



Programs & Services Committee Report

City of Newton **In City Council**

Wednesday, June 20, 2018

Present: Councilors Rice (Chair), Baker, Albright, Krintzman, Kalis, Greenberg, Brousal-Glaser and Schwartz

Also Present: Councilor Cote

City Staff Present: Jonathan Yeo (Chief Operating Officer), David Olson (City Clerk), Ouida Young (Acting City Solicitor), Marie Lawlor (Assistant City Solicitor), David MacDonald (Chief of Police), Bruce Proia (Fire Chief), Karyn Dean (Committee Clerk)

#377-18 Appointment of John Castellot to the Institutional Biotechnology Committee
PRESIDENT LAREDO appointing JOHN CASTELLOT, 3 Albion Place, Newton Centre, as a member of the INSTITUTIONAL BIOTECHNOLOGY COMMITTEE for a term to expire July 1, 2021.

Action: Programs & Services Approved 6-0 (Councilors Schwartz and Baker not voting)

Note: John Castellot joined the Committee. He stated that the Institutional Biotechnology Committee (IBC) has already accomplished something extremely helpful for the City, which is to help spearhead a change in regulations, making it easier for biotech companies to come to Newton. The City has gone from Bronze status to Gold status. He is the City Council's representative to the group that inspects the labs once a year, along with Chris Murphy who is the Mayoral appointee. The two groups realized they should be coordinating their efforts. Carl Munger who is on the IBC has helped fill in for inspections because more and more companies are coming to the City. Performing the inspections rapidly is very important so companies can get up and running, therefore, he is suggesting that there be more than one City Council representative to that inspection group as well as another Mayoral appointee. Mr. Castellot believes in the goal of the IBC which is to make Newton an attractive City in which to locate without too much difficulty.

Councilor Albright said she has worked with Mr. Castellot at Tufts for a number of years and he is an excellent researcher. She thanked him for volunteering so much of his time to this effort. He said he believes in public service and has volunteered in many other ways. He would like to contribute to the community he lives in with his family.

Councilor Albright moved approval and the Committee voted in favor, unanimously, with thanks.

#316-18 Appointment of Elizabeth Ingraham to the Human Rights Commission

HER HONOR THE MAYOR appointing ELIZABETH INGRAHAM, 187 Woodward Street, Waban, as a member of the HUMAN RIGHTS COMMISSION for a term to expire May 15, 2021.

Action: Programs & Services Approved 6-0 (Councilors Schwartz and Baker not voting)

Note: Eli Ingraham joined the Committee. She said that if there is ever a time to step up to do work such that the Human Rights Commission does, it is now. She has always considered herself an activist leader. As a community person, she takes public service very seriously and is grateful the City has an HRC. As a gay person, it is a resource she would turn to and rely upon and it would be a privilege to serve and participate in a way that protects fellow citizens. On a positive note it would help elevate and celebrate diverse voices as well. Both of things combined in the larger context of the nation, change has to happen locally to help inform the states.

Councilor Albright noted that she has recently become engaged with the Muslim community in Newton. She has a several residents to her home and she found that there is not much happening actively to bring the Muslim community into the broader community. They discussed speaking to the HRC to help with these issues because the Muslim residents are feeling left out. Ms. Ingraham said that there were some community engagement groups that she could think of that could be of assistance. Engaging students is critical as well – she said that her daughter has many friends from diverse backgrounds.

Councilor Rice moved approval and the Committee voted in favor, unanimously, with thanks.

#315-18 Appointment of Tamika Olszewski to the Human Rights Commission

HER HONOR THE MAYOR appointing TAMIKA OLSZEWSKI, 341 Lexington Street, Auburndale, as a member of the HUMAN RIGHTS COMMISSION for a term to expire May 15, 2021.

Action: Programs & Services Approved 7-0 (Councilor Baker not voting)

Note: Tamika Olszewski joined the Committee. Ms. Olszewski said she was joining the HRC because of the anti-Semitic incidents and various incidents in the schools. She is the mother of 3-year old twins and she is doing this work for them. There need to be more community conversations and discourse around the issues that make us different. Being able to bridge those gaps and celebrate differences is important to her and she thinks to everybody. Finding this robust group of people doing this kind of work is more impactful and is it gratifying to see when the work is making a difference. She is also a parent leader of FORJ (Families Organizing for Racial Justice), which is a wonderful collaboration with Newton Public Schools.

Committee members were extremely pleased that Ms. Olszewski will be joining the HRC. Councilor Krintzman moved approval and the Committee voted in favor, unanimously.

#318-18 Appointment of David Kuppenheimer to the Human Rights Commission
HER HONOR THE MAYOR appointing DAVID KUPPENHEIMER, 12 Sylvester Road, West Newton, as a member of the HUMAN RIGHTS COMMISSION for a term to expire May 15, 2021.

Action: Programs & Services Approved 7-0 (Councilor Baker not voting)

Note: David Kuppenheimer joined the Committee. He agreed that this is a time for action and to be aware of the violations of human rights in this country and to do something about it. Mr. Kuppenheimer has worked in human services for many years. For example, he has worked in various hospitals, ran a treatment program in the state prison system, served on the Board of non-profit that deals with batterers, as well as helped with food banks. He believes in giving back and would like to volunteer his time and talents with the City of Newton.

It was noted that Mr. Kuppenheimer served on the advisory board to the HRC twenty years ago. He said it felt like it was useless – he served for a year and felt like he did not make a contribution. He has been to some HRC meetings recently and found that it is much different dynamic than when he served on the advisory board.

Councilor Brousal-Glaser moved approval and the Committee voted in favor unanimously, with thanks.

#319-18 Re-Appt of Michelle Freshman to the Health & Human Services Advisory Council
HER HONOR THE MAYOR re-appointing MICHELLE FRESHMAN, 39 Gray Cliff Road, Newton Centre, as a member of the HEALTH & HUMAN SERVICES ADVISORY COUNCIL for a term to expire January 31, 2021.

Action: Programs & Services Approved 7-0 (Councilor Baker not voting)

Note: The Committee voted in favor of Ms. Freshman's re-appointment without discussion 7-0.

#320-18 Re-appointment of Bryan Barash to the Human Rights Commission
HER HONOR THE MAYOR re-appointing BRYAN BARASH, 161 Lowell Avenue, Newtonville, as a member of the HUMAN RIGHTS COMMISSION for a term to expire May 15, 2021.

Action: Programs & Services Approved 7-0 (Councilor Baker not voting)

Note: The Committee voted in favor of Mr. Barash's re-appointment without discussion 7-0.

#321-18 Re-appointment of Hattie Kerwin Derrick to the Human Rights Commission
HER HONOR THE MAYOR re-appointing HATTIE KERWIN DERRICK, 107 Spiers Street, Newton Centre, as a member of the HUMAN RIGHTS COMMISSION for a term to expire May 15, 2021.

Action: Programs & Services Approved 7-0 (Councilor Baker not voting)

Note: The Committee voted in favor of Ms. Kerwin Derrick's re-appointment without discussion 7-0.

#378-18 Re-appointment of Jane Brown to Human Rights Commission

HER HONOR THE MAYOR re-appointing JANE BROWN, 104 Atwood Avenue, Newtonville, as a member of the HUMAN RIGHTS COMMISSION for a term to expire January 1, 2021. (60 days: 8/17/18)

Action: **Programs & Services Approved 7-0 (Councilor Baker not voting)**

Note: The Committee voted in favor of Ms. Brown's re-appointment without discussion 7-0.

Referred to Programs & Services and Finance Committees

#350-18 Request to increase the salary of the City Clerk/Clerk of the Council

COUNCILORS LAREDO AND KALIS requesting an increase in the salary of the City Clerk/Clerk of the City Council to \$135,619 effective July 1, 2018 to match the percentage increase included in the FY 2019 budget for H-grade employees.

Action: **Programs & Services Approved 7-0 (Councilor Baker not voting)**

Note: Councilor Kalis explained that the goal of this docket item is to bring Mr. Olson's salary to comparable H-grade salaries. It had been decided at previous discussions that Mr. Olson's salary would be on par with Commissioner DeRubeis' salary, based on Mr. Olson's experience and responsibilities. This increase will bring Mr. Olson's FY19 salary in line with the H-grade FY19 salary of the Commissioner.

Historically, since the City Clerk is appointed every two years by the City Council, the salary was on a two-year cycle as well. In recent years, the salary schedule has been less than regular and the President and Vice President would prefer to have the salary set every year. There will be further discussions to get that codified. Many Committee members said they valued the contribution of Mr. Olson and agreed that his salary should be automatically moved up the H-grade scale, without having to come back to the City Council every time.

Councilor Kalis moved approval and the Committee voted in favor unanimously, with thanks.

#379-18 Ballot Question regulating the number of recreational marijuana establishments

COUNCILORS ALBRIGHT AND KRINTZMAN requesting that the City Council place on the ballot, at a special election to be held in November 2018, a question as to whether the City of Newton shall limit the number of retail recreational marijuana establishments operating in Newton to no fewer than two and no more than six.

Action: **Programs & Services Approved as amended to "no fewer than 2 and no more than 4" 5-1-2 (Councilor Baker opposed; Councilors Schwartz and Kalis abstaining)**

Note: Councilor Krintzman explained that he heard a number of concerns from residents at the public hearing on the Opt-Out Newton petition, which was a 50- citizen petition requesting that the City Council put a question on the November ballot to ban retail recreational establishments in the City. Notably, there was a lack of understanding from voters, when they voted, about the number of establishments the City would ultimately have. There is an inability for the City to limit the number of retail establishments. Based on the legislation, a ballot question would be required to limit the number to fewer than eight (which is 20% of the number of liquor stores in the City, which is the standard in the regulations put forth by the Cannabis Control Commission). He and Councilor Albright, therefore, docketed this item, which asks the City Council to put a question on the November ballot, asking the voters to limit the number of retail recreational marijuana establishments in the City to no fewer than 2 and no more than 6. This will give the City Council latitude and flexibility to see what the market and City looks like as this new industry evolves.

Councilor Albright added that when the cannabis regulations became known, she was surprised that eight establishments would be the required minimum number of establishments. She stated that she is not in favor of a total ban as was proposed by the Opt-Out Newton group. The Centers for Disease Control puts out statistic for a number of drugs and alcohol related issues. Their studies show that in 2017, 10-15% of youth in the 9th grade were using marijuana; in the 12th grade, the range was 28%-48%. A significant number of high schoolers are using marijuana and she did not think that should be ignored. Canada just recently passed a law making the sale and use of recreational marijuana legal. President Trudeau said “it’s been too easy for our kids to get marijuana and for criminals to reap the profits. Today we change that. Our plan is to legalize and regulate marijuana ...”. Councilor Albright said it is to our benefit to have legal and safe marijuana available. When she and Councilor Krintzman were discussing docketing this item, she wanted to set a number, but Councilor Krintzman preferred a range. She would like the Committee to consider setting a single number of either 3 or 4, which could allow establishments to be spread out evenly across the City. She was concerned that if a particular number is not set, there will be more deliberations about this when the zoning regulations are being discussed.

Health and Human Services

Councilor Rice noted that Commissioner of Health and Human Services provided an opinion on this issue, which is attached. The Chair invited Chief of Police, David MacDonald and Fire Chief Bruce Proia to address the Committee.

Police and Fire

Chief MacDonald said that he has not made any public statements about marijuana and his commentary is based on his experiences as a police officer and to provide the perspective of the Newton Police.

He explained that he has been a police officer for 26 years and he spent 7 years in narcotics enforcements in the pre-criminalization days of marijuana. In those 7 years on the Narcotics Task Force, the Task Force executed between 70-100 arrests a year for various drug offenses.

Anecdotally, he saw that not all people who dealt in marijuana used hard drugs, but every individual they arrested or locked up for distributing hard drugs, had personally used marijuana. The landscape has changed in the narcotic world due to the opioid crisis and the changing laws and attitudes towards marijuana. The first step towards normalizing and commercializing marijuana came with the word “medical”. The word “recreational” has added to the mainstream idea that this is a harmless substance. Society spent about 50 years fighting against tobacco – it is no longer on TV or advertised. The number of people smoking cigarettes dropped every year between 1969 and 1990.

He worked with his crime analyst for some data. He asked for data from November, 2016 which is when Garden Remedies opened on Washington Street. He found that the only call the police received was relative to an individual trying to enter the establishment without a license. Of the last 127 police reports where the word “marijuana” was used, 39 were at locations specific to juveniles – 33 at schools and 6 at locations like the Boys and Girls Club. He felt this was a large number, and noted he had not looked at reports that were written at playgrounds and parks.

The Chief indicated that he met with the people looking to site a recreational establishment on Elliot Street. They presented a floor plan and they spoke about traffic, which can get dense in that area. If the facility were strictly medical, he felt the traffic would have a minimal impact, however, added recreational sales could have a much larger impact on traffic. With neighboring towns all opting out, Newton would become a destination City for marijuana. In his experience, he found that people who were buying drugs were not waiting until they got home to use them. They were using them in their vehicles and then driving. While there is a test for alcohol impairment, there are no known tests for officers to utilize for marijuana impairment. A useful testing device could take years.

THC is more potent now and the cost has gone up substantially due to that. There have been no long-term studies to discuss the physiology of the newer, stronger strains of marijuana. It is the new big tobacco. It is about profits, which will be dealt with in cash because the federal government does not recognize this as a lawful industry. He spoke with District Attorney Ryan and she was concerned with the large sums of cash people would be taking home at night. This can cause potential for theft. He is not sure how large sums of money can be moved safely. He supports a total ban.

Fire Chief Proia addressed the Committee. He said he agreed with Chief MacDonald and added that there could be delays in getting equipment and firefighters to these establishments due to increased security at the sites. He explained that when Colorado firefighters have been exposed to a fire involving marijuana, all personnel were taken off line, put on injury, and sent home for the remainder of their tour. The replacement firefighters were then on overtime. Once personnel is put on injury, that follows that firefighter. If something else came from that original event, the City would be liable for that.

Colorado also found that they have not been able to decontaminate the firefighter gear after being exposed to the smoke. That means the gear has to be destroyed and replaced at about \$3,000 per set of gear. He also supported a total ban.

Dr. Seth Blumenthal

Councilor Rice explained that Dr. Seth Blumenthal would be a representative speaking in favor of the proposed ballot question.

Dr. Seth Blumenthal said he is a Senior Lecturer at Boston University and lives in Newton with his family. He is an expert on the history and policy of cannabis. He is in favor of pursuing the ballot question proposed by Councilors Krintzman and Albright.

He explained that there is a history to a bifurcated drug policy that is now being dismantled, thankfully, due to new approaches to drug policy. Until recently, there has been a punitive, almost militant approach in urban areas where people of color live, and a slap-on-the-hand approach in suburban areas. It is time that Newton accept some responsibility and that is what this is about. Understanding that for years, the problem has been the “black market”. He is hesitant to use that term because it has racist connotations, so he prefers the “illicit market”. Society has been trying to eliminate the illicit market for several reasons. Enforcement against the illicit market has been racist. If you look at the data and the ACLU report in 2016, it shows that blacks are 7 times more likely than whites to be arrested for selling marijuana, and they sell marijuana at the same rate. That is a fact. The illicit market has fed into a lot of racial aspects.

Dr. Blumenthal said he is currently writing the history of the “gateway theory” and all its incarnations from the 1930s. This is his specialty. It is not really a thing. The theory, while well intentioned, and police officers will agree with him, drug dealers that sell marijuana also sell other drugs. That is when young people come into contact with harder drugs. What we want to do is create a safe, regulated marijuana industry where if someone wants to purchase marijuana, they won’t be going to somebody who also has a hard drug for sale. Heroin comes to mind.

He also wanted to point out that drug dealers do not “card”. They do not care how old a buyer is. He has heard a lot of discussion about Colorado, but the numbers suggest the adolescent and high school marijuana use has decreased in marijuana. And while legal sales are not eradicating use in youth, it is not spiking the numbers as some have said. The Governor of Colorado, who had opposed legal marijuana, now supports it. He said that if a poll was taken of Coloradoans they would support it at a higher rate than they did originally, which was 56%.

It is helpful to look at the examples that are now in place to be realistic and understand how legal marijuana can actually solve some of the same problems that people are concerned about. He wants to protect his child and he knows the worst thing to do push out the illicit market would be to ban legal sales. This would be a drug dealers dream. It would spike the price. There are forward thinking progressive policies, and Newton can do its part to help remedy this on a statewide level, and banning legal sale is ignoring the reality. He read that some people do not want

to open Pandora's Box, but for those who have grown up in Newton, Pandora's Box was opened in the 1960s. Marijuana is here – and not it is about capturing the problems, regulating them, having a smart policy. He believes that over 8 is too many and there are opportunities for compromise but banning legal sales entirely would contribute to the illicit market. Lower supply means higher demand and higher costs. The way the illicit market works now is through delivery which invites drug dealers to drive to people's homes in Newton. There are no regulations on what is being sold.

Dr. Blumenthal said he does not want to be confrontational because he loves all his neighbors, but he has been thinking about this for a long time, and talking to a lot of experts. Going forward with regulating marijuana is the smartest and safest approach. In a City where 55% of the voters voted to legalize recreational marijuana, to say they did not want marijuana in their own City enables an embarrassing NIMBYism that has been part of Newton's contradictory history. One that has been written about by historians and friends from Newton. Willy Geismer has a book titled, tongue-in-cheek "Don't Blame Us" referencing the liberals who claimed they did not vote for Nixon but when it comes to things like low-income housing, fall short of their principles. Anecdotally, we can think of stories, but we need to start thinking about data, research and the advice of experts and bring the community into the conversation. To try for a citywide prohibition is not wise and he supports this ballot question.

Committee Comments/Questions

Law Department/City Clerk Questions

Councilor Baker said that the City Charter states that if there are two questions on the ballot with a similar subject, the one that garners the greatest amount of votes, wins. The Committee needs to understand that if both questions are on the ballot (Opt-Out and limit the number of establishments) and both "pass" percentage-wise, what the impact might be. Would the question with the most number of votes prevail?

Ouida Young, Acting City Solicitor, said she cannot clarify this as much as she would like to. The section of the Charter that Councilor Baker is referring to concludes that whichever measure, if they are in conflict, gets the most votes would be the one that takes effect. There is some question as to whether this is the proper answer and the Law Department is still looking at that. That particular section comes from tracking a provision in the Massachusetts Constitution that deals with the adoption of referendums and initiatives. While that provision in the text of the Charter itself does not mention referendum or initiative ballot questions, it is in the section of the Charter that deals with referendum and initiative ballot questions. That said, the questions the Committee are considering are neither referendum nor initiative questions.

There are some other issues that Massachusetts courts have gotten into and are included in a 72-page decision from the Supreme Court that just came down yesterday. Ms. Young is hoping to have a better answer soon. The questions may be put on the ballot in a particular manner, which may make a difference, but this needs further review because it is complicated.

Councilor Baker noted that because it is complicated and there could be confusion, great care must be taken in deciding if two questions should go on the ballot. Ms. Young said one of the principle issues the Supreme Court is concerned with is making clear what the voter is voting on and what the effect of the vote would be.

Councilor Baker asked the City Clerk, Mr. Olson, when the City Council would need to make their decision and take their final vote in order to get either one or two questions on the November ballot. Mr. Olson explained that the question or questions could not go on the state ballot in November; however, a special municipal election could run on the same date and time with a separate ballot containing the question or questions. Early voting will be in place this fall for the state ballot, so if a special municipal election were put in place on the same day, early voting would have to be made available for it as well.

A final vote would have to be taken by the full City Council at its September 17th meeting in order to make the deadlines for a November ballot. The signature of the Mayor would also be required for this to move forward. Councilor Baker noted that it would be best to vote at the September 3rd City Council meeting because if someone chooses a reconsideration, they would still have the opportunity to vote at the September 17th meeting.

Councilor Albright noted that if the City Council chooses to deny the Opt-Out Newton ballot question, the petitioners may still collect the required signatures to by-pass the City Council's approval. Mr. Olson said the petitioners would have the same general time limit of mid-September in order to submit those signatures.

Councilor Cote said that he did not understand why the petitioners need to get 9,000 signatures to get their question on the ballot without City Council approval. He would like to see this reviewed in the Charter. He would rather open up the opportunity for citizen involvement in government rather than limit it. He also noted that the Greater Boston Chinese Cultural Association Center is in his Ward and they are virtually 100% opposed to this for cultural and historical reasons. He did not think they would be doing justice if they did not listen to their concerns. He asked the City Council to do their homework to learn why this population was opposed. If this gets approved this would be an insult to them if a retail marijuana store opens up near the Center.

Dr. Blumenthal Questions

Councilor Baker asked if Dr. Blumenthal had an opinion on the right number of establishments. He answered there should be more than one. Having just one would not succeed in establishing a safe, effective marijuana industry that can compete with the illicit market. He did not suggest a particular number and said he was speaking to this issue from a policy point of view. The details need to be negotiated while honoring the results of the 2016 election.

Councilor Schwartz said it behooves the City Council to listen to experts in the field. On the other hand, they do have to consider some of the concerning aspects they have been hearing about. The commercialization and industrialization of marijuana by big business is very concerning. Big

Tobacco was a scourge on our country and our children, so based on that model, he asked if there was anything that can be done to control that. Dr. Blumenthal said that Massachusetts has a crackerjack group of members on the Cannabis Control Commission. This is a state-by-state regulated issue, for instance, cannabis grown in Colorado cannot be shipped to Massachusetts. This prevents a large national “brand” ending up in every state, though they could try, but it would be difficult considering the equity focus on the Massachusetts licensing process. It focuses on front-loading groups that have been marginalized and allowing them to have the first shot and disincentivizing large corporations, politicians with connections, and other groups that could lead to a predatory industry. He said society is very mindful of the lessons learned from the tobacco battles. Cigarette use has dropped quite a bit, as the Police Chief noted, but there is no ban on cigarettes in Massachusetts. Education is what drops consumption. To attack things from a supply side only inflates prices and creates more incentive for people to sell the drug illegally and that is the economic fact. These are lessons learned from tobacco. Massachusetts wants to be the gold standard of the marijuana industry. Newton can play a role in that bigger pictures.

Councilor Schwartz noted that another concern that has been raised is that selling recreational marijuana normalizes marijuana use for youth. Dr. Blumenthal said the concern has been that de-stigmatizing a drug would invite young people to be more curious about it. He shares that concern but says that marijuana has already been de-stigmatized. Look at “stoner” movies – it has become a joke. His concern is with advertising and targeting young people the way the E-cigarettes industry is operating. He finds that despicable. Having many storefronts could be interpreted as advertising to young people. That is why care needs to be taken with displays and locations. These are things that need to be thought about carefully. Having a ban ignores the nuance of those opportunities to discuss these issues.

Councilor Greenberg asked if other states that have legalized marijuana show an increase in underage use. Dr. Blumenthal said it is still early so there are only very small data sets thus far. Colorado is the state that Massachusetts is trying to learn from the most. Massachusetts representatives have spent a significant amount of time there looking at the lessons learned there. High school seniors’ marijuana use had gone down since 2012 in Colorado. Education is the key and the educational approach has worked in Newton in the past. When he grew up in Newton, many young people were smoking marijuana and he does not think that has changed. The City is currently in the “grey market” because it is not an illicit market or a fully legalized market. This is a difficult transition and a ban would suspend Newton in that grey market indefinitely. Washington state was so frustrated with its grey economy that it opened up all 300 or so of its medical marijuana establishments to allow recreational sales in one day. This helped the industry, which was unraveling in the grey market phase.

Councilor Albright thanked Dr. Blumenthal and asked that he continue to participate and share his expertise in the ongoing conversations and in particular, with the upcoming zoning discussions.

Additional Ballot Question Comments

Councilor Schwartz said he would like to see this question move on to the City Council for a fuller discussion, as the Committee has done with the Opt-Out ballot question. At the last meeting discussing the ban ballot question, he was concerned that it would not be approved by the voters if put on the ballot, and the City would still be unable to gain any control or authority to limit the number of establishments to fewer than 8. His understanding of the intent of the legislation is that they foresaw the ability and desire of cities and towns to have the authority, with the approval of the voters, to decide how many dispensaries there should be and to limit them to fewer than 8. He would like the opportunity for the petitioners to put their questions on the ballot, but he would also like to be able to have authority if it does not pass. The concern is that both questions on the ballot would be confusing. The questions would have to be crafted very carefully in order to make the intent and the effect of their passage very clear.

It was suggested that the ballot question ask for authority to limit the number of establishments to between zero and six. Ms. Lawlor, Assistant City Solicitor, responded that a proposal for banning all establishments has to be its own ballot question; therefore asking for between zero (which would be a ban) and any other number would not be acceptable.

Councilor Baker asked if the City could put one of the questions on the ballot at the upcoming election and if that did not pass, put the other question on the next municipal ballot. Ms. Lawlor said the Law Department is still trying to determine how that might work. Ms. Young said the answer could come from the courts or an amendment to the statute. There is a host of individuals who are trying to determine and understand what the range of options might be for municipalities, and they are frustrated. This will be a fight yet to come unless the statute is clarified and amended. However, there is nothing in the statute that says a municipality only has one chance at a ballot question and it does not say multiple questions could not be brought forward over a period of time. The current legislation states that if a vote is taken to adopt a ban, an ordinance must be adopted as well to implement the ban. The current language in the statute says "may adopt an ordinance". There is a pending piece of legislation that would change "may" to a "shall". It is that kind of remedial language that may be coming forward as communities wrestle with how many questions they can offer and how they can be offered.

Councilor Baker felt that offering both questions on one ballot would be very confusing and he is concerned. The ballot question for opting out was voted out of Committee and will be before the City Council on July 9th. He wanted to note that he was in another Committee when the vote was taken on the Opt-Out ballot question and if he were in the room, he would have voted in favor of it. He is not disposed to sending a second ballot question on an intermediate number, which has not been determined, or how the establishments will be allocated throughout the City, to the City Council. He felt the Opt-Out question should be given its opportunity before the voters without another question on the ballot. A decision about putting another vote subsequent to that on the ballot can be explored after the Opt-Out vote. He will not support the proposed ballot question on restricting the number of establishments.

Ms. Young noted that the marijuana statute requires that the ballot question itself contain the exact language of the ordinance, which the Committee currently does not have. The Law Department is still trying to determine how the question would be placed on the ballot in order to eliminate any confusion and show what the results would be depending on the vote. She is not able to answer that right now. This could be voted out of Committee with this concept, and direct the Law Department to have language ready in time for the full Council meeting on July 9th. Or the Committee could decide it wants to wait to see language before voting it out.

Councilor Albright noted that the Opt-Out ballot question came to the Council through a 50-person petition, which is not a 6,000 or 9,000 person petition. She would feel differently about the petition if it had come to them with those higher numbers of signatures. That ballot question was voted out of Committee with 3 in favor, 2 abstentions and 1 opposed which is not exactly a resounding vote. She had heard many say a 50-person petition was the tail wagging the dog. There are two issues that have merit: the Opt-Out petition and this petition to limit the number of establishments to fewer than 8. She does not see a problem with having the City Council debate and discuss both of those. She hopes the Law Department will figure out a way to put both questions on the ballot in a way that is clear.

Councilor Krintzman noted that the Opt –Out ballot question that was before them was voted out of Committee with the intent to have a fuller discussion with the City Council on July 9. He would like to see the same happen with this item. He abstained from that vote because he wanted to have the opportunity for a deeper discussion with the City Council. The state law is written in such a way that there is a restriction on the City Council's ability and the only way to gain some flexibility is to send a question to the voters. If the Opt-Out question fails, the restriction remains on the City Council to regulate the number of establishments. The moratorium will expire shortly after the vote in November and there will be the level of non-control that no one is interested in. He felt that the people were asked to opt-in or opt-out in the 2016 election and they spoke at a high turnout election to vote in favor of recreational marijuana. The voters did not know how many establishments that vote would allow at that time, so now the City and the City Council need a way to determine that. He believes that the Opt-out question is a second bite at the apple and that the opportunity to reduce the number of licenses is a sensible way to gain control.

Garden Remedies

Councilor Schwartz noted that Garden Remedies is operating as a medical dispensary and is before the Land Use Committee asking for an expansion to recreational use. There is another application for a medical dispensary that is indicating they will expand to recreational use. It is still unclear how much a ban would affect the medical marijuana conversions to recreational sales. He is concerned about timelines and would prefer to see both questions on one ballot as well.

Ms. Lawlor noted that if a ban is eventually enacted in November, it is still unclear whether Garden Remedies would be allowed to continue to sell recreational marijuana if they acquired their special permit and state license prior to a vote that leads to a ban. It will likely be decided in court. It is also unclear what would happen to other establishments that are now under review for a special

permit for a medical marijuana establishment, and begin to operate prior to a ban, relative to eligibility to convert to recreational sales at some point. In any instance, conversion to recreational sale would not be allowed until after December 31, 2018 as there is a moratorium in place. Garden Remedies is the only establishment exempted from the moratorium because it was licensed prior to July 1, 2017, which is a provision in the legislation. The City Council would not have the ability to deny a special permit to Garden Remedies, but could set conditions. The legislation provides that no zoning ordinance can prevent conversion from medical marijuana to recreational marijuana sales and a special permit is part of zoning.

Councilor Albright said that there should not be just one recreational facility in Newton. In the event a ban passes, that may be the case with Garden Remedies. This gives one person a monopoly and this would not be a good solution for Newton.

Zoning Ordinance

Ms. Lawlor said once the zoning is adopted and the moratorium is lifted, any establishments seeking a license, whether a medical facility converting to recreational, or a new recreational facility, would have to go through the special permit process. Councilor Albright noted that the Zoning & Planning Committee will be seeing the first draft of the proposed zoning ordinance for marijuana establishments on June 25. There will be another discussion on either July 16 or July 30 and then to public hearing on September 24. In her meetings with the Planning Department and Chief Planner, Jennifer Caira, she saw the proposed zoning map. She felt that it would be difficult to find 8 places given the zones that have been chosen along with required buffer zones.

Councilor Baker asked if the moratorium could be extended for another year to determine the best number to put before the voters. Ms. Lawlor said it could be difficult as moratoria are meant to be for a reasonable amount of time for the City or Town to determine zoning. The Attorney General has shot down towns' attempts to extend moratoria beyond December 31, 2018.

Possible amendments

- Councilor Albright offered an amendment to limit the number of establishments to 3 (North, South and somewhere in the middle).
- Councilor Krintzman would like to see a cap of up to 5 licenses. If the City decides that 3 is sufficient, for example, then they would not be required to grant all 5 licenses. Councilor Brousal-Glaser said she did not think that would be allowed - all 5 would have to be granted, if applicants met the requirements.
- Councilor Brousal-Glaser would like to see the number set at 4 establishments.
- Councilor Kalis suggested a step-up process, adding a number of establishments each year.

Ms. Young noted that, in the zoning ordinance, "no more than 4" cannot be perceived as less than 4. It would mean that if there are 4 qualified applicants, then 4 licenses would be granted. If the question is on the ballot asks for a range of establishments, such as 2-4, that means that the voters are giving the City Council the authority, at a later time, to decide on a particular number between 2 and 4 for the zoning ordinance. The ordinance cannot contain a range.

Ms. Young said that she spoke with the Secretary of State and Ballot Election officials and the advice they were giving to communities, in view of how the marijuana statute was written, was that if they wanted to have a range of numbers instead of a specific number, that would be possible, but using the term “no more than” a specific number was not advised; for example “no more than 4”.

Proposed Amendment

Councilor Albright asked if the number could be changed, after the fact, through a zoning amendment. Ms. Lawlor said that if the ballot question passed to allow the City Council to choose between 2 and 4, and it originally adopts a zoning ordinance allowing 2, it could then change that to 3 or 4 through a zoning amendment in the future. The voters would have given the City Council authority to allow 2, 3 or 4 establishments. Going back to the voters would not be necessary. The City Council could start slowly and try to learn as they go.

Councilor Baker felt the decisions ahead would be challenging to decide where 2-4 establishments would be located. Learning from mistakes is a great idea, but once the mistake is made, it is already established. Would this kind of learning lead to better decisions or would it just teach us that we made an error.

The Chair said he would like to move this item along to the full City Council as soon as possible as the timeline is short considering deadlines for the election.

After hearing from the Committee and the Law Department, Councilor Albright offered to amend the item to “no fewer than 2 and no more than 4”.

The Committee voted to approve the amended item 5-1-2 with Councilor Baker opposed, and Councilors Kalis and Schwartz abstaining.

The Chair explained that this item will be before the full City Council on July 9th.

Meeting adjourned.

Respectfully Submitted,

John B. Rice, Chair

City of Newton



Ruthanne Fuller
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT

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June 18, 2018

Dear City Council Members,

I am pleased to share my position on potential ballot questions regarding legal adult use marijuana establishments in Newton. The 2016 ballot question asked voters to decide whether Massachusetts as a state wanted to have retail stores for adult legal use. Newton voted 55% in favor. At this time, the City is determining what legal adult use establishments specifically in Newton should look like (which will have no bearing on medicinal marijuana establishments).

I think it's important for Newton residents to decide via specific ballot questions whether they want any adult legal use retail stores. And, if they choose to allow retail stores, how many they think are appropriate.

I recommend the city council put forward a ballot question that caps Newton retail marijuana establishments at 3 or 4, thus allowing the city to develop zoning to keep stores away from places where young people congregate and that maintains significant distance between any two retail marijuana stores. I also recommend the city council put forward a ballot question asking whether Newton voters would choose a ban of retail marijuana establishments.

In the absence of any questions on the ballot, the city council has authority to determine the rules and regulations around marijuana establishments but would have to allow a minimum of 8 retail marijuana establishments in Newton.

I contend that voters should have their say and decide whether they want; 1) an outright ban of retail marijuana establishments, 2) a small lower number of marijuana retail establishments.

Many cities and towns across the Commonwealth have already moved to do this, recognizing that local residents have important stakes in the character of their City.

Thank you for your consideration,

Deborah C. Youngblood