



Ruthanne Fuller  
Mayor

## City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089

### MEMORANDUM

**Date:** February 9, 2023  
**From:** Barney Heath, Director, Planning and Development  
John Sisson, Economic Development Director  
**To:** Honorable Members of the Zoning & Planning Committee  
**CC:** Jen Caira, Andrew Lee, Linda Walsh, Manuela Familia, James McGonagle, John Lojek, Jane Santosuosso  
**RE:** **PUBLIC HEARING of Feb. 13, 2023:**  
**Codifying policy for outdoor dining in the public way**

---

#### SUMMARY

In January, City staff submitted proposed amendments to Newton Ordinance Sec. 12-70 to:

1. Enable outdoor dining areas in the public way, adding oversight of protected parking stalls to existing regulations about café furniture on public sidewalks,
2. Codify the City's authority over an outdoor dining program, which will be necessary after the State's emergency authorization expires on April 1, 2023, and
3. Extend the existing program for seasonal outdoor dining on a permanent basis.

The Public Safety & Transportation (PS&T) Committee voted unanimously to approve the amendments.

The Law Department also identified a need to separately amend portions of the Zoning Ordinance cross-referenced by Sec. 12-70. These updates are needed to clarify that outdoor seating within the street will be treated the same as sidewalk seating.

Pertinent sections include:

- 5.1.4. Number of Parking Stalls (Restaurant, food, or beverage establishment)
- 6.4.29. Restaurant (B. Standards for Allowed Uses)
- 7.8.2. Nonconforming Buildings, Structures, or Uses

*A red-line draft of the proposed changes is attached.*

## **BACKGROUND**

In 2022, outdoor dining in specified, protected on-street parking spaces was enabled through a temporary Traffic Council program and regulated by multiple City departments. That pilot program expired on January 2. The State emergency order enabling outdoor dining will expire on April 1. Therefore, the City needs to codify its regulations and provide ample time for businesses to secure permits and make other preparations—and for Public Works to arrange protective barriers—prior to the outdoor dining season opening on April 1.

## **FUTURE PLANNING**

Despite its popularity, outdoor dining in the public way is a recent phenomenon in the U.S., and municipal policies will continue to evolve. Please know that City staff will be studying comparable policies and implementations in 2023 to provide an analysis and recommendations to the Council later this year.

## ATTACHMENT: RED-LINE DRAFT OF PROPOSED ZONING CHANGES

### 5.1.4. Number of Parking Stalls

A. The minimum number of parking stalls to be supplied for each type of building or land use shall be in accordance with the following requirements. Where the computation results in a fractional number, the fraction shall be counted as one stall.

Use	Parking Stalls Required	Allowed by Special Permit
Restaurant, food or beverage establishment (for sidewalk <a href="#">café</a> and <a href="#">parking space café seating</a> , see 12- 70)	1 per 3 patron seats, permanent or otherwise plus 1 per 3 employees excluding any sidewalk <a href="#">and parking space</a> café seating permitted under Sec. 12-70	

### 6.4.29. Restaurant

A. Defined. An establishment where the principal activity is the service or sale of food or drink for on-premises consumption.

#### B. Standards for Allowed Uses

1. In the Business 1 through 4, Mixed Use 2 and 4 districts, restaurants having not more than 50 seats.
2. In the Mixed Use 3 district, restaurants having not more than 5,000 square feet of gross floor area.
3. In all districts, outdoor sidewalk seats [and parking space seats](#) permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

#### C. Standards for Special Permit Uses

1. In the Business 1 through 4 districts, restaurants having over 50 seats which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation
2. In a Limited Manufacturing district, restaurant, pastry shop, coffee shop, fast food establishment, drive-in food service

## ATTACHMENT: RED-LINE DRAFT OF PROPOSED ZONING CHANGES

establishment, or other such establishment when such establishment dispenses food products between 10:30 p.m. and 6:00 a.m., but not including in this paragraph any such business operated as part of a hotel or motel.

3. In a Mixed Use 1 district, restaurants and businesses which hold a Common Victualler All Alcoholic, or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area.

4. In a Mixed Use 2 district, restaurants over 50 seats, and such businesses which hold a Common Victualler – All Alcoholic or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City.

5. In the Mixed Use 3 district, restaurants with more than 5,000 square feet of gross floor area.

6. In the Mixed Use 4 district, restaurants having more than 50 seats and extended hours of operation.

7. In all districts, outdoor sidewalk [and parking space](#) seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

---

### 7.8.2. Nonconforming Buildings, Structures, or Uses

#### A. Special Permit Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:

a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase

## ATTACHMENT: RED-LINE DRAFT OF PROPOSED ZONING CHANGES

the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;

b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;

c. Additional outdoor sidewalk [and parking space](#) seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and

d. Alteration, reconstruction, extension or structural change to a nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.

e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.