, GROSSMAN AND LAREDO requesting a new ordinance to prohibit the sale and manufacturing of firearms in Newton.

Zoning & Planning Committee Held 8-0 on 05/26/21, Public hearing will be held on June 21, 2021.

Action: Zoning & Planning Committee Denied 6-1-1, Councilor Baker opposed, Councilor Wright abstaining, Public Hearing Closed 06/21/21

Note: Chair Crossley noted that this item came before the committee for a preliminary discussion on May 26 and was held for tonight's public hearing. If City Council votes to approve this ordinance it would replace in its entirety the restrictive firearms ordinance that was recently passed. This ordinance that it would replace layers a set of rules, as follows:

- 1) This use is allowed in manufacturing and business zones only.
- 2) Buffer distances to a long list of sensitive uses such as schools, daycares etc. and residential uses, must be maintained.
- 3) Mapping the buffer distances leaves three relatively very small areas of the city as opportunities where someone could apply for a special permit. An entire building would have to exist outside of the buffer distances to be considered.

- 4) A special permit is required.
- 5) Additional criteria specific to this use must be met in the judgement of the Council in order to approve a petition, taking into account the impacts on a neighborhood, including sensitive uses that may be beyond our borders.

The docketers are proposing to replace this ordinance with a complete ban.

Chair Crossley opened the public hearing; there were about 45 attendees.

Ned Notis-McConarty, Temple Street, Member of the **Massachusetts Coalition to Prevent Gun violence**, working to reduce gun violence in Massachusetts. Reducing gun violence is a long term, not short term, effort. We have been successful in implementing several goals and reducing gun violence in Massachusetts, to the point where it's now the lowest gun violence state in the country. There are also local issues like this one, which are very upsetting and challenging - to think we might have a gun shop here in Newton. I would suggest that we have already accomplished as much as we can, by the zoning ordinance, it's also been enacted, which in practical effect prevents gun shops from opening in Newton in many ways. We can't prevent gun shops from being very close to us. I'm concerned that by trying to ban gun shops, we are going to invite a ruling by the United States Supreme Court. I don't think anyone thinks that this Supreme Court is going to uphold a ban on gun shops in Newton or anywhere else. In fact, it could set us back, they could take the opportunity to find a constitutional right to sell guns, which they've never found. We should take what we have, which is tremendously effective and don't take the extra step of banning gun shops in Newton although many of us may support it.

Lisa Dallaire, Prairie Avenue, I do not want a gun shop in my neighborhood. In my mind, more available guns in an area means more gun violence, either domestic, suicidal or accidental. Although we are against having a gun shop in our neighborhoods, let alone our city, we believe that the restrictive zoning ordinance that recently passed will technically make it very hard for gun business to operate here. I'm concerned that the noble idea of a total ban on gun shops, if passed, will open the door for a lengthy lawsuit against the city. A lawsuit that could drag on for years and replace the time and energy the city can use in other endeavors. Implementing a total ban on gun shops is very risky. Do we really want to take that risk? This past year, there has been an increase in gun violence too numerous to count. According to an article neighborhood level analysis of the economic impact of gun violence published in June of 2017, surges in gun violence can significantly reduce the growth of new retail and service businesses and slow home value appreciation. Higher levels of gun violence were also associated with lower home values, credit scores and home ownership rates. This is not good for the City. I believe that implementing a total ban on gun shops is playing into the hands of a gun shop lobby. In my opinion, they are chomping on the bit to challenge a total ban. This fight could go beyond the Massachusetts court system and find itself in the Supreme Court where the final decision will impact not just Newton, but the entire nation. I urge the councilors to vote no on the total ban.

Attorney Janet Goldenberg, I serve as the President of **Massachusetts Coalition to Prevent Gun Violence**. The coalition brings together groups who care about gun violence prevention from across the state. We helped expand background checks on gun sales, increased trafficking, increased tracking of guns, and created a way to temporarily remove guns from distressed persons. Our mission is to reduce all forms of gun violence. I'm asking you not to pass this ban because it has enormous potential to make us less safe, and virtually no potential to make us safer. I understand the Council was acting out of a desire to make Newton safer, and I commend that impulse and would love to work with the council to pass policies that would do that. Whether it's increasing funding for youth services, or for a mental health response rather than a police response. This ban fails the cost benefit test the council must apply to all that it does. The excellent zoning will protect us without creating a significant risk of undermining zoning nationwide. The ban on the other hand will not make us safer but will pose a risk of undermining zoning for Newton and the rest of the country. We have the privilege of living in a state with strong gun laws. A ban might have emotional appeal, it's a bad idea which creates the potential for the Supreme Court to overturn not just this ban, but restrictive zoning on gun shops that will make Newton less safe and make vulnerable communities across the country who don't have our gun laws much less safe. Because we felt entitled to push the envelope with little hope of success, there's a reason that Giffords Law Center and I and others who devote our lives to stopping gun violence are asking the council respectfully not to pass this ban.

Carolyn Gabbay, Doris Circle, Provided a PowerPoint presentation on "Ban vs. Legally Defensible "Virtual" Ban", attached to this report. The slides were previously presented to the Newtonville Area Council. Now that the ban is the issue before us, and the recently enacted ordinance is a very good first response, people are still concerned that it still opens the door to people want to ban but they disagree whether it's worth the risk of legal defensibility. We suggest that to mitigate the risks that the current ordinance presents, and the risks that a ban would present is to come up with a stronger ordinance and a legally defensible virtual ban. We know from your summary, there are three zones that that are currently under the new ordinance. We think that there's still a real risk that one of those many property owners there might sell or lease to a gun shop. We think that the better approach is to achieve a virtual ban by zoning you've already enacted is legally permissible, but practically remote - indeed even more remote - than what you've already zoned, by changing to specific parcels that are zoned for gun shop uses. The way to do that, is to work out the mechanics, maybe a special overlay, a new zoning category or some proximity requirements to Route 9, which would allow the Planning Department to work out and exclude the other B1 parcels. We would suggest that you keep the special permit requirements. Councilor Norton has pointed out, when you sit in on an evaluation of a special permit, you're in a quasi-judicial mode, you cannot just outlaw a qualified gun shop because you don't want one. Councilor Gentile has pointed out that many times the Council just does not deny special permits, yes, some are withdrawn without prejudice, but those can be corrected and resubmitted. This virtual ban avoids the potential for a second amendment challenge that the ban proposal presents. A virtual ban amendment is better than a total ban. A ban involves uncertain legal risks. Rather than a ban, we should change the zoning locations so that we come up with what is a virtual ban leaving us with a smaller chance of ever seeing a qualified special permit.

Kartikey Trivedi, Linwood Avenue, Vice-President, Newtonville Area Council. Should we ban or not? I would not favor a ban, because it could pose a legal risk. If we lose that legal battle, it opens not only for this gun shop, but for any gun shop to come to town with more guns and more shops. What Ms. Gabbay proposed is a more amenable approach where we get the same output of not having a gun shop. It does give us an opportunity to legally have boundaries where we don't have a gun shop, but we don't ban it either. It's virtually impossible to have a gun shop, but we are not saying no to them. If they come to challenge us legally, we have a way to defend ourselves and still not have a gun shop. I request councilors to seriously think about it. Ms. Gabbay and I had a brief discussion with President Albright, and she was very encouraged with these ideas.

Mona Hochberg, 16 June Lane, I would love a ban on gun stores in Newton and in Massachusetts. I want the ban for all the reasons that people advocating for the ban want it. But I support the advice of the Giffords Law Center, that this is not the correct course to take it this time. Some people will say that this attitude is letting the pro-gun people win. To me, what really allows the pro-gun people to win is having this case go to the Supreme Court and give the conservative justices the opportunity to rule on this case by declaring the ban and all regulations on gun stores everywhere unconstitutional. I thank Newton residents who have offered to use their legal expertise and resources to litigate the ban. I bemoaned the fact that we do not have a federal judiciary that can be trusted to be objective and rural on the legal merits of the case that involves the Second Amendment. The adopted zoning ordinance does protect Newton. I cannot guarantee that a gun store will not locate here. The zoning ordinance significantly lowers the chances. A successful ban will lower that chance to zero but brings with it other risks and consequences that are not worth that slight advantage. Please vote against the ban.

Andrew Steinberg, Westgate Road, I oppose a full ban of gun stores because I believe it will ultimately lead to more gun deaths in our city and vulnerable communities across the country. I am a member of what is known as the school shooting generation. While I oppose gun stores anywhere in Newton, I agree with City Solicitor, Alissa Giuliani and Mr. John Donahue III, a law professor at Stanford Law School, who argue that a full ban would face a legal challenge that's likely to win. Like many of us, I am a little tired of expert ping pong, I have no doubt that there are credible legal experts who would like to believe we can win in court if we pass a ban. However, I'd like to add an example that is relevant to this conversation. In May 2020, the Baker Administration designated gun stores in Massachusetts as non-essential businesses, a legal challenge followed, and US District Judge Woodlock ruled that preventing gun stores from opening even temporarily constituted an improper burden to the constitutional rights of individuals seeking to purchase firearms. The Supreme Court is not looking for a test case to expand the scope of the Second Amendment and enshrine unimpeded access to firearms as a national right. Resistance to a full out ban is not a sign of weakness, rather it is rational - and understanding that the odds are stacked against us. If we pass a ban and create a precedent that the Second Amendment covers gun stores, we will not only set our own city back but strip thousands of communities across the nation as the most effective tools they have to save lives. Rather than a precarious ban that looks inward. I want councilors to look outward, reaching out to other communities to create strong zoning to prevent gun violence.

David Roll, 21 McCue Place, Watching the recent meetings, we've seen councilors talk very passionately about where their kids eat ice cream or hang out. We have not heard councilors talk about this northwest corner of Newton. I'm here to say it matters to us and the families we know whose kids ride their bikes down those streets to go to the cove or bus stop. We want the same thing that everyone else wants for their families and for their neighborhood. The new ordinance may be the most legally defensible, but let's not pretend that it's equitable. The council selected one part of town knowing that no sane owner of a high end mall would allow a gun shop. Rumford Avenue and North Street are in the least wealthy parts of town adjacent to the least wealthy neighborhood and towns. When you chose those sites, it is only realistic sights while protecting your own neighborhood. The answer we hear is "Don't worry, the special permit process will take care of it, it'll never open". If that's true, the special permit process will take care of it in more areas than our neighborhood. If you want to treat all Newton residents fairly there's really two choices, either pass the ban, or pass an ordinance that includes more parts of town. I was impressed to hear about Ms. Gabby's proposal, a thoughtful and reasonable idea. The current ordinance is not a guarantee against a gun store opening, it's a calculated risk. As it stands, it's a gamble where only the part of town has something to lose. I have confidence that there's enough smart and fair minded people to pass an ordinance that's more equitable to all of us.

Laura Towvim, Islington Road, I heard about the possible ban, listened, and learned with residents coming to the same conclusion that legally defensible zoning ordinances work, and are the best way to keep us safe. As you consider a ban, consider what our goals are. Is the goal to keep gun stores out of the carefully crafted multifaceted zoning ordinances enacted by the council or is it to take a stand against gun violence rather than enact an unnecessary ill-advised ban? We should engage in a thoughtful process guided by state gun violence prevention leaders to push forward policies in line with our strategic priorities. I am devoted to fighting gun violence. I worked at a national Violence Prevention Center funded after Columbine. Since Sandy Hook, I have spent hours lobbying state representatives arguing with gun rights politicians and their lawyers. I am not afraid to take a stand, and neither are the state and national leaders who are advising against a ban. Their guidance is not rooted in fear or lack of conviction but based on years of experience fighting the gun lobby and a deep understanding of the complex landscape before us. They understand that an unfavorable ruling in this case could set back hard fought wins in the movement and cost lives people's lives. Leadership requires clear vision, understanding short and long term impacts and exercising judgment. Leaders recognize that sometimes the simple solution is not always the most effective. There are no quick fixes for gun violence in our country. Those of us who have been in this fight long term hold on that sometimes you need to slow down and look around. I urge you all to demonstrate true leadership by voting no on the ban.

Andrew Martin, Applegarth Street, I am concerned about the gun shop. What I don't understand is why the zoning approach adopted by the council and a gun ban are mutually exclusive when a gun ban can include a fallback provision as described. I was surprised to hear at the outset, that the two approaches are mutually exclusive. I am not confident that the zoning approach would withstand a second amendment challenge, so much better than a ban would. I would be surprised if a special permit applicant were denied a special permit and would not seek recourse to the courts and be well

supported by the gun lobby. Newton faces the prospect of a long court battle, regardless of what it does. I don't think that that's the argument about a court battle necessarily precludes a ban. I'd like to know more about the relationship between the two approaches.

Peter Harrington, We have many serious problems in USA, among the top ones are guns, gun violence and gun deaths. The question before you is what to do. One side says wait and do nothing; the other side says act. A difficult decision. If this question is going to go to the Supreme Court, I don't see any reason why Newton should not be involved in that case. There are an estimated 19,495 Incorporated cities and towns in the USA. Don't you think that at least one of those is going to propose a similar question, face similar issues, and a case is going to go to the Supreme Court. Do you think that Newton is the only community in the USA that wants to ban the sale of guns? Your recent legislation of locating Newton's only potential gun stores in three areas of land. I think when that when this law was debated and passed, its intent was to ban the sale of guns or the use of gun stores in the city. You're not going to be protected by these changes between a ban and the restrictions intended to work out as a ban. We must hope that your recent legislation is not contested. I would say that you have a reasonably good case. The Constitution does not guarantee the right to sell arms. Many states have existing laws that regulate and prohibit the sale of firearms but don't prohibit ownership. The Constitution does not say that the citizens must suffer gun deaths. History has shown that we are a changing and evolving nation, preservation does not work. In fact, many of you are opposed to preserving the status in some areas of the north side. If you apply those same arguments to this argument, you will vote in favor of this ban. I urge you to vote for this ban.

Pat Irwin, West Street, There are now at least three viable opportunities for gun shops to open in the city. You can bet they will be capitalized upon. I will be most disappointed if the council loses this opportunity to lead and perhaps set national precedent.

Matthew Tocci, People are unaware that there have been multiple firearm stores in the city. People need to understand that a firearm is only a tool. I believe that the store is trying to open not only involving firearm safety, but to teach people to train and understand firearms. Not like a lot of other states in this country, Massachusetts is very restrictive on obtaining a license. A firearm is not the end for everything. I hope people understand that regular people can obtain licenses, are vetted and if they have no criminal record or mental health issues can get a firearm. If you make a mistake, you are not going to be able to have a license to carry. I think there's a misconception of how to obtain a license. People think you can walk and just buy a firearm, that is not how it works here in Massachusetts. I hope that everybody can get together and realize that it's a firearm, if someone wants to go online and purchase one illegally, they can do that. I'm sure there are people right now at this meeting that have a license to carry a firearm, just because we don't want this store in Newton or trying to push it to the limits of Waltham and Brookline.

Michal Goldman, 34 Ware Road, I don't want a gun store on Rumford Avenue, my backyard, I don't want it in anybody's backyard. I would like to agree with what Mr. Martin and Mr. Harrington said. I don't understand, it hasn't been explained clearly. Why a virtual ban wouldn't be a subject to legal challenge for disingenuousness. If nothing else, then an actual ban can be challenged in court. Justice

Scalia, who was certainly proudly conservative went to great pains in his relevant decision to state that the Second Amendment does not at all guarantee or does not at all mean that communities don't have the right to control the sale of guns and a gun shop as gun ownership. If a ban is passed, does it remain in force during a legal challenge? If Councilor Baker's point is taken, even a ban might have within it a fallback position. It seems to me that this issue and what has been said that none of us want guns in the city. Well, that isn't true, some people do. Evidently there was a letter sent to the council signed by perhaps 1000 people who do want a gun store in Newton, it seems to me this is important on many levels. It's not about real estate values. For me, it's about something much more fundamental. Do the Councilors want to know whether the citizens of Newton want a ban, or want gun stores?

Jane Frantz, 12 Glastonbury Road, I oppose a ban and support the strong, restrictive ordinance that was passed. I encourage the council to vote no on the ban and retain the restrictive ordinance.

Heather Tausig, 120 Garland Road, Founding member of what is now called **Newton Gun Violence Prevention Collaborative** spoke on behalf of the organization a local group that's dedicated to strategically limiting the proliferation of guns in our community and surrounding areas. When we heard about the potential store opening at 709 Washington Street. Over 10,000 people signed a petition urging Mayor Fuller to "keep our residents safe" by taking a stand against the establishment of this gun retailer and prioritizing a change in our zoning regulations to ensure that no further gun stores are opened within our city borders. It's important to point out that 10,000 people signed that petition against gun stores in Newton, as opposed to the previously referenced 1,000 people who signed a petition urging a gun store. Our previous collaborative was called **Stop Gun Stores in Newton**, but this group was pivotal in the passage of zoning ordinance 145-21, which has made Newton one of the most restrictive cities in the nation for firearms dealers. Moving forward, we will continue to oppose any gun store at any location and help other towns and cities enact restrictive zoning laws and advocate for common sense gun violence prevention initiatives that are aligned with state and national gun violence prevention strategies. We want to provide comments on the docketed ordinance as well as address several points that have been raised. Most importantly, the existing ordinance is already one of the most restrictive in the country. We believe that creating a ban provides no practical benefit to the current ordinance and in fact increases our risk of losing a lawsuit. We think that the more restrictive the ordinance, the less legally defensible it becomes. The city has already engaged in an extensive mapping process to craft a zoning ordinance that maximizes restrictiveness while still being defensible. A complete ban would really be almost impossible to defend. The proposed ban temps the gun lobby at a time when we have an extremely unfriendly Supreme Court that is poised to take this type of case to expand gun rights. They now have the votes to do so. I'm concerned that we don't really want to facilitate legal action that has little likelihood of excess success, but also has the potential to protect gun rights nationally. It's important to remember that Supreme Court Justice Scalia is not alive. Justice Thomas has reiterated that the Second Amendment is a disfavored right making us concerned. The ban does nothing more than the zoning proposal to keep us safer. As we're surrounded by communities and states with ample guns, we're at risk of gun violence. In fact, a ban has the potential to set that progress by diverting attention away from the important strategic work being done by knowledgeable and effective state and national gun

violence prevention advocacy groups. We agree there's no acceptable location for a gun store in Newton, but we need to start explaining to people how our zoning ordinances work. Zoning ordinance 145-21 was passed, was crafted to be legally defensible which was supported by the City's Law Department and the Giffords Law Center. We have learned from other communities that have enacted effective zoning, the Council has thoughtfully and strategically added layers of protections for the city by regulations that make opening a gun store difficult and costly. The special permit process requires a public hearing where citizens can voice reasons that a specific location is not appropriate. The special permit requires (City) Councilors to weigh those concerns to determine whether a gun store will be beneficial to the neighborhood where it's proposed. Fighting gun violence is not simple or easy. In the unlikely event that a gun store does try to open at any of the allowable locations, we are ready to again activate our network of thousands of Newton residents and fight just as hard to stop a gun store from opening at any location. We will not stop if there's a threat of a gun store anywhere in Newton. We must operate within the reality that we have a Supreme Court hostile to gun regulations. The epidemic of gun violence of homicides and suicides is related to guns. A person mentioned that guns are a tool. We don't have an epidemic of people being killed by spoons or shovels; we have an epidemic around guns. Newton does not address the root causes of gun violence and doesn't provide important services that could help reduce the risk of violence, suicide or change the systems that have put us in these situations. Easy access to guns and excessive gun ownership fuels the daily gun violence scene in cities and towns across our country. Newton has approximately 2,000 gun permit holders. There are ten gun stores within a thirty-minute drive from Newton. We're surrounded by municipalities with no zoning in place and by states with looser gun laws than our own. Focusing solely within our borders perpetuates a false sense of security and complacency that will not help us be any safer. The fight against gun violence is complex hard work and we urge those of you who are pushing for a ban to redirect your energies to the difficult work that will make us safer. Explain to your constituents how our carefully crafted multifaceted zoning ordinance will work. Explore ways the city can address the root causes of gun violence and support strategic state level gun violence prevention work.

Councilor Baker made a motion to close the public hearing. Committee members agreed 8-0. A motion was made by a Planning Board member to close the public hearing. Committee members agreed.

Chair Crossley asked the Law Department to explain (as requested in testimony) why would the restrictive ordinance that we have in place, be more defensible/more effective than the outright ban? Assistant City Solicitor Lee answered that a ban is not really a regulation in the sense that regulating the use permits certain places that the gun shop can be located under some sort of strict regulations. But a ban itself would be likely deemed unconstitutional.

Chair Crossley asked whether a ban would remain in place while a case is being appealed/contested? Would the existing ordinance remain in place or does that depend on how it is written? Assistant City Solicitor Lee answered that there is no simple answer to the question. Unfortunately, we do not know if the ban would remain in effect, I would anticipate that the very first legal battle would be a request for what we call a preliminary injunction, where the challenging

party would ask the court to delay enforcement of the ban during the pendency of the lawsuit, and whether an injunction would depend on the ultimate likelihood of success on the merits of the legal account itself. It is hard to say whoever challenges that will seek to have it invalidated immediately, during the pendency of the lawsuit, or whether that would happen.

When you say existing ordinance are you referring to the one that was just passed? The Law Department advises that any zoning ordinance that conflicts (with an existing ordinance) would be inconsistent with zoning principles. Because you have restrictive zoning or the ban; they can't be implemented at the same time, it would have to be one or the other. One of the options that was presented by councilors was to have it explicitly set up so the restrictive zoning is as a fallback provision saying that if a ban is enacted, and then is overturned or declared ineffective, then the restrictive zoning would take its place. The risk would be that if anyone were to challenge the ban, it seems certain that they would also be challenging the restrictive zoning as a fallback provision or a conflicting ordinance that already enacted what the Law Department had suggested at that time, with the understanding that it was a ban and zoning ordinance. If the Committee tonight implements a ban, it would be an amendment of the current zoning ordinance, which is restrictive zoning. The action will repeal that (current ordinance), and then the ban would take its place, then there would be no conflict. By operation of law, the likely outcome would be that if the ban itself is declared in effect and overturned, then its predecessor, which would be the restrictive zoning would then take its place. However, as the Law Department advised at the last meeting, notwithstanding our concerns about the constitutionality aspect on terms of form and process, that's what we would advise moving forward if a ban is what the council chooses to enact.

Committee members concerns, comments, questions and answers.

Concerns:

A Council member noted that the Law Department advises that the risk of litigation is not sufficient (at this time) to warrant an Executive Session. That's an issue that I personally disagree with in the sense of what we've done in the past on these matters. The question of risk management is one that's really before us as a committee and I am concerned about asking about what you might call a two-step ordinance, one enacted as a ban and the other as a fallback.

Comments:

This has been the most difficult ordinance because many don't seem to understand how restrictive this (adopted) ordinance is. I would hope that all of us who worked hard on this ordinance would speak to our constituents and try to explain it to them. I do think that the overlay idea that Ms. Gabbay presented is interesting. Earlier, I spoke with the Planning Department and was informed that the city has not done overlays, and it would be very difficult to start doing it in the middle of (drafting) an ordinance. Perhaps we should explore the use of overlays in the future. Chair Crossley stated that in the past, the city has used overlays, such as for historic districts, and it is possible.

If people want to work to (further) protect Newton and our surrounding communities, the best way to do that is to work on strengthening federal gun laws or work to provide more resources for mental health. Massachusetts has some of the strictest gun laws in the country, the lowest death rate from firearms in the country. The Chief of Police has the final say on whether a person can receive a license to carry or not.

Questions and Answers:

Is it a coincidence that a speaker this evening, has the same name as a City Police Officer? If it's not a coincidence, the Police Department regulates gun licenses in the City. Would his testimony be a conflict of interest? Councilor Downs answered that she raised this concern with Interim Chief Mintz. The Police Department has strict rules about who enforces various laws, and he made it clear that if that individual would not be involved in enforcing the law that was proposed and any gun licenses relevant to that or any other business would be a conflict of interest. Police Officers have first amendment rights.

Councilors comments, questions and answers.

Comments:

Ms. Gabbay presentation is important to understand and consider her proposal because that very well may affect people's thinking on a total ban. I think the proponents have made some very strong compelling arguments.

Questions and Answers:

Why were more areas or types of zones not included? Why do we have this provision: "...location and operating characteristics of the proposed use that will not be detrimental to the public health, safety and welfare of the neighborhood?" It was stated that we didn't start off to construct an ordinance by saying no. That wasn't how it was done. It (constructing the ordinance) starts off by thinking about (what exists within) the zones in Newton. What are the residential zones? What are the business zones? What are the mixed use zones? The Committee thought and decided that we wanted 1,000 feet from schools, daycare, liquor stores, marijuana stores, etc. The Committee reviewed and tried to find the right balance (of requirements), and what would work the best for the city. We do have precedents that the zoning ordinance is supported by the Federal District Court. This zoning law was a careful, thoughtful creation of multiple layers that work to practically make it impossible for a gun store to do business in Newton. Remember, they are a business, they're in it to make money. If necessary, the zoning ordinance can be amended.

Zoning and Planning Committee Vote:

Without further discussion, Councilor Baker made a motion to approve this item. Committee members voted 1-6-1, Councilor Baker in favor, Councilors Leary, Albright, Krintzman, Crossley, Danberg and Ryan opposed and Councilor Wright abstaining. **This Motion Failed.**

Councilor Baker stated that since the committee is not recommending that we adopt this ordinance and that he would be glad to move reconsideration on his motion if someone could offer an alternative motion offering a clean slate. He then made a motion to reconsider the vote. Committee members agreed 8-0.

Councilor Krintzman made a motion to deny this item. Committee members agreed 6-1-1, Councilors Leary, Albright, Krintzman, Crossley, Danberg and Ryan in favor of denial, Councilor Baker opposed and Councilor Wright abstaining.

Planning Board Members Vote:

Without further discussion, Ms. Molinsky made a motion to approve this item. Committee members voted 0-5-1, Director Heath abstaining. **This Motion Failed.**

Chair Doeringer stated that we are not recommending that we adopt this ordinance and if someone could offer an alternative motion to deny the ban.

Ms. Maheshwari made a motion to deny this item. Committee members agreed 5-0-1, Mr. Doeringer, Mr. Steele, Mr. McCormick, Ms. Molinsky and Ms. Maheshwari in favor, no abstentions and Director Heath abstaining.

#222-21 Reappointment of Charles Tanowitz to the Economic Development Commission
HER HONOR THE MAYOR reappointing Charles Tanowitz, 51 Harding Street, West Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 14, 2024 (60 days: 08/06/21)

Action: Zoning & Planning Committee Approved 8-0

#223-21 Reappointment of Debora Jackson to the Economic Development Commission
HER HONOR THE MAYOR reappointing DEBORA JACKSON, 4 Pine Meadow Drive, Auburndale, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 14, 2024 (60 days: 08/06/21)

Action: Zoning & Planning Committee Approved 8-0

#224-21 Reappointment of Sarah Rahman to the Economic Development Commission
HER HONOR THE MAYOR reappointing SARAH RAHMAN, 33 Staniford Street, Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 14, 2024 (60 days: 08/06/21)

Action: Zoning & Planning Committee Approved 8-0

#225-21 Reappointment of Matt Segneri to the Economic Development Commission
HER HONOR THE MAYOR reappointing MATT SEGNERI, 45 Cedar Street, Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 14, 2024 (60 days: 08/06/21)

Action: Zoning & Planning Committee Approved 8-0

#226-21 Reappointment of Jeremy Freid to the Economic Development Commission
HER HONOR THE MAYOR reappointing JEREMY FREID, 35 Cotton Street, Newton, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on May 14, 2024 (60 days: 08/06/21)

Action: Zoning & Planning Committee Approved 8-0

Note: The Committee discussed docket items #222-21, #223-21, #224-21, #225-21 and #226-21 together. Without discussion, Councilor Krintzman made a motion to approve these reappointments. Committee members agreed 8-0.

At approximately, 9:45 p.m., the Committee adjourned.

Respectfully submitted,

Deborah J. Crossley, Chair

Firearms Zoning:

Ban vs. Legally Defensible "Virtual" Ban

Legally Permissible/Practically Remote

6/21/2021 Public Hearing Testimony by
Carolyn Jacoby Gabbay & Kartikey Trivedi

NAC's request to the City Council

- *The ideas in these slides were presented to the Newtonville Neighborhood Area Council on 6/10/21*
- *The Newtonville Neighborhood Area Council voted unanimously to endorse the author's presenting these ideas at the 6/21/21 public hearing with the **NAC's express request that the City Council give these ideas serious consideration***

Ban vs. A (Legally Defensible) Virtual Ban?

- The recently enacted ordinance is a good *“Rapid Response”* to the public consensus on stopping gun shops in Newton -- but people are concerned that a door is still too widely open
- People want a ban, but disagree on whether a total ban is legally defensible/risky
- Mitigate the risks by enhancing the recently enacted ordinance -- and achieve a legally defensible *“virtual”* ban

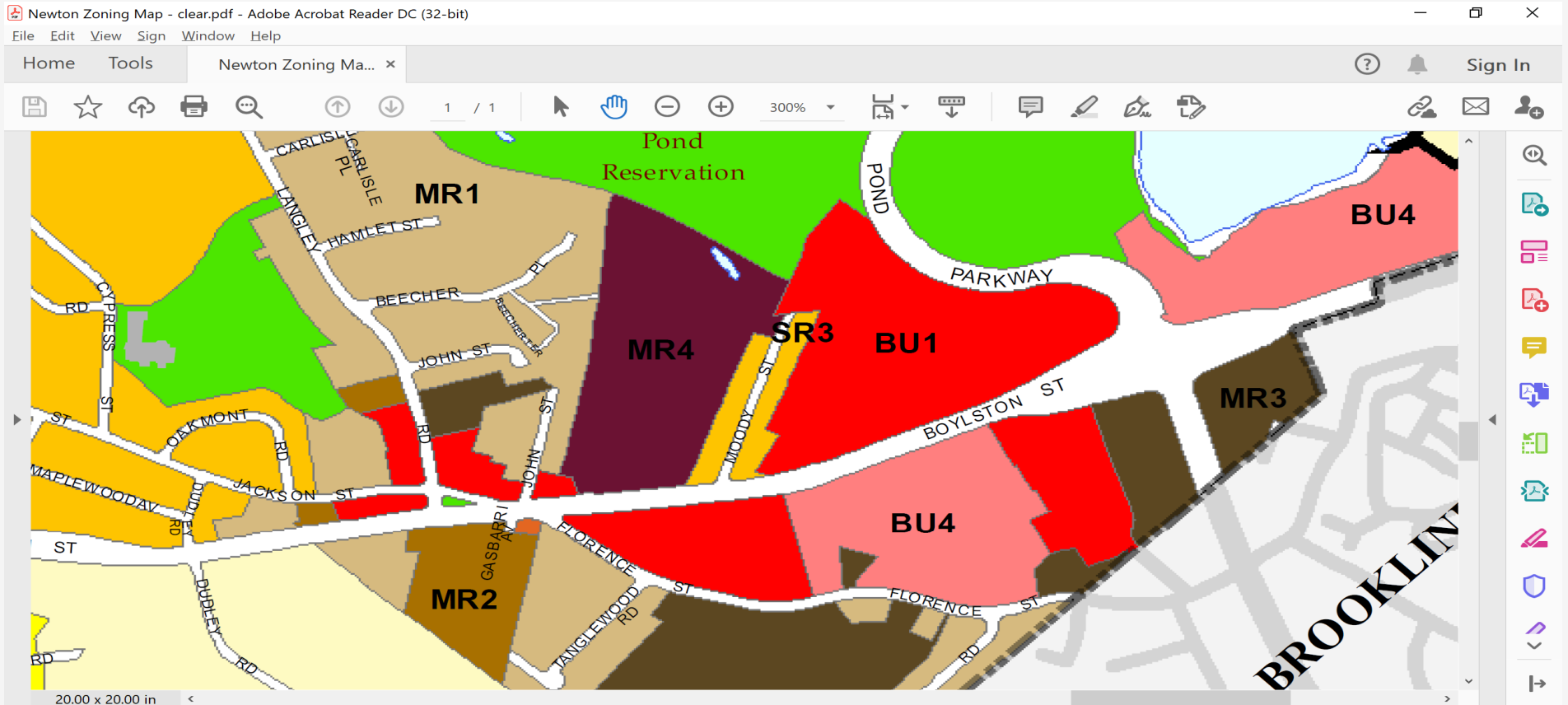
The Challenge of the Recently Enacted Ordinance

- **The new ordinance zones firearms to 3 locations (i.e., Rumford Avenue, North Street, and The Street mall)**
- **There is a very real risk that one of the many property owners might sell/lease to a gun shop/firing range**
 - **There are a many property owners at Rumford Avenue and North Street**
 - **There is a long-vacant, windowless building at The Street (i.e., the former site of the Container Store and the movie theater)**

Achieve a “Virtual Ban” by Zoning Better Places

- Achieve a “virtual ban” by zoning firearms as *legally permissible, but practically remote*
- Change the zoned locations
- Restrict firearms to *2 specific BU1 parcels*:
 - Lifetime Center (fka the **Atrium Mall**) and
 - The Shops at Chestnut Hill (fka **The Upper Chestnut Hill Mall**)

Achieve a "Virtual Ban" by Zoning Better Places



Version 6/21/2021

Zoning Mechanics

- **Three possible zoning mechanics:**
 - **Create a special Overlay District,**
 - **Create a new zoning category (“BU6”), or**
 - **Use the BU1 zoning category and add a Rt.9 proximity requirement (rather than a buffer) plus other criteria to exclude other BU1 parcels**

Keep the Special Permit Requirement

- **The Special Permit requirement would add “hurdles,” but**
 - **Per Councilor Norton, the City Council acts in a quasi-judicial role in evaluating Special Permit applications and cannot deny a Special Permit to a qualified applicant just because of not wanting a gun shop/firing range**
 - **Per Councilor Gentile, in practice the City Council rarely denies a Special Permit**
 - **Many applications are withdrawn “without prejudice,” but they can be edited and resubmitted after addressing the issues raised during review**

Why a “Virtual Ban” Is Better

- Avoids a ban’s potential for a Second Amendment challenge
- As a practical matter, the chance of a firearms application at the Atrium or Upper Mall would be ***vanishingly small*** because mall operators won’t want to (a) upset key tenants (i.e., Dana Farber Cancer Institute, MassGeneralBrigham/Newton Wellesley Hospital, Apple Store, Bloomingdale’s), (b) incur bad press, or (c) have public backlash protests
- These 2 locations are as good or better than the recently enacted ordinance re: “sensitive use” buffers
 - They’re about as far from residences, but further away from passive recreation land and the pediatric/family trauma care, community living/retraining assistance and childcare sites in neighboring communities

Lessons Learned from Dedham

- **Follows Dedham’s model of an “Adult Uses District Overlay” that is parcel-specific and coincides with Legacy Place**
 - **Dedham got "stuck" with their threatened gun shop because they couldn’t act fast enough to enact an ordinance**
 - **Newton was saved by the 709 Washington Street applicant’s failure to get a building permit, so the “Stop Work” order prevented it from opening before the public hearing notice**
- **Newton has the opportunity to strengthen the recently enacted ordinance with a location change after a new public hearing**
 - **The 709 Washington Street location would still be blocked by the April 23rd public hearing notice and recently enacted ordinance**

Lessons Learned from Dedham

Dedham Zoning Map.pdf - Adobe Acrobat Reader DC (32-bit)

File Edit View Sign Window Help

Home Tools Dedham Zoning M... x

75%

Overlay Districts

Adult Use

36.00 x 24.00 in

79%

78°F

1:57 PM
6/21/2021

Lessons Learned from Dedham

- **Dedham also restricted other adult uses (i.e., strip clubs, porn shops, XXX-rated video stores, and sex toys) to the Legacy Place “Adult Uses Overlay District”**
- **Needham Streets isn’t an appropriate place for these adult uses → its retail stores have significantly upgraded, plus more retail and 800 housing units will be added by the Northland project**
 - **The same practical business constraints at the Upper Mall and Atrium would help protect Newton if the adult use zoning were also changed**

The Bottom Line

- There's broad consensus: *Gun shops and firing ranges should not find a home in Newton*
- A ban involves uncertain legal risks
- We can mitigate those risks by enhancing the recently enacted ordinance
 - Changing the zoned locations would make firearms uses legally permissible but, as a practical matter, render the chance of confronting a qualified firearms Special Permit application *vanishingly small*