

Planning & Development

City of Newton



MEMO

DATE: March 22, 2024

TO: Councilor 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
John Sisson, Economic Development Director

RE: **#24-24 Request for discussion and possible ordinance amendments relative to aiding small businesses impacted by development**
COUNCILORS ALBRIGHT AND KELLEY request the Planning Department with the assistance of the Economic Development Commission, research and develop mechanisms including ordinance changes or other means to assist local businesses impacted by development similar to the Somerville work. The goal of this docket item will be to help small commercial/retail/independent and locally-owned businesses remain in Newton as development occurs.

#133-24 Requesting 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 25, 2024

CC: City Council
Economic Development Commission
Planning Board
Jonathan Yeo, Chief Operating Officer
Alissa Giuliani, City Solicitor

Introduction

The following information was prepared to update and expand on earlier Zoning & Planning Committee discussions about the concern over local businesses, especially those located in Newton's village centers, possibly being disrupted or displaced by future real estate development.

Municipal approaches to business displacement

City councilors, business owners, and residents have expressed concern that local small businesses may be displaced by development under the recently approved Village Center Overlay Zoning. Such displacement may occur directly, as when a commercial building is razed for redevelopment, and indirectly, when there are construction/disruption impacts that impact nearby businesses.

In the recent Harvard Kennedy School study of development pressures in Somerville, one function stood out as providing the most meaningful benefit in the face of redevelopment and gentrification: communication. This function includes a large range of efforts, from large-scale communication plans utilizing multiple distribution channels to individual signs on a construction fence showing project renderings, hours of allowed operation, contact information, and promotional messages about nearby businesses.

A template for real estate development communication plans could be designed in some detail, its implementation required as part of the commercial development process, and executed by the developer or hired communications professionals, with the costs baked into the development budget.

How Newton engages commercial and industrial stakeholders

City departments have numerous processes in place to address issues related to commercial enterprises. This work may be categorized by purpose and/or department:

- Regulatory: Staff from Planning & Development, Inspectional Services, and other departments regularly field queries from startups and established firms which are seeking guidance for locating or expanding in Newton. The majority of these inquiries are requests for help understanding and addressing City regulations, licensing, and permitting.
- Locational: Staff also receive queries from people seeking available real estate and from property owners with spaces to lease. In these instances, City staff work as matchmakers.
- Communication and outreach: Staff maintain and update websites and printed information for distribution to commercial operators. Planning and Public Works staff often go door-to-door to contact individual business operators with alerts and updates about public construction, planning initiatives (Washington Street Pilot), and updated regulations (the commercial recycling mandate). Staff performing inspections of commercial operations also provide updates and information in the course of performing that work.
- Environmental controls: Inspectional services, after permitting a building project, regulates construction activities from start to finish. Along with code compliance, ISD requires contractors to follow procedures to mitigate impacts on abutters. ISD is empowered to halt construction and assess fines contractors fail to follow these procedures.

- **Health:** Health and Human Services educates and inspects commercial operators and responds to complaints related to food service and commercial solid waste. HHS staff also fields inquiries from businesses seeking to locate or expand in the city.
- **Public safety:** Fire and Police inspect storefronts, offices, and other commercial areas, working to provide personal safety, minimize crime, and the protection of private property. They respond to complaints and alarms 24 hours a day.

How can Newton be more business-friendly?

Planning & Development staff work primarily in the permitting of commercial enterprises to comply with zoning regulations. As such, our department's focus is logically on improving those regulations to reduce confusion and delays in the processing of applications.

As with other parts of the City Ordinance, zoning regulations have not kept up with the fast pace of change in commercial sectors. It stands to reason that, over time, new uses should be incorporated and obsolete ones pruned. In practice, however, zoning amendments tend to advance only as reactions to immediate needs rather than as declarations of the City's goals for economic development. Dead wood is rarely removed.

Over the past year, Commissioners and Planning staff have worked with the Council to update zoning's use table and definitions to enable animal services, craft brewing and distilling, and the bottling of alcoholic beverages within the city limits for the first time in a century.

One current effort to amend zoning include making home business regulations consistent across different residential zones. Another proposal would create a new use definition for private instruction, so that such firms would be able to locate in commercial zones and offer lessons in computer coding, musical instruction, or Irish step dancing without requiring an act of the City's legislature. The latter effort would shave at least three months off the current process, saving applicants, staff, and City Councilors many hours of time and effort.

Over many years, Planning staff have compiled a list of specific problems and gaps in the zoning ordinance. As discussed above, some of these have been addressed and others are teed up for discussion in 2024. Below, I describe two approaches to updating the zoning ordinance which could be pursued in tandem or separately.

An incremental approach

Staff discussions about the inventory of regulations that might be amended have suggested an incremental amendment of the ordinance, an approach which has demonstrated recent successes. Staff may work to address one use or use category at a time and prioritize amendments based on current impacts and potential benefits. Each problematic use identified could be evaluated based on context, options for improvement, cost-benefit analysis, and an implementation plan.

Those uses are listed in Attachment A.

A strategic approach

In tandem with incremental updates of the use table and definitions, Planning staff have also discussed the possibility of pursuing additional modifications of the zoning ordinance for the specific benefit of small businesses. Two approaches are presented separately below, but they might be implemented together.

1. Reduce regulatory burdens for small businesses. At present, small businesses have to surmount many of the same regulatory hurdles as larger and better-funded enterprises. To level the playing field, the City might apply a less stringent set of regulatory requirements for first-floor commercial uses smaller than an established threshold (perhaps square footage). This change may not benefit existing small businesses, but it should encourage new business formation. A smoother regulatory path for smaller storefronts might also make such spaces more attractive in the local real estate market—both for existing commercial buildings and new construction.

Example: The small Bettina's Bakery in Upper Falls could accommodate and would benefit from additional seating for customers. However, the number of seats is limited by a Special Permit the City Council issued 34 years ago to a previous business in that storefront. It was subsequently amended to allow for the two tables, 8 chairs, and increased hours of operation. Additional seats in the space should still comply with the building code, fire code, plumbing code, and accessibility standards. More seats would create more revenue for the bakery. However, the addition of 2-4 seats would require amending the Special Permit and increasing the parking waiver. That process would take 3-4 months from start to finish. And, as approval would require the majority vote of a political body, the outcome would be uncertain. Most small business owners have little time to spare away from their operations to pursue such solutions.

Staff could review zoning regulations to determine changes that might be implemented and beneficial. The City Council is empowered to accomplish such amendments. While outside of the City's control, staff could also review State building, plumbing, fire codes to identify any opportunities for making it easier to open and operate a small business.

2. Implement preferences to encourage desired, active uses. This approach would apply different regulatory requirements to desired versus undesired commercial uses, with the objective of attracting the former and discouraging the latter. The Village Center Overlay Zoning does this in relation to locating banks in village centers. Banks are not allowed as a ground-floor use in MRT and VC3 and only by special permit in VC2. This helps level the playing field for businesses in other sectors which cannot afford the lease expense financial institutions can absorb.

City staff could use established industry categories to specify businesses in desired sectors—such as Retail Trade (NAICS 44-45) or Accommodation and Food Services (NAICS 72)—and apply certain regulations to those and other desired sectors. Regulations could be tailored to address different business sectors based on desirability for shaping the commercial mix of a village center. The use of standard categories would provide clarity for both regulators and commercial applicants.

ATTACHMENT A

Commercial uses to consider for incremental improvements

Zoning

1. Commercial signage for small businesses: Consider enabling administrative approval of small signs within a commercially zoned building's sign band rather than requiring Urban Design Commission approval of all commercial signage.
2. Places of amusement: Consider enabling by-right use for operations up to a certain size in specific commercial zones. The use is currently allowed by Special Permit in limited zones, essentially prohibiting golf simulators, and other small entertainment venues.
3. Commercial kitchen: Newer use needs to be defined.
4. Fast food restaurant: Poorly defined.
5. Manufacturing: Dated definition specifies many older processes and does not account for newer, small-scale technology or maker spaces.
6. Office: Dated definition could be updated to include shared spaces, business incubators.
7. Veterinary clinics and hospitals should be better delineated.
8. Self-storage and storage warehouse should be better delineated.
9. Small businesses operating in historically commercial buildings (pre-1945) that the City later rezoned as residential, thus requiring the business owner to obtain a Special Permit for virtually any changes to their operations.
10. Non-accessory (off-site) parking. Does the City need to regulate off-site parking which involves contractual agreements between private parties?

Other regulations

1. BYOB: Enable BYOB for small restaurants lacking liquor licenses, as in Brookline.
2. Parking: Update traffic regulations to allow for friendlier commercial loading/unloading in business districts.