

FIREARM SAFETY BUSINESS USE ZONING BYLAW

Information Session

March 2024

OUTLINE

1. Why We're Here
2. The Process
3. The Proposed Bylaw – Overview
4. What This is Not
5. Current State (status quo)
6. What Would Change?
7. Expert Recommendations
8. Other Communities?
9. Why Not a Ban?
10. The Proposed Bylaw - Recap

A YEAR AGO ...

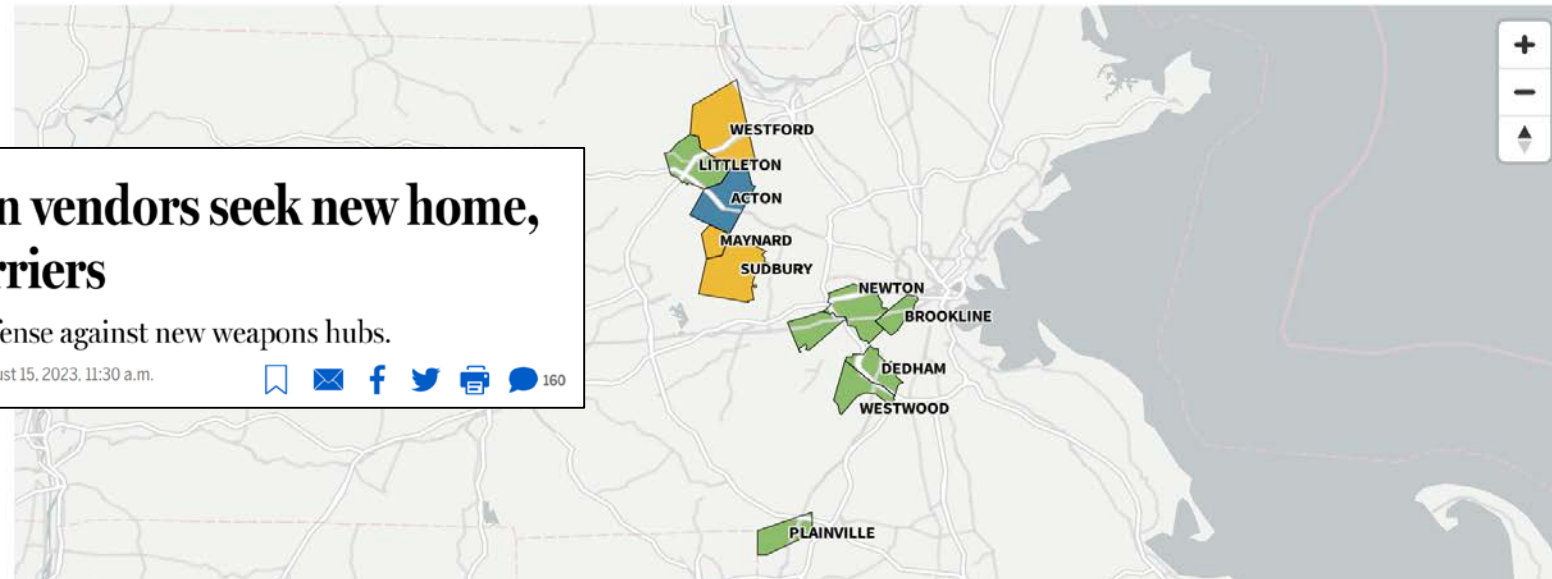
- The Littleton “gun mill” recently housed 84 firearm businesses.
- Littleton developed a firearm business zoning restriction bylaw and a sale of the property means the gun mill – just 13 miles away from LSRHS – is closing down.
- Acton, Stow, and Westford received inquiries from firearm businesses seeking to relocate from Littleton. All those communities have developed or are developing firearm business zoning bylaws as a result. Newton received an inquiry from a firearm business and Newton, Brookline, and Wellesley developed firearm business zoning bylaws as a result.
- A Citizens’ Petition at 2023 Annual Town Meeting proposed a zoning bylaw that would impose a full ban of firearm shops.
- The vote for a full ban last year was 59 in favor, 107 against - i.e., after debate, 64% of Town Meeting attendees voted against a full ban.
- The ban failed, but generated extensive media coverage (Sudbury Patch, Boston Globe, gun rights websites, etc.).

WHY WE'RE HERE

Cities and towns turn to zoning to limit gun businesses

At least eight municipalities in Massachusetts passed zoning bylaws between 2020 and 2023 to limit where firearms businesses can operate. Some also cap the total number that can exist at one time and bar them from clustering in the same building. At least three other towns are eyeing similar measures.

Status ■ Pending AG approval ■ Pending town approval ■ Enacted



As Littleton gun vendors seek new home, towns erect barriers

Zoning becomes go-to defense against new weapons hubs.

By Sarah L. Ryley Globe Staff, Updated August 15, 2023, 11:30 a.m.



NEWTON AS A CAUTIONARY TALE

Newton's experience of a firearm shop applying to operate in a community with no firearm zoning:

"... got everybody's attention, I think, about potentially a flaw in the town's land use that might allow gun stores in places we don't want ..."

Brookline Town Administrator Mel Kleckner, during a Brookline Select Board discussion of the firearms shop zoning bylaw that was approved in that community.

- *WickedLocal.com Brookline coverage, Sept. 7, 2021*


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BROOKLINE-TAB

Brookline proposal would limit gun stores and create buffers around schools and homes

 **Abby Patkin**
Wicked Local

Published 6:14 a.m. ET Sept. 7, 2021 | Updated 10:10 a.m. ET Sept. 7, 2021

[f](#) [X](#) [✉](#) [↗](#)

A gun store's arrival in Newton earlier this year sparked outrage and a hasty — and at times controversial — process to [limit firearm sales](#) in the city.

With a proposed zoning bylaw change, Brookline is hoping to preempt a similar situation.

A warrant article for fall Town Meeting, filed last week, proposes limiting where a firearm business could be located in town, stipulating buffers around residential properties, private and public K-12 schools, childcare facilities and other firearm businesses.

Under the proposal, firearm businesses would only be allowed by special permit in General Business (G) zoning districts, which includes certain areas near Route 9 or the Newton border, Commonwealth Avenue on the Allston border, Washington Square, Coolidge Corner and Brookline Village, per a [town zoning map](#).

Newton's experience "got everybody's attention, I think, about potentially a flaw in the town's land use that might allow gun stores in places we don't want," Town Administrator Mel Kleckner said during a Select Board discussion of the proposal last week.

More: [Brookline exploring gun shop restrictions amid Newton zoning debate](#)

KEEP A PROMISE ...

*“The Select Board does share the petitioner’s **deep concern about the high rate of gun violence in the United States** and is interested in **action to mitigate this crisis and increase public safety in Sudbury**. Select Board members have expressed a desire to work further with the citizen petitioner and with the Planning Board to develop a revised bylaw through a modified approach such as Brookline, Dedham, or Newton have ... such a revised bylaw might be more likely to be approved by the Attorney General and may be **more legally defensible** if challenged while still **enhancing the public safety in Sudbury and beyond.**”*

- Joint Statement from the Select Board, Annual Town Meeting 2023, May 2

THE PROCESS

Key Points of this Bylaw:

- Debated as an issue at Annual Town Meeting 2023
- Drafted by Town Manager based on Select Board comments after ATM23
- Based on similar established, approved bylaws (Acton, Littleton, Dedham, Newton, Wellesley, etc.)
- Discussed and revised at 12+ open Select Board meetings
(May 16, June 27, July 11, Sept. 26, Dec. 19, Jan. 9, Jan. 23, Jan. 31, Feb. 6, Feb. 27, March 12, March 26)
- Revised numerous times
- Reviewed by the Gifford Law Center to Prevent Gun Violence
- Reviewed by Town Counsel

BYLAW OVERVIEW

Firearms Business Uses are not specifically defined or regulated in Sudbury's Zoning Bylaws. This means a firearms business permit would be reviewed the same as a standard retail store application, with minimal review focused on a dimensional requirements of the shop.

Other businesses in Sudbury, such as kennels and auto repair shops, must undergo a more stringent special permit process. The new bylaw will require firearm businesses to undergo the more stringent special permit process and:

- Add zoning and geographic location restrictions that do not exist now
- Strengthen the permitting standards from “by right” to Special Permit requirements
- Limit the number of firearm businesses to a maximum of 2 (only 2nd in Mass/US to have a cap)
- Add minimum operational safety requirements (e.g., storage, video recording)
- Adhere to relevant state and federal regulations
- Respect individual and Constitutional rights

OVERVIEW...PROPOSED BYLAW

- Adoption of this Bylaw would create a new use, Firearm Safety Business Use Zoning Bylaw, and restrict the operation of firearm businesses to only one zoning district, Industrial District, by special permit granted by a 4-1 vote or better from the Select Board.
- Special permits require a public hearing with abutter notification and empower the permitting authority with greater ability to impose conditions, safeguards, and/or limitations on the time or use of a site, or even to deny an application for good reason.
- This bylaw would limit two Firearm Businesses to locate in Sudbury at any given time.
- The bylaw aligns with similar bylaws approved in nearby communities, follows a template created by the Gifford Law Center to Prevent Gun Violence, and includes regulations on best business practices and security to maintain safety for the general public.
- The end result is **far greater local control** over the permitting of any firearm business application that comes to Sudbury.

BYLAW OVERVIEW

Category	Current	Proposed
Number of Zoning Districts where firearms businesses are allowed:	7 of 10	1 of 10
Number of Parcels where firearm businesses are allowed:	536 (500+)	5
Number of potential firearm businesses in Town:	536 (500+)	2
Required setback from sensitive locations	None	250 feet
Local operating standards:	None	Best practice
Permitting standards:	“Check Box” By Right	Discretionary Special Permit

WHAT THIS IS NOT ...

- Not a ban on firearm businesses.
 - No community in Massachusetts has a ban on firearm businesses in place.
 - We are not aware of any community in the U.S. with a ban in place.
 - (Nationwide, places like Alameda County CA and Piscataway NJ have had zoning restrictions similar to the one we propose upheld when challenged in court).
 - Because of Constitutional protections (2nd, 10th, 14th), a total ban is likely to be challenged in courts, with case law not supporting bans.
- Not a discussion around regulating individual rights to buy, own, or carry firearms.

CURRENT STATE

PRINCIPAL USE	A-RES	C-RES	WI	BD	LBD	VBD ⁱ	ID	LID	IP	RD
2. Educational use, nonexempt	N	N	N	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA
3. Farm stand, nonexempt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4. Animal clinic or hospital	N	N	N	BOS	N	N	BOS	N	N	N
5. Kennel	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA
6. Nursing or convalescent home and assisted care facility	ZBA ⁱⁱ	ZBA ⁱⁱ	ZBA ⁱⁱ	N	ZBA ⁱⁱ	ZBA ⁱⁱ	N	N	N	Y
7. Funeral home	N	N	N	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA
8. Adult day care facility	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA
9. Bed and Breakfast	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA	ZBA
10. Motel or hotel	N	N	N	ZBA	N	Y ⁱⁱⁱ	ZBA	N	N	N
11. Retail stores and services not elsewhere set forth	N	N	N	Y	Y	Y	Y	Y	N	N

CURRENT STATE

PRINCIPAL USE	A-RES	C-RES	WI	BD	LBD	VBD ⁱ	ID	LID	IP	RD
D. INDUSTRIAL										
1. Light manufacturing	N	N	N	Y ^v	Y ^v	Y ^v	Y	Y	Y	Y ^{vi}
2. Laboratory for research and development	N	N	N	Y	N	N	N	Y	Y	Y ^{vi}
3. Wholesale, warehouse, self-storage, mini-warehouse or distribution facility	N	N	N	N	N	N	Y	Y	Y	N
4. Manufacturing	N	N	N	N	N	N	Y	Y	Y	Y ^{vi}
5. Wholesale or retail lumber yard	N	N	N	N	N	N	Y	ZBA	N	N



Town of Westford
Director of Land Use Management
Town Hall, 55 Main Street
Westford, Massachusetts 01886
TEL (978) 692-5524 FAX (978) 399-2732

To: **Westford Select Board**
From: Jeffrey Morrissette, Director of Land Use Management
Re: Zoning Bylaw Amendment for Firearm Businesses
Cc: Kristen Las, Town Manager
Mark Chambers, Chief of Police, Westford Police Department
Rae Dick, Health Director, c/o Westford Board of Health
Justin Perrotta, K-P Law/Town Counsel
Date: **September 11, 2023**

As you may recall, the Planning Board, Select Board, and Board of Health held a joint discussion about the proposed zoning bylaw amendment to regulate Firearm Businesses during the August 21, 2023, Planning Board public hearing. Several questions were raised by the various boards and public, and so additional advice was sought from Town Counsel. As co-sponsors of the amendment, the Select Board decided to further discuss the proposal (outside the public hearing process) at their meeting of September 12, 2023, to be able to provide recommendations to the Planning Board for consideration at the public hearing scheduled for September 18, 2023.

This memorandum serves to provide a friendly reminder to readers about the status quo and what will continue if no zoning bylaw amendment is passed by Town Meeting, summarizes recent advice received from Town Counsel, clarifies the "math" behind the suggested limitations on the number of special permits, and provides several options for the Board's consideration.

Reminders:

- Depending on the nature of the specific business, our current zoning bylaw does not regulate Firearm Businesses any differently than Retail sales to the general public (selling firearms, selling ammunition), Light manufacturing (performing gunsmithing services), or potentially Indoor and outdoor commercial recreation (firing ranges).

Town of Acton

Summary

Acton's Zoning Bylaw does not currently have a separate use for Firearms Businesses. Under today's zoning, firearms businesses would either be classified as a retail store, manufacturing, or both depending on how the business operates. Retail Store uses are allowed by-right in the following Village Districts: Village Residential (VR), East Acton Village-2 (EAV-2), North Acton Village (NAV), South Acton Village (SAV), West Acton Village (WAV), as well as the Kelley's Corner (KC), Limited Business District (LB), and Powder Mill (PM) zoning districts, and by special permit in the East Acton Village (EAV) zoning district. Manufacturing uses are allowed by-right in Office Park-1 (OP-1), Office Park-2 (OP-2), Power Mill (PM), General Industrial (GI), Light Industrial (LI), Light Industrial-1 (LI-1), Small Manufacturing (SM), and Technology District (TD) zoning districts, and by special permit in the South Acton Village, West Acton Village, and Kelley's Corner zoning districts. The Powder Mill zoning district is the only Acton zoning district that allows both Retail Store and Manufacturing as a use. Depending on the business operation, a firearms business would be allowed in one or more of the above zoning districts.

Adoption of this Bylaw would create a new use, Firearm Business, and allow the use by special permit. The bylaw would limit two Firearm Businesses to locate in Acton at any given time. Over the last year the Town has received inquiries from firearms businesses looking to relocated from the Town of Littleton to Acton primarily along Great Road and Main Street. This Bylaw would allow for a Firearm Business to located in the Technology District off Knox Trail and Small Manufacturing District in north Acton, but prohibit the use elsewhere in Town. The Bylaw includes regulations on best business practices and security to maintain safety for the general public.

Layers

- Dept of Fish & Game
- Municipal
- Land Trust
- Non-Profit
- Private

Water Resource Protection Districts

- Zone II
- Zone III
- Wells

Zoning

Zoning Labels

Zoning

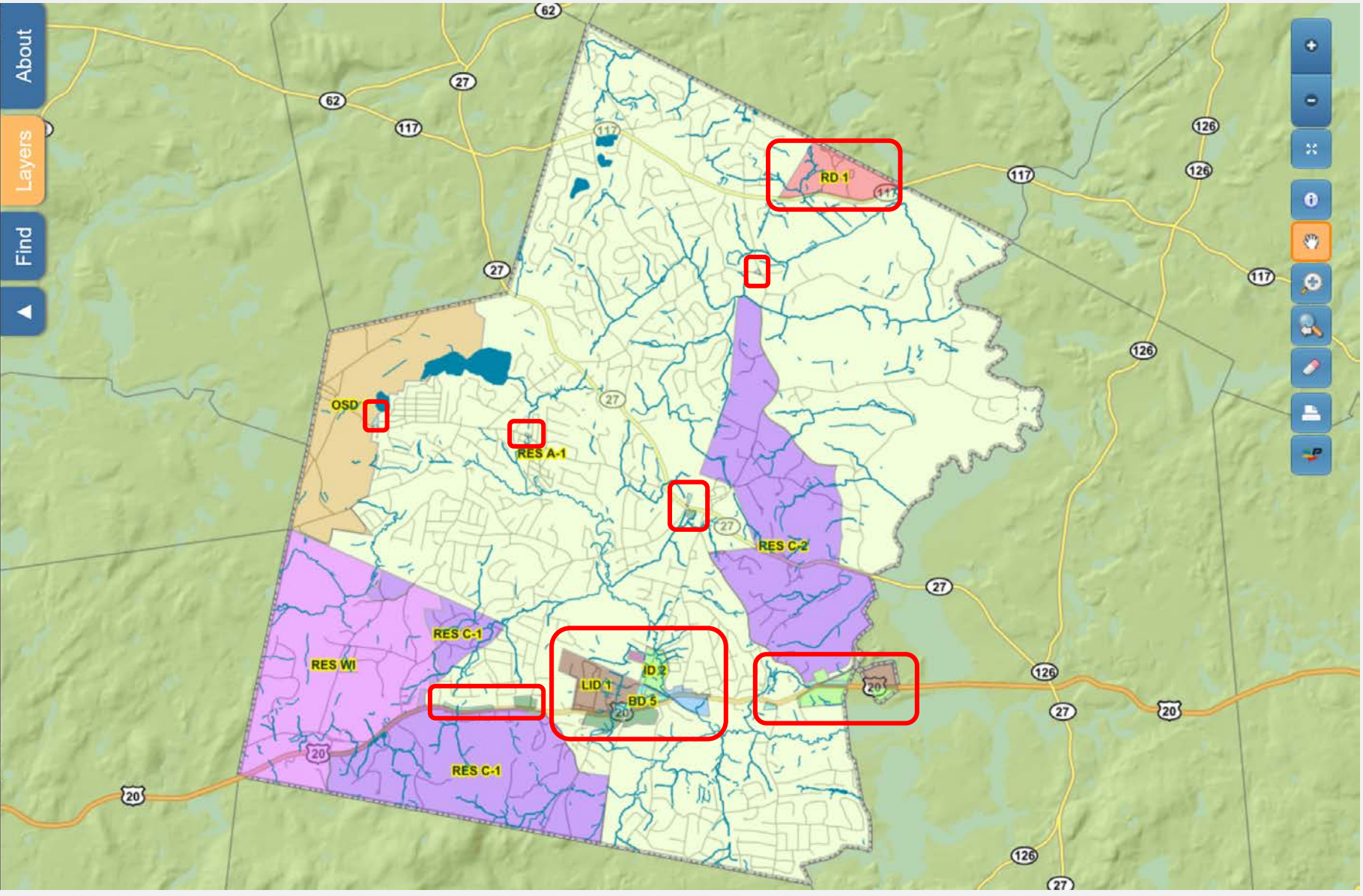
- Business
- Industrial
- Industrial Park
- Limited Business
- Limited Industrial
- Open Space
- Residential A
- Residential C
- Research
- Wayside Inn Hist Pres
- Village Business

Voting Precincts

- 1
- 2
- 3
- 4
- 5
- 6

Base Maps

- OpenStreetMap
- Google Hybrid Map
- Google Street Map
- 2008 Color Infrared Photo
- 2019 Ortho Basemap



WHAT WOULD CHANGE?

	PRINCIPAL USE	A-RES	C-RES	WI	BD	LBD	VBD ⁱ	ID	LID	IP	RD
Before:	11. Retail stores and services not elsewhere set forth	N	N	N	Y	Y	Y	Y	Y	N	N
After:	11. Retail stores and services not elsewhere set forth	N	N	N	N	N	N	SB	N	N	N
Before:	1. Light manufacturing	N	N	N	Y ^v	Y ^v	Y ^v	Y	Y	Y	Y ^{vi}
After:	1. Light manufacturing	N	N	N	N	N	N	SB	N	N	N
Before:	4. Manufacturing	N	N	N	N	N	N	Y	Y	Y	Y ^{vi}
After:	4. Manufacturing	N	N	N	N	N	N	SB	N	N	N

ARTICLE TITLE: AMEND ZONING BYLAW, SECTIONS 2200 AND 7000, FIREARMS SAFETY BUSINESS USE

To see if the Town will vote to amend the Sudbury Zoning Bylaw, Sections 2200 and 7000, as set forth below, by adding the following provisions; or act on anything relative thereto:

2200. PRINCIPAL USE REGULATIONS

A.

Insert in Section 2230, Table of Principal Use Regulations, Part C. Commercial, after “28. Marijuana Establishment” a new use category entitled “29. Firearm Business Use”, as shown in the table below.

PRINCIPAL USE	A-RES	C-RES	WI	BD	LBD	VBD	ID	LID	IP	RD
C. COMMERCIAL										
29. Firearm Business Use	N	N	N	N	N	N	SB	N	N	N

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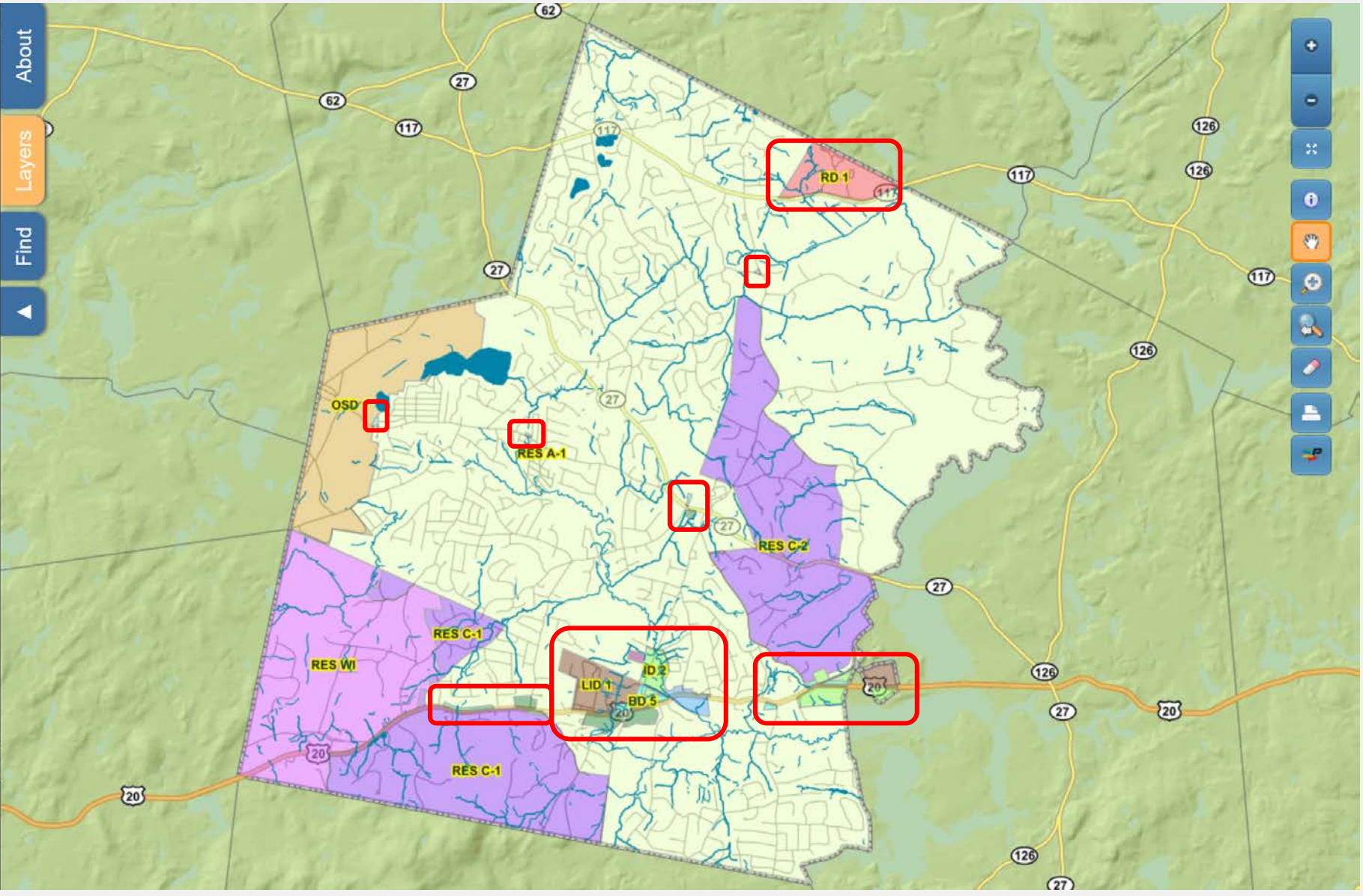
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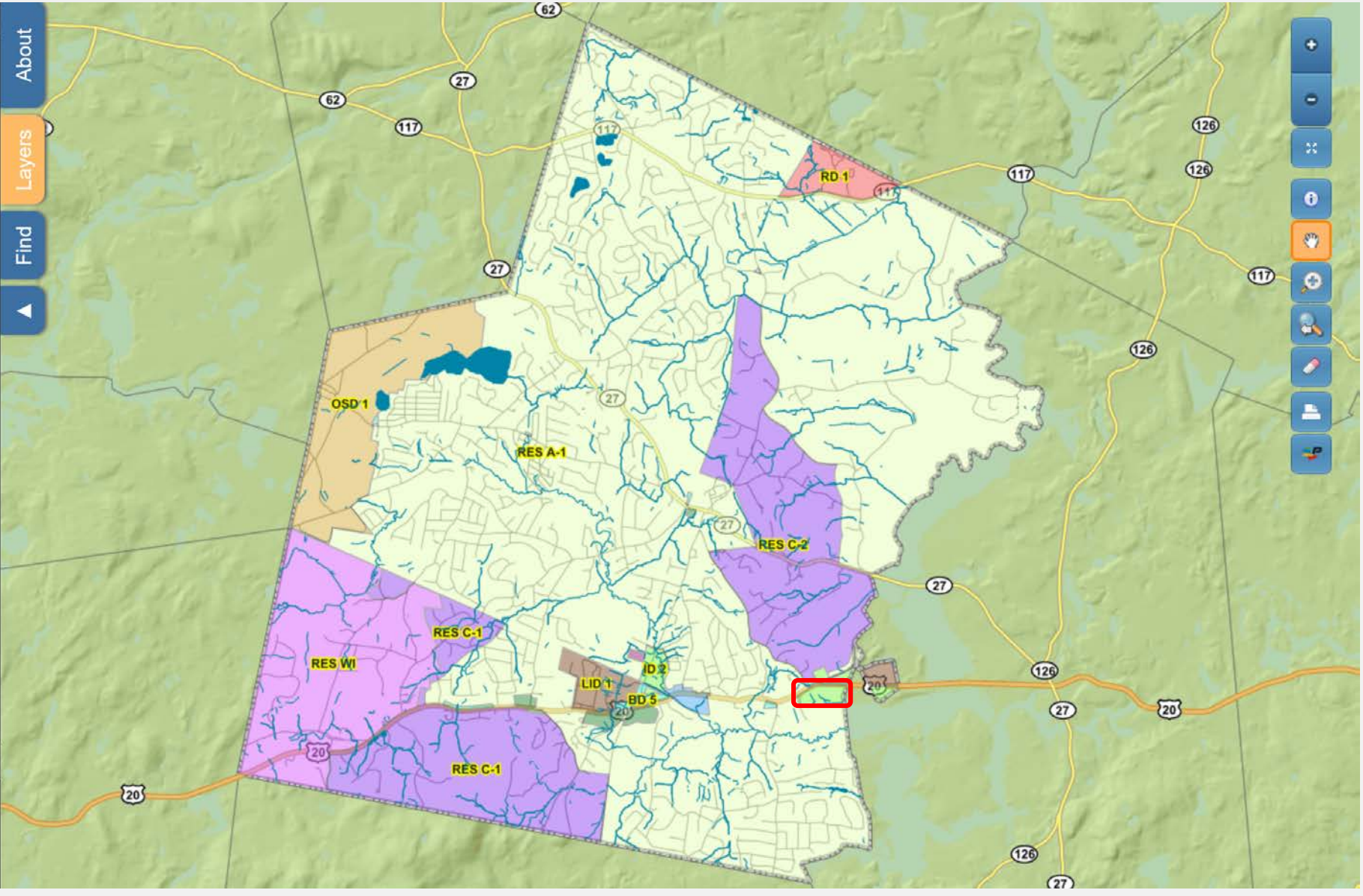
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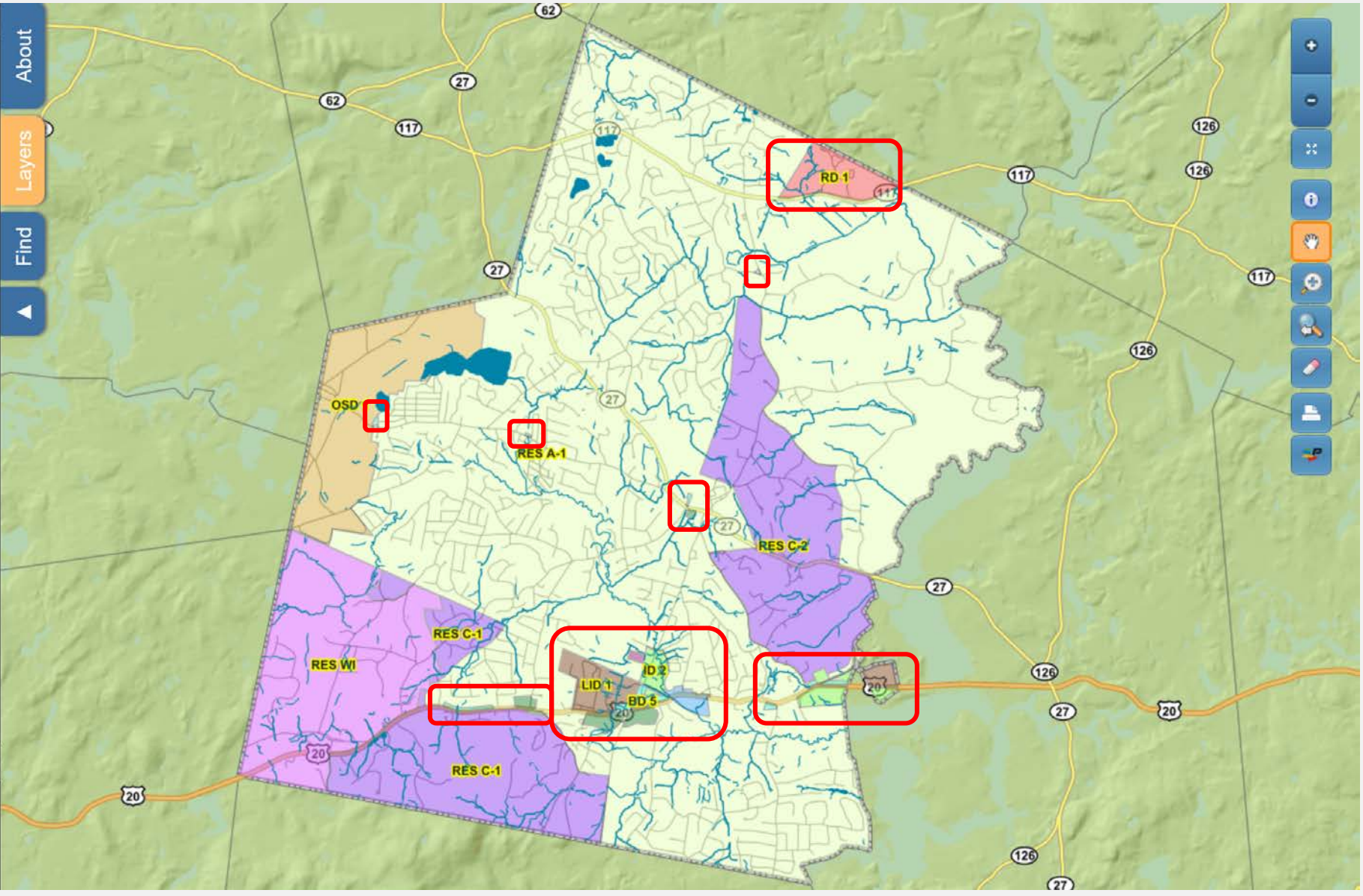
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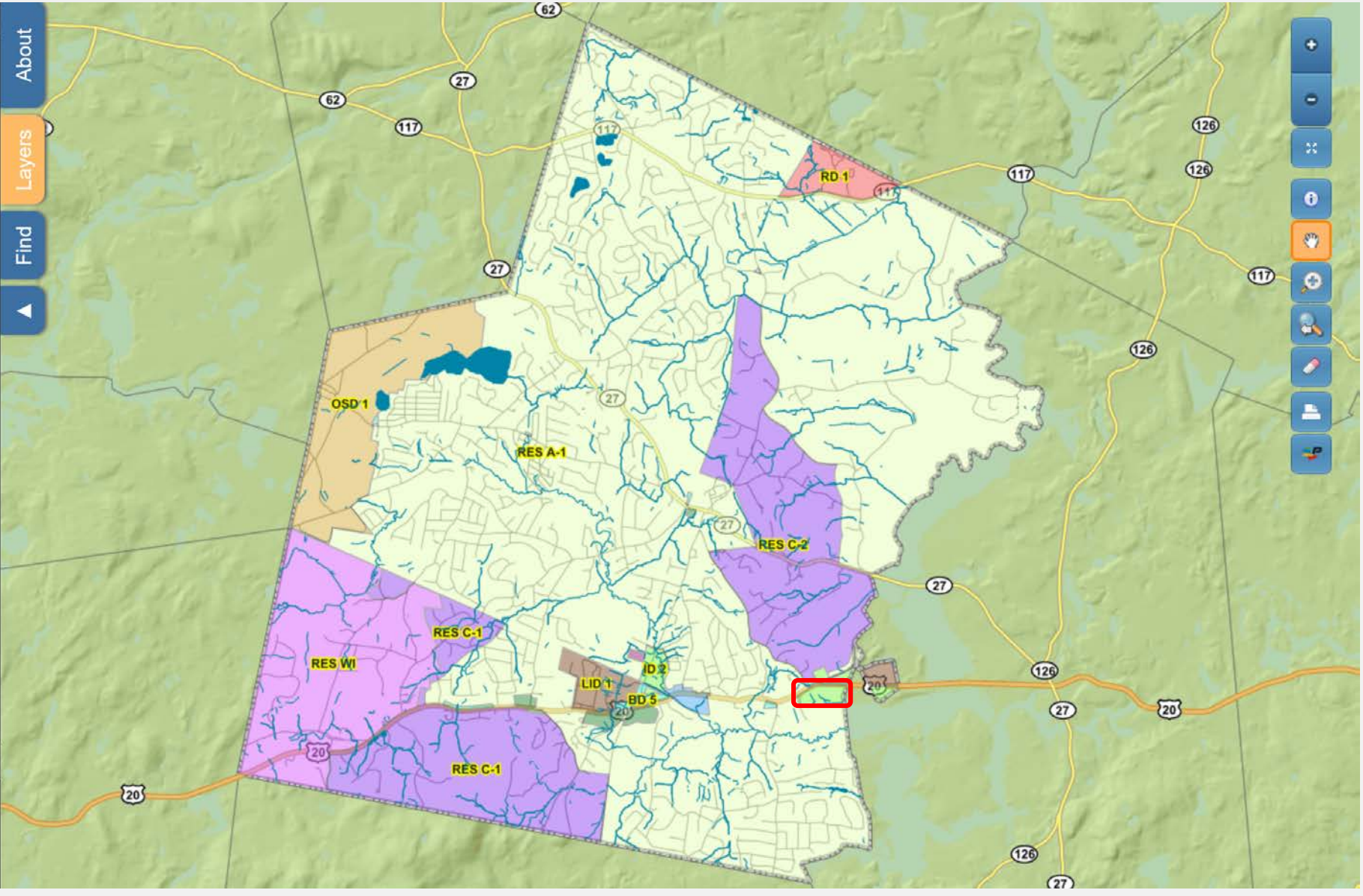
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EXPERT RECOMMENDATIONS

ZONING BYLAW / SPECIAL PERMIT

- Giffords Law Center to Prevent Gun Violence
- MA Coalition to Prevent Gun Violence representatives
- Every Town for Gun Safety
- Stop Handgun Violence MA
- Newton Coalition to Prevent Gun Violence

BAN

- No gun control organization



**MODEL LAW
REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS
(LOCAL GOVERNMENTS IN CALIFORNIA)**

March 2023¹

About Giffords Law Center and Our Model Laws

Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit organization focused on ending the epidemic of gun violence in America. Formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in San Francisco, and renamed Giffords Law Center in 2017 after joining forces with former congresswoman Gabby Giffords, the organization is now the premier clearinghouse for information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

Giffords Law Center serves governmental entities and activists throughout the United States. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, giffordslawcenter.org, is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

May 7, 2021

Newton City Council
citycouncil@newtonma.gov
rfuller@newtonma.gov

Dear Mayor Fuller and Members of the City Council,

On behalf of Giffords Law Center to Prevent Gun Violence, the nonprofit gun violence prevention organization led by former congresswoman and survivor, Gabby Giffords, I write to offer our support for the proposed ordinance regulating gun dealers that seek to operate in the community. This ordinance would zone gun dealers to safe locations in the city, and impose other measures to deter and detect illegal gun sales and thefts. It will undoubtedly improve the public safety of the residents of Newton and surrounding communities.

We support the approach the city is taking to zone dealers to areas where their presence poses a lower risk.

Despite the claims of gun extremists, firearms dealers do present risks to a community. They are high-value targets for criminals, and have often been magnets for break-ins, theft, and destruction of property. According to an [ATF Special Agent](#), “When people break into homes or businesses, guns are often the target. ... [O]f the commodities that we find that people that are involved in criminal activity are looking for, guns are very high on the list.” Gun thefts have been on the rise nationally, and while [Massachusetts has lower rates of gun thefts](#) from dealers than most other states thanks, in part, to its comprehensive statewide regulations, after years of declines, gun thefts from dealers in 2020 reached [peak levels](#) not seen since 2014.

The presence of gun dealers is incompatible with places where children and families frequent as well as other locations that have been targets of violence, such as houses of worship. One academic study suggests that firearms dealers may attract individuals engaged in criminal activity to the areas in which they are located, not only because they are a high-value target for theft, but also because of firearms dealers’ willingness to sell to “straw purchasers” who illegally buy for others.¹ Another [study](#) analyzed ATF data showing that guns “are often found to have been used for criminal purposes not far from the gun dealer where they were first obtained.” Based on the above evidence, the presence of firearms dealers in residential neighborhoods and near sensitive areas may endanger the public (and decrease the public’s sense of safety) by increasing the risk of criminal activity and violent crime.²

¹ Garen Wintemute, “Firearm Retailers’ Willingness to Participate in an Illegal Gun Purchase,” *Journal of Urban Health* 87, no. 5 (2010): 865-878.

² See *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (law that reduces the “perceived risk from a mass shooting, and mak[es] the public feel safer as a result” provides “a substantial benefit”).

Parents should have the freedom to determine when and how to expose their children to guns. If a gun store is located along a walking route to a school, playground, child care facility, library, or park, this becomes impossible. Zoning gun dealers away from these areas and ensuring that unsupervised minors may not enter gun stores puts these decisions back in the hands of parents, not gun dealers.

Finally, this ordinance will help ensure that guns sold by dealers in the community do not end up in the hands of people who commit crimes. Requiring guns to be safely stored during non-business hours will help prevent gun store burglaries after-hours. Unlike jewelers who routinely lock up their inventory at night, many dealers leave their guns unsecured which enables criminals to [drive their cars into storefronts and make off with numerous](#) guns quickly, before law enforcement arrives. Stolen guns are often used in subsequent crimes. An [analysis](#) of more than 23,000 stolen firearms recovered by police between 2010 and 2016 found that the majority of these weapons were recovered in connection with crimes, including more than 1,500 violent acts such as murder, kidnapping, and armed robbery.

For the foregoing reasons, Giffords Law Center strongly supports the proposed ordinance which would enact reasonable and effective regulations of gun dealers.

Sincerely,



Allison Anderman
Senior Counsel

ABOUT GIFFORDS LAW CENTER

For over 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.



April 26, 2021

Mayor Fuller and the Members of the Newton City Council
Newton, MA

Sent via email

Dear Mayor Fuller and the Members of the City Council,

On behalf of Giffords Law Center to Prevent Gun Violence, the gun violence prevention organization led by former Congresswoman and survivor, Gabby Giffords, I write to offer our perspective on an ordinance that would prohibit gun dealers from operating in the City of Newton. For nearly 30 years, the organization now known as Giffords Law Center to Prevent Gun Violence has been providing advice and assistance to federal, state, and local legislators and attorneys on gun violence prevention.

We are aware that Newton is contemplating an ordinance that would prohibit gun dealers from operating in the city and that such an ordinance has garnered significant public support. Given our decades of expertise in gun violence prevention policy and Second Amendment litigation, we write to offer the following perspective.

Regardless of the constitutionality of a law banning gun dealers, gun advocates will surely sue the city for such an ordinance. In light of the fact that former President Trump filled the federal judiciary, including the Supreme Court, with gun extremists, even a law fully consistent with existing constitutional precedent could face a serious threat. A bad ruling in this case could jeopardize reasonable, constitutional, and effective laws that regulate dealers around the country. Zoning and other regulatory measures, on the other hand, are effective tools which other cities have successfully employed. Pursuing a ban at this time with the current makeup of the federal judiciary is not an effort that Giffords recommends.

If you would like to discuss this further, please do not hesitate to contact me at aanderman@giffords.org.

Sincerely,

A handwritten signature in black ink that reads "Allison Anderman". The signature is fluid and cursive, with the first name being the most prominent.

Allison Anderman
Senior Counsel

IMPLEMENTATION?

ZONING BYLAW / SPECIAL PERMIT IN MASSACHUSETTS

1. Acton (2023)
2. Littleton (2023)
3. Newton (2020)
4. Wellesley (2023)
5. Brookline (2022)
6. Dedham (2020)
7. Plainville (2022)
8. Westwood (2021)
9. Westford (defeated at Town Meeting 2023; updates planned)

OTHER COMMUNITIES

Community	Highlights
1. Acton	Special Permit in 2 Industrial District zones. 500-foot setback from sensitive uses. 2 licenses cap.
2. Littleton	Special Permit in Industrial District. 500-foot setback from sensitive uses. No cap on # of licenses.
3. Newton	Special Permit in Business and Manufacturing districts. 150-foot setback from residential use. 1000-foot setback from K-12 schools, other sensitive uses. No cap on # of licenses.
4. Dedham	Special Permit in Adult Uses Overlay District. 150-foot setback from sensitive uses. No cap on #.
5. Brookline	Special Permit in Business District. 1000-foot setback from K-12 schools. 500-foot setback from child-centered and other sensitive uses. Cannot abut a residential property. No cap on # of licenses.
6. Wellesley	Special Permit in Business and Industrial districts. 500-foot setback from K-12 schools, child-centered businesses. No cap on # of licenses.
7. Westwood	Limited to Highway Business and Industrial districts. No setbacks or other specific regulations. No cap on # of licenses.
8. Plainville	Special Permit in 6/13 districts. 150-foot setback from residential uses. 1000-foot setback from K-12 schools. 500-foot setback from childcare and similar uses. No cap on # of licenses.

WHY NOT A BAN?

- No community in Massachusetts, or anywhere in the United States, has a full ban on firearm sales, due to protections around free commerce, due process, and the Second Amendment.
- Massachusetts Coalition to Prevent Gun Violence writes:
 - “As longtime activists for gun violence prevention, we see terrible risks in a gun shop ban, and little practical benefit over a tough zoning ordinance.”
 - “While a ban might have emotional appeal, it’s a bad idea. It creates the potential for the Supreme Court to overturn not just this ban, but restrictive zoning on gun shops.”
- Sudbury Marijuana Prohibition not the same – that was a one-time opt-out as part of the law enabling the legalization process, not federally legal, and not supported by Constitutional rights



THE COMMONWEALTH OF MASSACHUSETTS
 OFFICE OF THE ATTORNEY GENERAL
 CENTRAL MASSACHUSETTS DIVISION
 10 MECHANIC STREET, SUITE 301
 WORCESTER, MA 01608

ANDREA JOY CAMPBELL
 ATTORNEY GENERAL

November 20, 2023

Eva K. Szkaradek, Town Clerk
 Town of Acton
 472 Main Street
 Acton, MA 01720

Re: Acton Annual Town Meeting of May 1, 2023 ---
 Warrant Articles # 15, 16, and 17 (Zoning)
 Warrant Articles # 12, 13, 18, and 20 (General)

Dear Ms. Szkaradek:

Article 15 - Under Article 15 the Town voted to amend its Businesses (as defined in the by-law) by special permit in two zones because it does not conflict with the Constitution or laws of the Commonwealth. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring in Constitution for the Attorney General to disapprove a by-law). A limit on Firearm Businesses may be impacted by the U.S. Supreme Court decision in State Rifle & Pistol Association v. Bruen, 142 S.Ct. 2111 (2022) licensing statute because of conflict with Second and Fourth Amendments. Below, we determine that Bruen does not preclude the Town from amending its Firearm Businesses.

In this decision we briefly describe the by-law amended and discuss the Attorney General's limited standard of review of the by-law and explain why, based on that standard, we approve Article 15.

constitutionality of a handgun licensing law and did not limit a municipality's zoning power to regulate the siting and operation of a firearm business, the Bruen Court's holding does not provide grounds for this Office to disapprove Article 15. The Town should consult with Town Counsel with any questions on the scope of the Court's holding in Bruen.³

We have also considered the question whether the limit on the number of Firearm Businesses that can operate in Town poses any conflict with state or federal law and determine that it does not. The limitation does not amount to a complete ban on Firearm Businesses in the Town and thus cannot be said to constrain any resident's ability to purchase firearms in the Town. See Teixeira v. County of Alameda, 873 F.3d 670, 680 (9th Cir. 2017) ("Gun buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained.") see also Second Amendment Arms v. City of Chicago, 135 F. Supp.3d 743, 754 (N.D. Ill. 2015) ("[A] slight diversion off the beaten path is no affront to . . . Second Amendment rights."). Moreover, courts have consistently upheld municipalities' authority to impose traditional zoning restrictions on firearms-related land uses. See, e.g., Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011) (although a complete ban on firing ranges was unconstitutional, City retained power to adopt zoning and safety regulations governing operation of firing ranges); see also Teixeira, 873 F.3d 670 (upholding a 500-foot buffer restriction between gun store and various other uses because it was not a total ban on gun sales or purchases). Although we determine that the limitation on special permits for Firearm Businesses in the Town does not conflict with state or federal law, we encourage the Town to consult closely with Town Counsel during the special permit application process to ensure the by-law is applied in a lawful manner.

IV. The Town Must Apply Article 15 Consistent with State Laws Applicable to Firearm Dealers

In applying the by-law, the Town should also be mindful of the various state laws and regulations governing the safety of firearm businesses and the licensing requirements for gun dealers. Those laws include (but are not limited to) the requirements in G.L. c. 140, § 122 (licenses to sell firearms), § 122B (licenses to sell ammunition), § 123 (imposing conditions on firearm sales licenses issued under G.L. c. 140, § 122), and 940 CMR 16.00 *et seq.* (imposing conditions on the sale of handguns in Massachusetts).⁴

³ General Laws Chapter 140, Section 122 requires a license to sell firearms and Section 122B

MEMORANDUM

To: File
From: David E. Emer, Legislative Director and General Counsel (Senator Jamie B. Eldridge)
Date: August 4, 2023
Re: Zoning Ordinance for Gun Dealers

I am providing some information on gun dealer zoning ordinances in Massachusetts and potential legal challenges to them. Please be advised that this information is not provided as legal advice.

Massachusetts Gun Zoning Ordinances

- **Newton** -- the City of Newton adopted an ordinance to regulate firearm dealers through a zoning ordinance.¹ Most significantly, a firearm dealer must be 1,000 feet from an “existing Firearm Dealer or Firing Range.”
- **Littleton** – On February 15, 2023, Littleton approved a Firearms Business Zoning bylaw at a special town meeting.²

Littleton’s bylaw is stricter than Newton’s is. In contrast to Newton’s ordinance, it prohibits a firearm business from being located within 500 feet of an existing firearm business.³ It also prohibits a firearm business from being located within 500 feet of a residential zone, educational institution and other locations.⁴

The bylaw contains a number of other significant provisions. First, it prohibits signage depicting firearms.⁵ Second, it limits the hours of a business from 8 AM to 9 PM.⁶ Third, the bylaw prohibits a person under age 18 from being at a firearm business without a parent or legal guardian.⁷ Finally, it requires a business to obtain a permit before opening a firearm business.⁸ The bylaw provides for the termination of a permit.

On May 25, 2023, the Attorney General approved the bylaw as it did in Dedham,

¹ <https://www.newtonma.gov/home/showpublisheddocument/70763/637588394567130000>.

² <https://littletonma.org/523/Firearms-Business-Zoning-Bylaw-Infomati>

³ § 173-238 (E).

⁴ § 173-238 .

⁵ § 173-240 (D).

⁶ § 173-243 (D).

⁷ § 173-243 (E).

⁸ § 173-237 (A).

Westwood, Brookline, Wellesley, and Plainville.⁹ The approval stated that the permitting authority must revoke the permit. It also noted that the “the by-law is silent as to any notice and hearing process prior to revoking a special permit.” This statement might suggest advice from the Attorney General to, in fact, provide a hearing before terminating a special permit.

Constitutional Legal Challenges

- **Challenges to Gun Dealer Zoning** – Neither the Supreme Court nor the intermediate federal circuit court that covers Massachusetts has decided whether the Second Amendment applies to gun zoning regulations.

Federal courts throughout the nation have been split on this question. The federal circuit court in California upheld a zoning regulation similar to Newton’s.¹⁰ By contrast, the federal circuit court in Illinois rejected a zoning regulation related to firearm ranges.¹¹

- **Bottom line** — Based on my limited research, I do believe that the Town could ultimately prevail in limiting gun dealers through zoning regulation. That’s a prediction. It’s not a guarantee.

The Town, however, would need to carefully study the practical impact of any regulation. A court would likely review the regulation to ensure that the zoning regulation does not operate as a *de facto* ban on gun dealers anywhere in town. In addition to studying the practical impact, before moving forward on a regulation, I would encourage the town’s counsel to carefully review the recent Second Amendment Supreme Court decision – *New York v. Bruen*. That case does not involve zoning. But it changes the ways courts analyze Second Amendment claims.

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⁹ https://littletonma.org/DocumentCenter/View/5749/Littleton10868S_App

¹⁰ *Teixeira v. County of Alameda*, 873 F.3d 670 (2017).

¹¹ *Ezell v. City of Chicago*, 846 F.3d 888 (2017).

THE PROPOSED BYLAW

Key Additions:

- Requires a Special Permit process, a much stronger oversight process, which enables conditions and is discretionary
- Requires a public hearing, with public notice, and abutter notification
- Requires a 4-1 vote of approval of the Special Permit from the Select Board
- Limits zoning locations to just the Industrial District: just 1/10 zoning district instead of 7/10 available today
- Limits the number of potential parcel locations from 500+ to ~5
- Reduces geographic footprint from 8 locations in town to 1
- Caps the number of firearm businesses in town to 2 – Sudbury would be only the second community we know of with a cap
- Requires 250 foot offset from sensitive locations – schools, parks, churches, senior living, alcohol stores – the largest feasible setback, in line with other communities' setbacks, with a longer list of sensitive locations in Sudbury than other communities
- Requires 24/7 surveillance and videotape storage for 3 years
- Requires after-hours lock up and secure storage
- Allows site-specific conditions in consideration of abutters, public safety

THANK YOU

- Questions?