131 Rumford Avenue
#21-23 (amending #299-21)

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to
allow a marijuana retailer (§6.10.3.D; §4.4.1); allow parking facility requirements to be met off site (§5.1.6.A; §5.1.6.B); waive the minimum driveway width requirement (§5.1.8.D.1; §5.1.13); waive perimeter screening requirements (§5.1.9.A; §5.1.13); waive the lighting requirements (§5.1.10; §5.1.13); waive the 25% façade transparency requirement (§6.10.3.E.15), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed Marijuana Retailer due to its location within the Business Use 2 zone. (§7.3.3.1)
2. The proposed Marijuana Retailer as developed and operated will not adversely affect the neighborhood given its proximity to mixed uses. (§7.3.3.2)
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved given the projected trip generation associated with the proposed use. (§7.3.3.3)
4. There will be no nuisance or serious hazard to vehicles or pedestrians due to the petitioner's upgrades to the site. (§7.3.3.4)
5. Literal compliance with the requirement that required parking stalls be located on site is impracticable due to the width and shape of the lot and due to the shared driveway with the abutting property. (§5.1.6.A, §5.1.6.B)
6. Granting an exception to the requirement that a driveway have a minimum width of twenty feet for two-way traffic is in the public interest as it would allow for the shared use of an existing curb cut and driveway on an abutting lot (§5.1.8.D.1, §5.1.13)
7. Waivers from the parking facility perimeter screening requirements is impracticable due to the size, width, and depth of the lot and that the property will share a curb cut and drive aisle with an abutting property. (§5.1.9.A, §5.1.13)
8. A waiver from parking facility lighting requirement is in the public interest because the submitted photometric plan provides sufficient lighting for the parking facility. (§5.1.10, §5.1.13)
9. It is appropriate to waive the 25% front street level façade transparency requirement as impacts to security and aesthetics have been appropriately mitigated. (§6.10.3.E.15)

With regard to special permits concerning the Marijuana Retailer on site, pursuant to §6.10.3.G:

1. The lot is designed such that it provides convenient, safe, and secure access and egress for clients and employees arriving to and leaving from the site, whether driving, bicycling, walking, or using public transportation. (§6.10.3.H.1.a)
2. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.H.1.b)
3. The Marijuana Retailer is designed to minimize any adverse impacts on abutters with its building design and landscaping (§6.10.3.H.1.c)
4. The Marijuana Retailer is not located within a 500-foot radius of a public or private K-12 school. (§6.10.3.H.2.a)
5. Traffic generated by client trips, employee trips, and deliveries to and from the Marijuana Retailer will not create a significant adverse impact on nearby uses as stated by the petitioner's transportation analysis and as confirmed by the City's on-call consultant and because of the appointment only system set forth in Condition #2. (§6.10.3.H.2.b)
6. The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures. (§6.10.3.H.2.c)
7. The building and site are accessible to persons with disabilities. (§6.10.3.H.2.d)
8. The lot is accessible to regional roadways and public transportation. (§6.10.3.H.2.e)
9. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.H.2.f)
10. The Marijuana Retailer's hours of operation will have no significant adverse impact on nearby uses given the mixed-use nature of the surrounding area and presence of commercial uses nearby (§6.10.3.H.2.g)

PETITION NUMBER:	#21-23 (amending #299-21)
PETITIONER:	Community Care Collective, Inc. (Collective)
LOCATION:	131 Rumford Avenue, Ward 4, on land known as Section 41 Block 31 Lot 50, containing approximately 20,443 square feet of land
OWNER(S):	SSG Lexington Newton LLC
ADDRESS OF OWNER(S):	129 South St, 4th Floor Boston, MA
TO BE USED FOR:	Marijuana Retailer
CONSTRUCTION:	Metal

EXPLANATORY NOTES: Special Permit per §7.3.3 of the Newton Zoning Ordinance to:

- allow a marijuana retailer (§6.10.3.D, §4.4.1)
- allow parking facility requirements to be met off site (§5.1.6.A, §5.1.6.B)
- waive the minimum driveway width requirement (§5.1.8.D.1, §5.1.13)
- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)
- waive the 25% façade transparency requirement (§6.10.3.E.15)

ZONING: Business Use 2 (BU2) District

This Order is amending and replacing Special Permit Order #299-21 to allow for a change to the proposed operator of the facility, as identified above as the "PETITIONER."

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan approval shall be located and constructed consistent with:
    a. A set of plans entitled "131 Rumford Cannabis Dispensary, 131 Rumford Avenue, Newton, MA, Permitting Plans," dated July 2, 2021, as revised through November 9, 2021, prepared by Fuss & O'Neill, comprised of the following sheets:
        i. Cover Sheet (GI-001)
        ii. General Notes (CN-101)
        iii. Context Map (GI-100)
        iv. Boundary & Topographic Survey by Control Point Associates (Sheet 1 of 1)
        v. Site Preparation Plan (CP-101)
        vi. Erosion and Sediment Control Plan (CE-101)
        vii. Site Layout Plan (CS-101)
        viii. Grading and Drainage Plan (CG-101)
        ix. Utility Plan (CU-101)
        x. Landscape Plan (LP-101)
        xi. Erosion and Sediment Control Details (CD-501)
        xii. Details (CD-502-509)

b. Architectural plans entitled "Pharmacann-Verilife, 131 Rumford Avenue, Auburndale, MA," prepared by Interform, signed and stamped by Timothy John Levaughn, Registered Architect, comprised of the following sheets:

   i. First Floor Plan (AP1-1, dated November 16, 2021
   ii. Exterior Elevations (AP2-1
   iii. Exterior Elevations (AP-2)
   iv. Exterior Aerial Site View (AP3-1)
   v. Exterior Perspective View- Looking North (AP3-2)
   vi. Exterior Perspective View- Looking Southeast (AP3-3)

c. A photometric plan entitled "Pharmacann, BFL Series Lights," prepared by First Light Technologies Ltd. (sheet 1 of 1), dated November 7, 2021

2. The petitioner shall see all visitors of the Marijuana Retailer on an appointment only basis. Given that the petitioner requires each customer to be served individually by a customer service representative, the "appointment only" requirement is intended to ensure a smooth flow of customers arriving to and leaving from the site, to avoid customer waiting outside the building for a customer service representative to be available, and to allow the petitioner to anticipate customer volume.

   The petitioner may use reasonable flexibility to accommodate customers where events such as, but not limited to, traffic delays, public transportation scheduling, or changes in customers' schedules affect the appointment schedule. The petitioner shall also accommodate those customers who need to wait inside the building either before or after their scheduled appointments. This "appointment only" condition will permit "first available" (i.e., no waiting period) appointments only when a customer service representative is immediately available to serve that customer.

   Six months after commencement of operations for the Marijuana Retailer authorized by this Order, the petitioner may submit a letter to the Commissioner of Inspectional Services, the Director of Planning and Development and the Clerk of the Council requesting to no longer require that all customers be served by appointments only. Such letter shall only be filed after the petitioner has completed the following:

   - Met with the Director of the Transportation Division of Public Works, the Director of Planning and Development, and the Newton Police Department to discuss pedestrian and traffic safety and site security.
   - Met with the Director of the Transportation Division of Public Works, and the Director of Planning and Development regarding Transportation Demand Management in accordance with Condition #9 below.

3. The Commissioner of Inspectional Services and the Director of Planning and Development may administratively waive the "appointment only" requirement if they determine that the petitioner is able to maintain an orderly flow of patrons, accommodate all patrons waiting to see a customer service representative inside the building, and accommodate patron parking on site without the "appointment only" requirement. Prior to any decision on the petitioner's waiver request, the Commissioner of Inspectional Services and the Director of Planning and Development shall consult with the Land Use Committee of the City Council regarding the

waiver request in the same manner as the Land Use Committee is consulted when a "consistency" ruling on a special permit is requested from the Commissioner of Inspectional Services.

4. The Marijuana Retailer may only operate between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday, and from 12:00 Noon to 6:00 p.m. on Sunday.
5. If the appointment only condition is removed and at any time the Director of Planning in conjunction with the Commissioner of Inspectional Services, Chief of Police, and Commissioner of Public Works, determines there is a public safety concern due to the lack of appointments, the petitioner shall meet with the Director of Planning to discuss and implement measures to address concerns, including resuming appointments during peak periods.
6. The Marijuana Retailer may not have more than five (5) points of sale.
7. There shall not be more than twelve (12) staff members on site at any one time not including delivery personnel.
8. Employees of the Marijuana Retailer shall not park on residential streets in the vicinity of the site.
9. The Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site as described in a memorandum submitted by the petitioner, entitled "131 Rumford Avenue Cannabis Facility, Transportation Demand Management Plan," from Matthew W. Skelly, PE, PTOE and Katherine O'Shea, EIT, to Allan Mellske, Technical Manager, INTERFORM, dated as revised November 8, 2021, on file with the City Clerk's Office and the Planning Department.

   The Petitioner shall keep records detailing how employees are commuting to and from the site, including the number of employees utilizing public transit, parking at satellite lots, and using alternative methods of transportation such as the bikeshare and ridesharing. Two months after the commencement of operations for the Marijuana Retailer, the petitioner shall provide an update to the Director of Planning and Development and the Director of Transportation regarding the results of the petitioner's TDM Plan for employees. Should the TDM plan be deemed insufficient, the petitioner shall be required to revise the TDM plan to the satisfaction of the Director of Planning and Development and the Director of Transportation. The petitioner shall be required to meet again with the officials above at six months and at 12 months after the receipt of a temporary certificate of occupancy.

   The Petitioner shall also provide data regarding sight lines and on-street parking immediately east and west of the site driveway to determine whether it is appropriate to petition the Traffic Council for changes to on-street parking on either side of the site driveway.

10. The Petitioner shall submit a signal plan(s) for the intersection of Rumford Avenue, Lexington Street, and River Street to the Department of Public Works (DPW) for review and approval. Such signal timing shall be implemented, without any cost to the City, prior to the issuance of any certificate of occupancy. The petitioner shall be responsible for reviewing and implementing any modifications to the signal plan(s) as determined by the Commissioner of Public works for two years after receipt of a final certificate of occupancy.

11. Prior to the issuance of any Building Permit, the petitioner shall make a one-time financial contribution of $10,000 to the City's bicycle share and rideshare programs.
12. The Petitioner shall apply to Traffic Council for a parking restriction near the site driveway. In the event said restriction is approved, a new sign will be installed, at the Petitioner's expense, east of the driveway reflecting said restriction; in the event the proposed new restriction is not approved, a new sign will be installed, at the Petitioner's expense, west of the site driveway reflecting the existing parking condition.
13. Security lighting shall be in accordance with the standards imposed by the Cannabis Control Commission. Additionally, security lighting shall be directed downward, shall not shed light on abutters' properties, and shall comply with the Site Photometric Plan identified in Condition #1 above.
14. The petitioner shall locate, secure, and screen any dumpster(s) on the site to minimize its visibility from the public way. Any dumpster(s) shall be kept closed and secured and the area surrounding the dumpster(s) shall be kept free of debris.
15. The petitioner shall maintain plantings to ensure adequate sight distance.
16. The granting of a special permit to allow a Marijuana Retailer to operate at this site applies only to the petitioner and does not run with the land. When the petitioner has permanently stopped operations at the site, for whatever reason including but not limited to the loss of its registration with the Cannabis Control Commission, the Marijuana Retailer use as well as the additional relief granted by this Order shall expire.
17. Snow shall not be stored on site.
18. Should the petitioner seek to extend the Marijuana Retailer authorized by this Order, including but not limited to, increasing the number of employees, or extending the hours of operation, it shall seek an amendment to this Order.
19. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
20. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
21. The petitioner shall maintain its registration with the Cannabis Control Commission. Within one (1) week from the date of the initial and annual renewal of its registration, the petitioner shall file a copy of the same with the Clerk of the City Council, the Commissioner of Inspectional Services and the Planning Department. The petitioner shall immediately notify the Clerk of the City Council, the Commissioner of Inspectional Services and the Planning Department if its registration is not renewed or is revoked.
22. In order to provide information to the City regarding the operation of the Marijuana Retailer and the effectiveness of the mitigations and conditions imposed through this Council Order, the petitioner shall monitor the Marijuana Retailer's operation in the following areas and at the following intervals, and shall provide reports summarizing such monitoring to the Commissioner of Inspectional Services and the Director of Planning and Development, and such reports shall also be filed with the Land Use Committee of the City Council:

a. Within six (6) months and again at twelve (12) months of commencing operations of the Marijuana Retailer, a report on pedestrian and traffic safety concerns, if any, that may have arisen from the operation of the Marijuana Retailer and on the issue of the security of the facility itself, as well as a report on the number of customers coming to the site and the peak times when customers are at the site.

If the Commissioner of Inspectional Services and Director of Planning and Development have concerns and/or find that the reports raise concerns regarding the security of the facility or regarding public safety, including pedestrian or traffic safety, created by the operation of the Marijuana Retailer at this site. If the Commissioner of Inspectional Services and Director of Planning and Development have concerns regarding public safety or the security of the facility, the petitioner shall meet with the Director of Planning to see if further mitigations on the operation of the Marijuana Retailer are warranted to address such public safety or security of the facility concerns.

23. Prior to the issuance of any building permit pursuant to this Order, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
24. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved security plan to the City of Newton Police Department for review and approval.
25. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved emergency response plan to the City of Newton Fire Department for review and approval.
26. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved Operation and Management plan to the Inspectional Services Department and the Department of Planning and Development for review and approval.
27. Prior to the issuance of any building permit, the petitioner shall pursue test pits and/or Closed-Circuit Television (CCTV) inspection of the City owned 12" reinforced concrete pipe shown on the Drain Atlas to determine if that pipe is abandoned. In the event said pipe has not been abandoned, no construction shall be permitted in, above and/or below the area occupied by the pipe without the review and approval of the Engineering Division. Such review and approval may include providing the City with an easement for future access to the relocated pipe.
28. The Petitioner shall do the following to remediate pest and rodent activity:
    a. Prior to issuance of any demolition or building permit, the petitioner shall hire a licensed pest control operator (the "Operator") to assess the property for pest and rodent activity and develop and implement a pest remediation action plan (the "Plan") to eliminate the activity and prevent off-site migration. The Plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.

b. A copy of the Plan shall be submitted to the Inspectional Services Department, and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copy of such approvals shall be provided to the Department of Planning and Development.

c. The Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.

d. Prior to issuance of the certificate of occupancy, the Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site assessment.

e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide rodent abatement services on an as needed basis for all direct abutters, subject to owner authorization of such properties and a waiver of liability.

29. Prior to the issuance of any building permit for the Project the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:

    a. 24-hour contact information for the general contractor of the project.

    b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor or designee.

    c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.

    d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.

    e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.

    f. Proposed methods of noise, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts

of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.

g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.

h. The CMP shall also address the following:

- safety precautions;
- anticipated dewatering during construction;
- site safety and stability;
- impacts on abutting properties.

30. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:

a. Recorded a certified copy of this Council order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.

b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

c. Received approval of the final engineering, utility, and drainage plans for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

d. Submitted the payment in accordance with Condition #11.

e. Provided the City Engineer, Department of Inspectional Services, and the Department of Planning and Development with a recorded copy of the Operation and Maintenance (O & M) plan for Stormwater Management in accordance with Condition #23.

f. Received approval from the Engineering Division in accordance with Condition #27.

g. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

31. No Final Inspection and/or Occupancy Permit for the portion of the building covered by this Special Permit/Site Plan approval shall be issued until the petitioner has:

a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.

b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.

c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works.

d. Implemented the signal timing plan(s) in accordance with Condition #10.

e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features, fencing, and parking areas.

32. Notwithstanding the provisions of Condition #31 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of final landscaping provided that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.