

City of Newton Review Process for Marijuana Establishments and Registered Marijuana Dispensaries

2/4/2019

On December 3, 2018, the City of Newton (City) adopted amendments to its Zoning Ordinance to govern all marijuana establishments and registered medical marijuana dispensaries (RMDs). The maximum number of marijuana retail establishments in the City of Newton is eight (8). The Zoning Ordinance for marijuana uses are located in Section 6.10.3 of the Newton Zoning Ordinance, which can be found at <http://www.newtonma.gov/civicax/filebank/documents/69436>.

All marijuana establishments and RMDs require both a Host Community Agreement (HCA) and a Special Permit from the City of Newton, in addition to a state license from the Department of Public Health and/or Cannabis Control Commission.

The following outlines the processes for requesting a Host Community Agreement, undertaking Zoning Review and applying for a Special Permit.

1) Host Community Agreement (HCA) Process

Under state law, each marijuana establishment and recreational marijuana dispensary is required to execute a Host Community Agreement with the municipality in which they operate. The agreement must set forth the responsibilities of the marijuana establishment or RMD and the community. The HCA may include a community impact fee of up to 3% of gross sales to be paid to the host community.

The primary focus of the HCA in Newton is financial. The agreement establishes the amount and method of payment for a negotiated community impact fee. It may also include an agreement about a donation to a Newton public charity or non-profit. The HCA also includes other terms such as a commitment to diversity in hiring and hiring qualified employees who are Newton residents, and cooperation with the Newton Police Department for security and the City on drug abuse prevention. The HCA process does not address in depth whether the site is an appropriate location for the proposed project, what site specific mitigations are necessary, or provide for a full understanding and possible mitigation of community concerns, as those important considerations are part of the Special Permit process. The granting of a HCA does not mean that a Special Permit will be granted; rather, the HCA indicates that the critical decision-making process by the City Council about granting a special permit should proceed.

The decision to execute a HCA with an applicant is solely at the discretion of the Mayor, as the contracting authority of the City. The basis for the Mayor's review and consideration of HCAs is to protect the health, safety and welfare of Newton residents and the community as a whole. The City shall make every effort to ensure the process for obtaining a HCA is unbiased, transparent and timely; however, the Mayor is under no obligation to enter into a HCA or do so in a set time frame.

The Mayor has created a Marijuana Host Community Agreement Advisory Group (Advisory Group) consisting of representatives from Planning and Development, Law, Police, Health & Human Services, Transportation and the Mayor's office to assist her/him in this process.

The HCA process is outlined below:

A. Advisory Group Meeting: The Applicant meets with the Marijuana Host Community Agreement Advisory Group (Advisory Group). The Applicant should be prepared to provide information regarding proposed plans for security, public health, and community relations including the required State community outreach meeting; industry and managerial experience as well as biographies for the organization's controlling members; proposed environmental sustainability features; qualifications for state economic empowerment or social equity programs; economic value to the City; contextual information including a description of site location and an overview of transportation, traffic and parking; and proposed operations (including hours and number of staff).

B. Advisory Group Review: Following the meeting with the Applicant, the Advisory Group will review the proposal and make a recommendation to the Mayor as to whether to move forward with negotiating a Host Community Agreement (HCA). The HCA process is not intended to be duplicative of the special permit process and the special permit process will go into many areas in greater depth than the HCA process. Based on the available information (which is more limited than that available to the City Council during the Special Permit process), the Advisory Group will consider a wide range of criteria in making its recommendation and these will include, but are not limited to:

- Security – Whether there is a sufficient commitment to public safety and a sufficient plan for controlling access to areas with marijuana and preventing sales to underage populations, and other similar factors;
- Public Health – Whether there is a commitment to help monitor and mitigate health impacts to the neighborhood and to Newton's youth and adult populations, assistance with local substance abuse prevention programming, and other similar factors;
- Community Relations – What are the plans for community outreach and addressing community concerns, experience with the Newton community, and other similar factors;
- Experience – What are the professional experiences and qualifications of the management team and other similar factors;
- Sustainability – What are the proposed sustainable and renewable energy practices, and other similar factors;
- Equity – What are the qualifications of the Applicant under state Economic Empowerment and/or Social Equity programs;
- Economic value - What is the amount of additional economic value the business would bring to Newton, e.g., new jobs, additional local tax revenue, increased property value, commitment to diverse and local hiring, commitment to use of local businesses for construction, supplies, product, and other business needs, openness to long-term community impact fees, and other similar factors; and
- Context – Whether the proposed facility is not clearly inappropriate in terms of location, operations as well as transportation, traffic and parking, with those final decisions reserved for the City Council during the Special Permit process.

C. Authorization to Begin Negotiations: The Mayor will consider the recommendation of the Advisory Group and will decide whether to start HCA negotiations based on the best interests of the City. If there are multiple applicants, the relative merits of each proposal will be considered. If granted, the HCA is contingent upon the granting of a Special Permit by the City Council and all necessary state permits and licenses.

D. Development Review: The Applicant meets with Development Review Team (DRT). If the Mayor decides to move forward with negotiations for a Host Community Agreement, the Applicant will have a meeting with the DRT. The DRT includes the Planning staff, as well as staff from other City departments, as necessary. Just as with any application for a special permit, the DRT will focus on zoning and technical aspects of the project as well as provide information regarding the Special Permit process. The Applicant should bring to the DRT meeting a survey of the existing site and conceptual plans for any improvements to the site and/or building.

E. Execution of the Host Community Agreement: Once the DRT process is complete, the Mayor will decide, in her/his sole discretion, to sign the HCA. The Applicant will be notified in writing if the HCA has or has not been signed. If signed, the HCA will be provisional pending the outcome of the City Council Special Permit process. If the City Council does not approve the Special Permit, the HCA will be revoked. When the Applicant has a signed HCA, they may begin the Zoning Review process which is then followed by the Special Permit process.

2) Zoning Review Process

Once an Applicant has a signed HCA, then it must apply for a Zoning Review before it can apply for a Special Permit. During the Zoning Review, the Chief Zoning Official from the City's Planning and Development Department will review the property history and proposed plans and produce a memorandum detailing all necessary relief from the zoning ordinance that must be requested by the Applicant to the City Council based on its proposal (e.g., use, dimensional requirements, parking, lighting, landscaping, etc.). The Zoning Review helps ensure that all necessary relief is requested, avoiding the need to re-notice or restart the Special Permit process.

a) The Applicant should fill out the application for zoning review and send the application along with the survey and proposed plans to the Chief Zoning Official. The Chief Zoning Official has 45 days to review and issue a memo detailing the exact relief needed for the request for a special permit.

b) Once the Zoning Review memo has been issued, the Applicant may file for a Special Permit.

3) Special Permit Process

All marijuana uses require a Special Permit, which is a discretionary action, from the City Council. The Land Use Committee of the City Council will hold a public hearing, review the petition, and ultimately make a recommendation to the full City Council based on the criteria included in Section 6.10.3 G of the Newton Zoning Ordinance.

Public input is an important part of the Special Permit process and allows the City Council an opportunity to consider concerns raised by the community.

There are a wide variety of criteria considered by the City Council in granting a Special Permit for a marijuana establishment or RMD. For example, these criteria include consideration of whether the specific site is an appropriate location, whether adverse impacts have been appropriately mitigated, whether the site provides convenient access, is accessible to persons with disabilities, and has access to transportation options, whether there will be no nuisance or serious hazards to vehicles or pedestrians, whether literal compliance with parking requirements are required, whether loading, refuse, and service areas have been appropriately screened, whether the site is sufficiently buffered from schools, and whether the site is located where it may be readily monitored by law enforcement and other code enforcement personnel. An affirmative vote of two-thirds of the City Council (16 votes) is required for a Special Permit to be issued. Approval of a Special Permit is contingent upon maintaining a Host Community Agreement with the City and a license from the state.

Details of the Special Permit process are outlined below:

- a) The Applicant should file 15 copies of their application and plans with the Planning and Development Department and City Clerk.
- b) The City Clerk will docket the item with the City Council and assign a public hearing with the Land Use Committee.
- c) Abutters within a 300' radius will be noticed of the public hearing, notice will be placed in the newspaper and a sign will be placed on site.
- d) The Land Use Committee will hold a public hearing where any member of the public will be given an opportunity to speak, the Applicant may give a presentation, and Planning staff will also submit a memo analyzing the petition and will give a presentation. The City Councilors will deliberate and, when ready, will take a vote to recommend approval or denial to the full City Council. (Please note this may require multiple meetings.)
- e) Once the Land Use Committee has voted, the full City Council will vote on the petition and following the vote there will be a 20-day appeal period. In order to open, an Applicant will need to have an approval from the City Council and will need to have complied with any conditions of approval, including obtaining a license from the state and maintaining a signed HCA with the City.