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Barney Heath
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MEMORANDUM

DATE: March 8, 2024

TO: R. Lisle Baker, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director, Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Olivia James, Community Engagement Specialist

RE: **#132-24 Request for discussion and amendments to Newton Zoning Ordinance, Chapter 30**
HER HONOR THE MAYOR requesting discussion and amendments to the Newton Zoning Ordinance, Chapter 30, to clarify definitions, edit missing or incorrectly transcribed provisions, and revise inconsistencies in the ordinance.

#133-24 Request for discussion and amendments to Newton Zoning Ordinance, Chapter 30 to incentivize small businesses
HER HONOR THE MAYOR requesting discussion and amendments to the Newton Zoning Ordinance, Chapter 30, in order to incentivize and promote small businesses.

MEETING: March 11, 2024

CC: City Council
Planning Board
Anthony Ciccariello, Commissioner of Inspectional Services
Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani, City Solicitor

Overview

Planning staff, working closely with the Law Department and Inspectional Services (ISD), propose changes to the Zoning Ordinance to improve clarity, align language with practice and intentions, and correct internal inconsistencies. This work has taken place every year, or every other year, since the 2015 Zoning Ordinance recodification.

The amendments have been divided into two docket items to help facilitate focused discussion on each group of proposed amendments. The first set of items (#132-24) are not substantive in any way and are solely categorized as clean up items. The second set of items (#133-24) are split out for two reasons:

- They deal with incentivizing small businesses, which is a recent priority for the City Council (see #24-24).
- They align the zoning language with the pre-2015 interpretation or with current ISD enforcement.

Please see Attachment A and Attachment B for background on each item and redline changes.

Looking Ahead

Staff recommends that the Zoning & Planning Committee (ZAP) set a public hearing for this item at their first April meeting.

Attachment A Draft ordinance revisions – Clarifying

Attachment B Draft ordinance revisions – Incentivizing Small Business

Attachment A

Formatting / Clarifying (#132-24)

A Correcting “Design Review Team (DRT)” to “Development Review Team (DRT)” (Sec. 9.2.4.B.1.)

- **Issue:** Current language is incorrect
- **Working Proposal:** Correct language

Section	Current Text	Proposed Text
9.2.4.B.1.	A pre-submittal discussion or meeting, known as a Design Review Team (DRT), with the Planning Department, who shall consult with the Inspectional Services Department (ISD), is recommended for all development.	A pre-submittal discussion or meeting, known as a Design Development Review Team (DRT), with the Planning Department, who shall consult with the Inspectional Services Department (ISD), is recommended for all development.

B Clarifying Residential Uses for VC2 and VC3 Developments on Priority Streets (Sec. 9.2.8.C.)

- **Issue:** The use table in Sec. 9.2.8.C currently only states that residential uses are allowed by-right for all VC2 and VC3 properties. The table does not clearly address VC2 and VC3 properties on Priority Streets, which requires active uses along the façade.
- **Working Proposal:** Add an “L” to the use table for residential uses in VC2 and VC3. Add reference to appropriate section within the VCOD where regulations can be found.

Residential Uses	MRT	VC2	VC3	Definition / listed standard
Multi-Family residential use	P	P/L	P/L	Sec.6.2.4 / Sec.9.2.6.B.9
Assisted living, nursing home	SP	SP/L	SP/L	Sec. 6.2.5 / Sec. 9.2.6.B.9
Congregate living facility	SP	P/L	P/L	Sec.6.2.8 / Sec. 9.2.6.B.9
Elderly housing with services	SP	SP/L	SP/L	Sec.6.2.10 / Sec. 9.2.6.B.9
Live/work space	P	P/L	P/L	Sec.6.2.11 / Sec. 9.2.6.B.9
Lodging house	SP	SP/L	SP/L	Sec.7 / Sec. 9.2.6.B.9

C Clarify when a Special Permit is required in the MRT Zone (Sec. 9.2.4.B. and Sec. 9.2.6.B.8.)

- **Issue:** The current language only refers to “multiple buildings on a lot” triggering a Special Permit. This is not the intent, as accessory buildings should be allowed by-right. Instead, it should be clarified that “multiple principal buildings on a lot” requires a Special Permit.
- **Working Proposal:** Add the word “principal” where needed

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Section	Current Text	Proposed Text
9.2.4.B.3.b	The construction of multiple buildings on a lot in the Multi Residence Transit zone (MRT), except as modified through Adaptive Reuse (see Sec. 9.6.2.B.8).	The construction of multiple principal buildings on a lot in the Multi Residence Transit zone (MRT), except as modified through Adaptive Reuse (see Sec. 9.6.2.B.8).
9.2.6.B.8.d.iv	Multiple buildings on a lot are permitted, subject to site plan review in lieu of special permit approval.	Multiple principal buildings on a lot are permitted, subject to site plan review in lieu of special permit approval.

D Further break down the Building Dimensional Standards (Sec. 9.2.5.B.)

- **Issue:** All three VCOD zones (MRT, VC2, and VC3) are cited under Sec. 9.2.5.B. currently. This is confusing for referencing since each one stands on its own.
- **Working Proposal:** Building dimensional standards should be further cited (i.e., VC3 should be 9.2.5.B.1, VC2 should be 9.2.5.B.2, and MRT should be 9.2.5.B.3.)

Section	Current Text	Proposed Text
9.2.5.B.	VC3 Building Dimensional Standards	1. VC3 Building Dimensional Standards
	VC2 Building Dimensional Standards	2. VC2 Building Dimensional Standards
	MRT Building Dimensional Standards	3. MRT Building Dimensional Standards

E Clarify that Accessory Buildings (ex. Detached garages) in the MRT are regulated by existing rules of Sec. 3.4.3. And Sec. 3.4.4. (Sec. 9.2.5.B.)

- **Issue:** Although the MRT zone is defined as a residence district, it is not clear that the accessory building regulations found in Article 3 apply, which is the intent.
- **Working Proposal:** Add an asterisk note under the MRT dimensional table with a reference to the accessory building regulations.

Section	Current Text	Proposed Text
9.2.5.B. (MRT Dimensional Table)	N/A	* Accessory buildings are subject to the standards found in Sec. 3.4.3. Accessory Buildings and Sec. 3.4.4. Garage Design Standards.

F ISD Commissioner discretion on non-listed uses (Sec. 9.2.8.C)

- **Issue:** Standard language that is found at the end of the Use Tables in Sections 3 & 4 giving the ISD Commissioner discretion to determine what to do with a non-listed use is not found in Section 9.
- **Working Proposal:** Add in this language under the Use Table in Section 9 (p. 3-36)

Section	Current Text	Proposed Text
9.2.8.C. (Use Table)	N/A	The Commissioner of Inspectional Services is responsible for determining all uses. If a proposed use is not listed, but is similar or accessory to a listed use, the

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		<u>Commissioner of Inspectional Services may consider the proposed use part of the listed use</u>
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G VCOD Site Plan Review fee reference is incorrect (Sec. 9.2.9.B.7.a.)

- **Issue:** The current text does not refer to the revised ordinances, which is where the fee requirements are located.
- **Working Proposal:** Add language that refers to the appropriate revised ordinances

Section	Current Text	Proposed Text
9.2.9.B.7.a	The Applicant has submitted the required fees and information as set forth in this section	The Applicant has submitted the required <u>information set forth in this section, and fees and information as set forth in this prescribed by Revised Ordinances Chapter 17, Article II, Section 17-3, as amended section</u>

H Zoning Ordinance is no longer aligned with the recently approved Stormwater Ordinance (Sec. 5.3.)

- **Issue:** Section 5.3 does not reference the correct Chapter for the Stormwater Ordinance. In addition, Section 5.3.B refers to the previous stormwater regulations which have been addressed in the amended stormwater ordinance in Chapter 29.
- **Working Proposal:** Update this section with the correct Chapter reference and remove language that is not aligned with the approved Stormwater Ordinance.

Section	Current Text	Proposed Text
5.3.	See also Revised Ordinances Chapter 22, Article II, Section 22-22. A. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. B. Projects increasing impervious surface area by more than the lesser of a) 4 percent of lot size or b) 400 square feet, or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the Commissioner of Inspectional Services and the City Engineer to ensure compliance with this Sec. 5.3. The	See also Revised Ordinances Chapter <u>2229</u> , Article <u>VIII</u> , <u>Section 22-22as amended</u> . A. Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. B. Projects increasing impervious surface area <u>by more than the lesser of a) 4 percent of lot size or b) 400 square feet, that are subject to the stormwater ordinance, as regulated in Chapter 29 Article VIII</u> , or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the Commissioner of

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	Commissioner of Inspectional Services and the City Engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil.	Inspectional Services and the City Engineer to ensure compliance with this Sec. 5.3. The Commissioner of Inspectional Services and the City Engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil.
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I Retaining Walls Ordinance should reference the Stormwater Ordinance (Sec.5.4.2.B)

- **Issue:** Regulations for retaining walls should reference the Stormwater Ordinance
- **Working Proposal:** Add in a reference to the stormwater ordinance in new sec.5.4.2.B.1. Note that a separate docket item and amendment proposal is being proposed to require all retaining walls over 4 feet to require a special permit.

Section	Current Text	Proposed Text
5.4.2.B.	B. Standards: The placement of a retaining wall of 4 feet or more within a setback requires a special permit.	B. Standards: <u>1. The placement of a retaining wall of 4 feet or more within a setback requires a special permit.</u> <u>2. See also Revised Ordinances Chapter 29, Article VIII as amended.</u>

J Remove outdated tables for breakdown of Inclusionary Units Required (Sec.5.11.4)

- **Issue:** In 2021 the percent of inclusionary units required in a multifamily housing development for rental projects and ownership projects increased per the adopted ordinance. The outdated tables for each are still listed in Sec.5.11.4.
- **Working Proposal:** Remove the outdated tables

Proposed Text

<u>Rental Projects: Number of Inclusionary Units Required</u>		
Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
Total	15%	17.5%

Rental Projects: Number of Inclusionary Units Required <u>EFFECTIVE January 1, 2021</u>			
Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
Total	15%	17.5%	20%

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Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
Total	15%	15%	17.5%

Ownership Projects: Number of Inclusionary Units Required <u>EFFECTIVE January 1, 2021</u>				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
Total	15%	15%	17.5%	20%

Attachment B

Incentivizing Small Business (#133-24)

A Aligning home business regulations with practice and City intent (Sec. 6.7.3.B)

- **Issue:** There are two key issues:
 - The zoning states that a home business requires a Special Permit within MR zones, which is not being enforced by ISD in practice. In addition, this is based on the zone not the actual use. This means a two family in an SR zone may have a home business in each dwelling unit by-right, but the same two family in an MR zone may not.
 - Current regulations are out of date with modern day work practice.
- **Additional Background:** In speaking with ISD, the provisions requiring a home business within MR zones to obtain a special permit are not being enforced and have not been enforced. This misalignment with practice warrants this change, which should be viewed as a clean up item.
- **Working Proposal:** Permit home businesses as an accessory use within MR districts the same way they are allowed in SR districts.

Section	Current Text	Proposed Text
6.7.3.B.1	In Single Residence districts, a single home business per dwelling unit is permitted as an accessory use so long as such home business does not violate any of the following conditions	In all residence districts Single Residence districts , a single home business per dwelling unit is permitted as an accessory use so long as such home business does not violate any of the following conditions
6.7.3.B.2	In Multi-Residence Districts. The City Council may grant a special permit for a home business in accordance with standards listed in Sec. 6.7.3	Remove this section

B Separate small private educational/tutoring/class services (i.e. coding academy, dance studio, etc.) from more general educational uses (Sec. 6.3.14.A. And Sec. 6.4.26.A.)

- **Issue:** Prior to the 2015 zoning recodification these small private “schools” were categorized under the Personal Service use. After 2015, they were categorized as a School use. This was not intentional.
- **Additional Background:** Prior to 2015, instructional uses such as tutoring or dancing schools were classified as personal service uses. Non-profit schools were shown as allowable uses in all zoning districts {section 30-5(a)(2)} and for-profit schools were allowed by special permit in all districts {per former section 30-5(b)(2)} and were referenced in the definitions section with the same language as is current. After the reformatting of the zoning ordinance, a question about the classification for a driving school made the definition of “School or Other Educational Purposes” seem appropriate and a shift occurred where all instances where an instructor taught a skill to even one

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student were now treated as either a “for profit school’ or “non-profit school.” A non-profit school is a Dover Amendment protected use and is allowed anywhere in the City through the Administrative Site Plan Review process. However, this change to the interpretation now required a special permit for any for profit school. The one benefit to this shift is that these uses were allowed in any zoning district in the City, as long as the special permit was granted.

It should be noted, at the time the previous Commissioner of Inspectional Services determined such uses should be classified as “school or other educational purposes,” that classification was (and still is) under the heading of “Civic/Institutional Uses”, implying the more traditional definition of a school. As these instructional uses are generally small businesses, the more appropriate category would be “Commercial Uses”.

The special permit process generally takes three to four months and can be unnecessarily arduous and time-consuming, especially for small business owners.

- **Working Proposal:** Modify definition of For-Profit School, Personal Service, and create a new use called Personal Instruction. Allow Personal Instruction by-right or by special permit the same way they are allowed now based on how they are being interpreted now, which is either For-Profit School or Personal Service. Note that Personal Instruction would be a new use and all subsequent Commercial Uses will be renumbered accordingly within the use tables and in Article 6.

Section	Current Text	Proposed Text
6.3.14.A	School or Other Educational Purposes Defined: Any building or part of a building used as a public or private educational institution containing 1 or more rooms, with provisions for 2 or more pupils, provided that a school or other use for educational purposes shall not include a correctional facility, and is either a. 1. Non-Profit. A school or other educational use on land owned or leased by a religious sect or denomination, or the Commonwealth of Massachusetts or any agencies, subdivisions or bodies politic, or nonprofit educational corporation; or 2. For-Profit. [reserved]	Any building or part of a building used as a public or private educational institution for pre-school, k-12, or post-secondary education containing 1 or more rooms, with provisions for 2 or more pupils, provided that a school or other use for educational purposes shall not include a correctional facility, and is either a 1. Non-Profit. A school or other educational use on land owned or leased by a religious sect or denomination, or the Commonwealth of Massachusetts or any agencies, subdivisions or bodies politic, or nonprofit educational corporation; or 2. For-Profit. [reserved]
6.4. 2627 .A.	Personal Service Defined. Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and laundry, and/or dry cleaning drop off.	Defined. Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and laundry, and/or dry cleaning drop off. Uses that provide a variety of services

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		associated with personal grooming and the maintenance of health, and well-being.
6.4.27.A.1	N/A	This includes but is not limited to barbershop, salon, tailor, cobbler, laundry, dry cleaning drop off
6.4.26.	N/A	Personal Instruction Defined. Uses that provide a variety of services associated with learning and training.
6.4.26.A.1.	N/A	This includes but is not limited to tutoring, driving instruction, coding instruction, cooking instruction, music lessons, dancing lessons, martial arts lessons, art lessons, and test prep classes. Personal instruction shall not include Educational Uses.

[Sec.3.4.1 Residential Districts Allowed Uses](#)

Commercial uses	SR1	SR2	SR3	MR1	MR2	MR3	MR4	Definition / Listed standards
Personal instruction, up to 5,000 sf	SP	SP	SP	SP	SP	SP	SP	Sec.6.4.26.
Personal instruction, over 5,000 sf	SP	SP	SP	SP	SP	SP	SP	Sec.6.4.26

[Sec.4.4.1. Business, Mixed Use & Manufacturing Districts](#)

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Personal instruction, up to 5,000 sf	P	P	P	P	P	P	P	P	P	SP	P	Sec.6.4.26
Personal instruction, over 5,000 sf	P	P	P	P	P	P	P	SP	SP	SP	P	Sec.6.4.26

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Sec. 9.2.8.C Village Center Overlay Districts

<u>Commercial Uses</u>	<u>MRT</u>	<u>VC2</u>	<u>VC3</u>	<u>Definition / Listed Standard</u>
<u>Personal instruction, up to 5,000 sf</u>	<u>SP</u>	<u>P</u>	<u>P</u>	<u>Sec.6.4.26</u>
<u>Personal instruction, over 5,000 sf</u>	<u>SP</u>	<u>P</u>	<u>P</u>	<u>Sec.6.4.26</u>

C Allowing Retail and Personal Services uses by-right in MU1 and BU5 Districts (Sec.4.4.1)

- Issue: Personal service is not permitted in BU5 or MU1. Retail is not permitted in BU5 and retail less than 5,000 square feet is not permitted in MU1. Retail over 5,000 square feet are allowed by special permit in MU1. There are already many existing nonconforming retail and personal service uses in MU1 and BU5 districts, however the use table allowances do not align with the physical uses on the ground.
- Additional Background: ISD currently permits by-right a new personal service or retail use if there is already one there, even though the use is technically not allowed, however a change of use (i.e. retail to personal service) requires a special permit to extend the nonconforming use. Personal service (under and over 5,000 square feet) as well as retail (under and over 5,000 square feet) are permitted by-right in MU2 districts as well as all of the other business districts. There are no substantive differences between MU1 and MU2 or BU5 and BU1-4.
- Working Proposal: Allow Retail and Personal Services uses by-right in MU1 and BU5 districts.

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Personal service up to 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	P	P	--	P	Sec.6.4.25
Personal service over 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	SP	SP	--	P	Sec.6.4.25
Retail sales, under 5,000 sf	P	P	P	P	<u>-P</u>	<u>-P</u>	P	P	P	--	P	Sec.6.4.30
Retail sales, over 5,000 sf	P	P	P	P	<u>-P</u>	<u>SPP</u>	P	SP	SP	--	P	Sec.6.4.30