



Zoning & Planning Committee Report

City of Newton In City Council

Monday, May 13, 2024

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, Danberg, and Kalis

Also Present: Councilors Lucas, Kelley, and Farell

City Staff: Zachary LeMel, Chief of Long Range Planning, Olivia James, Community Engagement Specialist, Anthony Ciccariello, Commissioner of Inspectional Services; Andrew Mavrelis, Deputy Commissioner of Inspectional Services; Andrew Lee, Senior Assistant City Solicitor; Kristen Annunziatzo, Assistant City Solicitor; and Jaclyn Norton, Committee Clerk

All agendas and reports, both past and present can be found at the following link: [Zoning & Planning Committee | City of Newton, MA \(newtonma.gov\)](https://www.newtonma.gov/zoning-planning)

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - May 13, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

#23-24

Update on Short-term rental ordinance compliance and enforcement

COUNCILORS MALAKIE, WRIGHT, KELLEY, LAREDO, LIPOF, HUMPHREY, LUCAS, ALBRIGHT, DANBERG, AND OLIVER requesting an update on Short-term Rental ordinance compliance and enforcement, including data on registrations, complaints, investigations and fines issued; types of violations being found (e.g. non-owner occupied, room limits, annual time limits, other code violations like noise, health & safety, trash); ability to compare STRs registered with the city vs registered with the state vs listings on public platforms; ability to obtain listing information from STR companies; adequacy of resources or other obstacles to enforcement.

Zoning & Planning Held 8-0 on 01/08/24

Zoning & Planning Held 8-0 on 01/22/24

Zoning & Planning Held 8-0 on 04/08/24

Action:

Zoning & Planning Held 8-0

Note: Anthony Ciccariello, Commissioner of Inspectional Services; and Andrew Mavrelis, Deputy Commissioner of Inspectional Services, stated that in the last two years, there have been 13 short-term rental complaints. Eight of these complaints have been closed and five are currently open with one of them being referred to the Law Department for prosecution. The Department identified issues with the current ordinance as it related to

tenants of rental properties being the operators and identifying if a listing is registered. The attached memo from the Law and Inspectional Services Departments provides an overview of the proposed amendments along with a redline copy of the text.

Councilors asked if other communities have implemented the requirement of needing to publish the registration number in the listing. Kristen Annunziato, Assistant City Solicitor, noted that this requirement is being implemented in Cambridge and Somerville. When asked how the proposed ordinance affects properties owned by a trust, Andrew Lee, Senior Assistant City Solicitor, stated that this is copied for the ADU ordinance which clearly outlines this. Regarding fines, a Councilor asked if the City is limited in the amount a fine for non-compliance can be and if the fines are paid. The Chair and Commissioner Ciccariello stated that the City is limited to charging a \$300 fine for non-criminal dispositions and that the only way to collect the fines is to take the individual to court. The Chair during the discussion noted that since this is not an amendment to the zoning ordinance it does not require a public hearing, or a two-thirds vote to be adopted.

Committee members voted 8-0 on a motion to approve item #225-24 from Councilor Albright. Councilors subsequently voted 8-0 on a motion to hold item #23-24 from Councilor Krintzman.

#225-24 Requesting possible amendments to the short-term rental ordinances
COUNCILORS BAKER AND OLIVER on behalf of the Zoning & Planning Committee, requesting amendments to the short-term rental ordinance to require that the property owner be listed as the operator, and other amendments to strengthen the ordinances relating to short-term rentals.

Action: Zoning & Planning Approved 8-0

Note: This item was discussed concurrently with item #23-24. A written report can be found with item #23-24.

#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.

Zoning & Planning Held 8-0 on 01/08/24

Zoning & Planning Held 8-0 on 01/22/24

Zoning & Planning Held 8-0 on 03/25/24

Action: Zoning & Planning Held 8-0

Note: Zachary LeMel, Chief of Long Range Planning, described that during previous discussions regarding this item interest was expressed in moving forward with a number of proposed amendments. These amendments include incorporating the fast food establishment use into the restaurant use, allowing for shared makerspaces and/or co-working, and define a place of amusement use. The incorporation of the fast food establishment use into the restaurant use is due to a number of businesses serving food can be classified in both the fast food establishment and restaurant use. In doing this a provision will be added that requires a special permit for all restaurants seeking to have a drive-thru component. The allowing of shared makerspaces will allow for small businesses to get a foot in the door and that this use would not be allowed by-right when abutting a residential zone. The attached memo provides an overview of the proposed amendments.

A Councilor expressed concerns with a lack of parking requirements for shared makerspaces and places of amusement uses. Another Councilor also asked that staff create a distinction between small manufacturing and a design and fabrication center. Mr. LeMel stated that he would look into these amendments in advance of the public hearing.

Committee members voted 8-0 on a motion to split item #24-24, set a public hearing for June 27th for #24-24(2), and hold both #24-24 and #24-24(2) from Councilor Krintzman.

#24-24(2) Requesting discussion and possible ordinance amendments relative to aiding small businesses impacted by development

ZONING & PLANNING COMMITTEE requesting discussion and possible amendments to Chapter 30, Zoning to incorporate the “Fast Food Establishment” use into the “Restaurant” use, allow for shared “makerspaces” and/or co-working, and define a “Place of Amusement” use.

Action: Zoning & Planning Held 8-0; Public Hearing Set for 06/27/24

Note: This item was discussed concurrently with item #24-24. A written report can be found with item #24-24.

#76-24 Discussion and possible ordinance amendment to deal with grade changes created during construction causing stormwater runoff on neighboring properties

COUNCILORS ALBRIGHT, LIPOF, WRIGHT, AND LEARY requesting a discussion with the Planning Department to address concerns relative to the trend of significantly raising grade elevations on lots, using retaining walls, terracing and other means to add soil to conceal a raised basement, which can lead to new buildings that are significantly taller than nearby existing houses in the area and cause denuding of wooded areas and increase stormwater runoff. This discussion may result in an ordinance change to Chapter 30 section 5.4.2 which would require a special permit or other means of city review of all retaining walls over 4 feet on a site.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 7-0 on 03/11/24

Action: **Zoning & Planning Held 8-0**

Note: Olivia James, Community Engagement Specialist, presented the attached presentation that covers potential amendments to change how building height is measured. Under the current ordinance, the grade definition does not specify whether it refers to the original or finished grade, and the grade plane average and mass below the first story are determined based on the finished grade. Due to this ordinance issues have arisen that there is a detrimental visual and environmental effect on the adjacent homes and neighborhood. This also has contributed to the loss of starter homes within Newton. The attached presentation shows examples of recent projects that have manipulated the grade of the site. The proposed amendments would specify that the grade plane average and floor area are measured from the original grade or proposed grade, whichever is lower. Original grade will also be defined along with subsections for if there is an existing building, no existing building, or a new subdivision. Ms. James noted that these amendments do not change the formula for how building height is measured but rather change the starting point of the measurements.

Councilors asked how this would affect measurement for FAR and if there would be any impacts on homes built into the side of a hill. Commissioner Ciccariello stated that this would not impact homes built into natural hills, only if the hill was artificial. He also described how FAR related to the bulk and mass of the building and that these amendments change what below the first story can be counted towards FAR. A Councilor also asked if this could impact people being able to sell their home to a developer and if this would reduce the number of houses that appear to be on a pedestal in Oak Hill Park. Mr. LeMel stated that there are other ways for a developer to develop a site if these amendments were approved and that it could reduce the number of houses that appear to be on a pedestal. Later in the discussion Commissioner Ciccariello stated that if a site would raise the grade it would need to be a less tall building. Planning staff will be meeting with the Building Professionals Working Group regarding the proposed amendments in advance of the public hearing.

Committee members voted 8-0 on a motion to split item #76-24, set a public hearing for June 10th for #76-24(3), and hold both #76-24 and #76-24(3) from Councilor Krintzman.

#76-24(3) Discussion and possible amendments to change how building height is measured

ZONING & PLANNING COMMITTEE requesting discussion and possible amendments to Chapter 30, Zoning to require that building height is measured from original grade instead of finished grade.

Action: **Zoning & Planning Held 8-0; Public Hearing Set for 06/10/24**

Note: This item was discussed concurrently with item #76-24. A written report can be found with item #76-24.

#85-24 Request for discussion and possible amendments to enhance the preservation of existing homes.

COUNCILORS BAKER, OLIVER, MALAKIE, KALIS, GETZ, LUCAS, LOBOVITS, AND WRIGHT requesting a discussion and possible amendments to Chapter 30 Zoning or other City Ordinances to enhance the preservation of existing homes over their replacement by larger and more expensive structures.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

Action: **Zoning & Planning Held 8-0**

Note: The Chair provided a brief update that Planning Department staff is currently working on items #85-24 and #41-24 and that a more detailed discussion will occur on June 10, 2024. Councilors voted 8-0 on a motion to hold items #85-24 and #41-24 from Councilor Krintzman.

#41-24 Amend the setbacks in the MR zones to encourage preservation of existing buildings

COUNCILORS ALBRIGHT, DANBERG, KRINTZMAN, AND LEARY seeking a discussion with the Planning Department to consider ordinance amendments that would revise the metrics in the multi-residence (MR1, MR2 and MR3) zones, to regulate the size of new buildings better, enable a wider range of housing options close to public transit, and better incentivize preservation and renovation of existing housing stock.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

Action: **Zoning & Planning Held 8-0**

Note: This item was discussed with item #85-24. A written report can be found with item #85-24.

#182-24 Request for discussion and possible amendments to allow for-profit schools by-right

COUNCILORS LUCAS, KELLEY, LAREDO, AND LOBOVITS requesting a discussion with the Planning and Development Department to possibly amend Newton's Zoning Ordinance to allow Schools or other educational purposes, for-profit to be allowed by right.

Action: **Zoning & Planning No Action Necessary 8-0**

Note: The Chair explained that the requested amendments in this docket item were part of item #133-24, which was passed by the Committee on April 8, 2024. Committee members voted 8-0 on a motion of No Action Necessary from Councilor Krintzman.

The meeting adjourned at 9:07 pm.

Respectfully Submitted,

R. Lisle Baker, Chair

TO: Zoning and Planning Committee

FROM: Anthony Ciccariello, Commissioner of Inspectional Services
Andrew S. Lee, Senior Assistant City Solicitor

SUBJECT: Proposed Amendments to the Short Term Rental Ordinance
City Council Docket #23-24 and #225-24

DATE: May 10, 2024

The Zoning and Planning Committee requested that the Inspectional Services Department (“ISD”) identify issues with enforcement of the City’s Short Term Rental Ordinance and for ISD to work with the Law Department to recommend updates to the ordinance addressing such issues. ISD has encountered two primary hurdles in administering the ordinance. First, allowing a lessee to operate a Short Term Rental has allowed a single person or entity to own several properties used as a Short Term Rentals which are purportedly occupied and used as residences of the lessee. The second hurdle concerns difficulties in identifying properties that are being operating as an unregistered Short Term Rental and, once the property is identified, finding the party responsible for the violation. Attached is a draft of proposed updates to the ordinance. These suggested changes accomplish the following:

1. The “Operator” of the Short Term Rental must be the owner of the property, not a lessee.
2. Clarify and bolster the requirement that the operator post the ISD-issued registration number in any and all advertisement for the short-term rental, including online advertisements.
3. Clarify the residency requirement when the Short Term Rental is owned by an entity.
4. Add language holding the owner of the property liable if the property is offered or operated without an ISD-issued certificate of registration.

(b) In addition to the penalties for code and ordinance violations established by the Commonwealth of Massachusetts and City of Newton, the Licensing Board shall have the authority to issue the following penalties for violations of these regulations after notice of hearing and opportunity to be heard.

- (1) More than three (3) code violations not addressed within 30 days of inspection unless a correction plan is approved by the Inspectional Services Department or Fire Prevention Bureau as appropriate \$300 Fine
- (2) More vehicles stored on the premises than allowed on the premises by zoning on (3) or more occasions as recorded by the Inspectional Services Department.....\$300 Fine
- (3) More residents on the premises than allowed on two (2) or more occasions as recorded by the Inspectional Services Department..... \$300 Fine
- (4) If two (2) or more of the above fines are warranted in any 12-month period or if three (3) or more of the above fines are warranted in a 36-month period Denial of License Renewal.

Sec. 20-159. Reserved.

**Article IX
SHORT TERM RENTALS**

Sec. 20-160. Definitions.

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person or persons offering a dwelling unit or bedroom for short-term rental in the City, who ~~may be either~~ must be the record owner ~~or the primary leaseholder~~ of the dwelling unit, with the written permission of the ~~property owner and the~~ condominium association if applicable.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 30 consecutive calendar days to one person or party, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant or Guest*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- (e) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this article.

- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this article.
- (c) No Outstanding Code Enforcement or Inactive Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing, trash, noise or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, unpaid fines or if there are any inactive outstanding building permits for the property.
- (d) Three or More Violations in a Twelve Month Period. Should a property receive three or more violation notices within any twelve month period under this article, or of any municipal ordinance, state law, or building code, any residential unit within the property shall be ineligible to be used as a Short Term Rental for a period of six months from the third or subsequent violation.
- (e) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.
- (f) Annual Notice to Abutters. The Operator must, within thirty (30) days after registration of a Short Term Rental, provide notice of such registration to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Such notification shall include the contact information of the Operator and the local contact, the Operator's state registration number, the Operator's Inspectional Services Department issued registration number, and a reference to this article. This notice must thereafter be provided annually on the first business day of January to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after January 1, 2020 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed sworn Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
 - 1) Contact information of Operator and Local Contact;
 - 2) Proof of ownership and Residence;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there is no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that the Short Term Rental conforms to this article.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property

meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after January 1, 2020. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.

- (d) House Rules. A copy of the House Rules required to be posted and distributed in accordance with Sec. 20-164 of this ordinance.
- (e) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (f) Local Contact Information. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.

(g) Proof of Residence. A property owner or indirect property owner must reside in the dwelling unit operated as a Short Term Rental for a minimum of 9 out of 12 months during each calendar year. Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property. When registering a Short Term Rental, an Operator must provide evidence that the property owner or indirect owner ~~he or she~~ resides in the dwelling unit for a minimum of 9 out of 12 months during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, ~~deed, lease,~~ driver’s license or state-issued identification.

~~(g) All Short Term Rentals registered with the Inspectional Services Department under the provisions of this article shall be issued a certificate of registration and registration number.~~

(h)

~~(i) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or as the lessee has permission from the owner to operate the Short Term Rental.~~

Sec. 20-163. Inspections.

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes, including but limited to the provisions of this article. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The Operator shall also be responsible for the behavior and activity of guests that results in a violation of this ordinance. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) No Nuisance. Short Terms Rentals shall not result in the disruption of the peace, tranquility, or safety of

the immediate residential neighborhood through the production of noise, vibration, light, glare, trash, fumes, odors, traffic, parking congestion, or any other nuisance beyond that which normally occurs in the immediate residential area.

- (c) Compliance with City Ordinances and State and Local Laws. All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City’s Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- (d) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
- (e) Agreements with Occupants. Operators may not enter into any rental or use agreements that are inconsistent with the terms of this article.
- (f) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (g) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant’s license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (h) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (i) Notice of Registration. The Operator of every Short Term Rental shall post in a prominent place within the rental the house rules below as well as the certificate of registration with the City of Newton. The Operator shall clearly display the Newton Registration number in all advertisements, postings or notices offering use of the short term rental, including but not limited to online advertisements.

(j) House Rules. Operators shall institute house rules to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.

- 1) House rules must make occupants aware of the City’s ordinances and the Operator’s policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions

- vi. Occupancy limits according to the City’s Zoning Ordinance
- vii. Any other provisions as may be required by City Officials.

2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.

~~(j)~~(k) Egress and Access. Operators of short term rentals, classified as one-family or two-family dwellings for the building code, shall be responsible for ensuring that adequate egress is provided in accordance with the the appropriate section of Massachusetts State Building Code, 780 CMR.

~~(h)~~(l) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.

~~(i)~~(m) Burden of Proof and Cooperation. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article. Operators must cooperate with any enforcement or investigation proceedings under this article.

~~(m)~~(n) False Information. Submission of false information shall constitute a violation of this ordinance.

Sec. 20-165. Enforcement, Violations and Penalties.

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article ~~to the Operator.~~ Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice.
- (c) Penalties. Any Operator who violates any provision of this ~~article ordinance~~ shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without ~~first registering with thea valid and current certificate of registration from the Inspectional Services Department pursuant to this article, and the record owner of the property offered or operated as a Short Term Rental, City~~ shall be fined three hundred dollars (\$300.00) per violation ~~per day.~~ Each day’s failure to comply with a notice of violation or any other order shall constitute a separate violation. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

Sec. 20-166. Effective Date.

The provisions of this Article IX shall take effect on January 2, 2020.

Sec. 20-167. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-168. Reserved.

DRAFT

DRAFT



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
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#24-24 & #24-24(2)

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Barney Heath
Director

MEMORANDUM

DATE: May 9 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: **#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.

MEETING: May 13, 2024

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

Overview

This year, the City Council Zoning and Planning Committee (ZAP) has discussed and taken up numerous items to incentivize small business, existing and new, throughout Newton. In April, the City Council approved a series of zoning amendments removing red tape for small businesses under docket #133-24, [see memo here](#). In addition, ZAP suggested Planning staff develop additional small business friendly zoning amendments at their March 25 meeting, [see report here](#). The draft

amendments proposed below come out of that ZAP discussion and consultation with City staff (Planning staff, Law, and ISD).

Zoning Amendments

Staff have drafted three specific amendments for the City Council's consideration. The first one is considered a clean-up/clarification item:

1. Delete the "Fast Food Establishment" use and incorporate into "Restaurant" use.

The second two are substantive and specifically address ZAP's charge to further Newton's status as a small business friendly community:

2. Explicitly allow for shared "makerspaces" and/or co-working.
3. Define "Place of Amusement" Use and allow by-right with standards.

Attachment A below provides background information, rationale, and draft language for each of the these items.

Next steps

If supportive, ZAP may wish to set a June public hearing date for the proposed amendments. In addition, Planning staff will work closely with the Economic Development Commission (EDC) to develop a prioritized list of other small business friendly zoning amendments to be brought forward at a later date.

Attachments

Attachment A Draft ordinance revisions – Incentivizing Small Business

Docket #24-24

- 1. Delete the “Fast Food Establishment” use and incorporate into “Restaurant” use (Sec. 6.4.15. and Sec. 6.4.31)

Issue:

As defined, many businesses serving food can be categorized as both a fast-food establishment and restaurant. Examples of this include Starbucks, Chipotle, and McDonalds. The difference is that the Zoning Ordinance does not allow fast-food establishments in most commercial districts, where restaurants are either allowed by-right or special permit in all commercial districts. Because of this, a new food business coming in is almost never categorized as a fast-food establishment, even if it meets the existing definition. Planning staff believe the definition fast-food establishment was a reaction in the 1970s to the rise of drive-thru businesses. Given this, the recommendation is to delete the fast-food establishment use and create a special permit requirement within the restaurant use if any drive-thru component is provided.

Proposed Change:

Existing Language	Proposed Language
<p>6.4.15. Fast Food Establishment</p> <p>A. Defined.</p> <p>1. Fast Food Establishment. An establishment whose primary business is the sale of food for consumption on or off the premises which is:</p> <ul style="list-style-type: none"> a. Primarily intended for immediate consumption rather than for use as an ingredient or component of meals; b. Available upon a short waiting time; and c. Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold. 	<p>6.4.15. Fast Food Establishment</p> <p>A. Defined.</p> <p>1. Fast Food Establishment. An establishment whose primary business is the sale of food for consumption on or off the premises which is:</p> <ul style="list-style-type: none"> a. Primarily intended for immediate consumption rather than for use as an ingredient or component of meals; b. Available upon a short waiting time; and c. Packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.
Existing Language	Proposed Language
<p>6.4.31.C. Standards for Special Permit Uses</p>	<p>6.4.31.C. Standards for Special Permit Uses</p> <p><u>8. In all districts, any restaurant with a drive-thru component.</u></p>

2. Explicitly allow for shared “makerspaces” and/or co-working (Sec. 4.4. and Sec. 6.4.27)

Issue:

Currently, shared working space (co-working, communal kitchens, etc.) are not explicitly allowed within the Zoning Ordinance. A strictly co-working space, like the very successful Writer’s Block in Nonantum, can be categorized as an office use and therefore allowed. However, spaces that can support culinary incubators/test kitchens, and creative design/fabrication spaces are not. The recommendation below looks to update and define the current “Business Incubator” use to make this small business promoting change.

Proposed Change:

Existing Language	Proposed Language
<p>6.4.6. Business Incubator</p> <p>A. Defined. [reserved]</p>	<p>6.4.6. Business Incubator</p> <p>A. Defined. [reserved] <u>Uses that provide multi-purpose facilities with dedicated space for multiple creative business enterprises. Business incubators include, but are not limited to:</u></p> <p><u>1. Co-working. A commercial or non-profit organization providing multiple individuals and small firms access to workplace facilities, including but not limited to, artist studios, office suites, for-rent ‘hot-desks’, dedicated workstations, conference rooms, meeting rooms, event space, resource libraries, and business or administrative support services.</u></p> <p><u>2. Culinary Incubator. An organization providing start-up catering, retail, and wholesale food businesses with shared kitchen facilities and often providing business planning, access to finance, mentoring, and other business or administrative support services.</u></p> <p><u>3. Creative Incubator. An organization providing startup and early-stage arts and creative enterprises with shared facilities and often providing business planning, access to finance, mentoring, and other business or administrative support services.</u></p> <p><u>4. Design & Fabrication Center. A facility providing individuals and small firms access to professional tools & equipment; classes & training; lab, workshop, and studio space; and storage for tools and supplies.</u></p> <p><u>B. Standards for Allowed Uses.</u></p> <p><u>1. Business Incubators are not allowed abutting a residential district.</u></p> <p><u>C. Standards for Special Permit Uses.</u></p> <p><u>1. Business incubators abutting a residential district.</u></p>

Docket #24-24

Sec. 5.1.4. Number of Parking Stalls

Use	Parking Stalls Required	Allowed by Special Permit
Commercial		
<u>Business Incubator</u>	<u>1 per 1,000 sf</u>	

Sec.4.4.1. Business, Mixed Use & Manufacturing Districts

Existing Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Business Incubator	P	P	P	P	--	P	P	P	--	P	P	Sec. 6.4.6

Proposed Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Business Incubator	P	P	P	P	<u>P--</u>	P	P	P	<u>P--</u>	P	P	Sec. 6.4.6

3. **Place of Amusement Define and allow by-right where appropriate (Sec. 4.4., Sec. 6.3.15, and Sec. 6.4.28)**

Issue:

Currently, Place of Amusement is not defined and is not permitted by-right in any zoning district. These are uses, particularly indoor ones, that enliven Newton’s village centers and commercial areas. A recent proposal for an indoor golf simulator had to be turned away because it is not allowed in the zone where they were looking to locate. It should be noted that the City Council allowed this use as part of the Village Center Zoning amendments (VC2 and VC3). By further defining this use, the current use “Theater”, which is not defined, can be incorporated.

Proposed Change:

Existing Language	Proposed Language
6.4.28. Place of Amusement, Indoor or Outdoor A. Defined. [reserved]	6.4.28. Place of Amusement, Indoor or Outdoor A. Defined. [reserved] <u>Uses that provide gathering places for participant and spectator recreation, entertainment, or other assembly activities including, but not limited to, cinema, theater, bowling alley, dance hall, and/or venue of a professional or semi-professional sports team.</u> <u>B. Standards for Allowed Uses.</u> <u>1. Places of amusement may provide accessory food or beverage service for on-site consumption.</u> <u>C. Standards for Special Permit Uses.</u> <u>1. In the Business Use 1-2 and Mixed Use 3-4 districts, indoor places of amusement uses occupying space in excess of 12,500 square feet may seek a special permit.</u>

Existing Language	Proposed Language
6.3.15. Theatre, Hall A. Defined. [reserved]	6.3.15. Theatre, Hall A. Defined. [reserved]

Docket #24-24

Sec.4.4.1. Business, Mixed Use & Manufacturing Districts

Existing Language

Commercial Uses	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition / Listed Standard
Place of amusement, indoor or outdoor	--	SP	--	--	--	--	--	SP	SP	--	SP	Sec. 6.4.28

Proposed Language

Commercial Uses	BU 1	BU2	BU3	BU4	BU5	MU 1	MU 2	MU3	MU4	M	LM	Definition / Listed Standard
Place of amusement , indoor	P/S P-	P/SP SP	P/S P-	P/S P-	P/S P-	P/S P-	P/S P-	P/SPS P	P/SPS P	P/S P-	P/SPS P	Sec. 6.4.28
Place of amusement , outdoor	- SP	SP	--SP	--SP	--SP	--SP	--SP	SP	SP	--SP	SP	Sec. 6.4.28

Sec. 5.1.4. Number of Parking Stalls

Use	Parking Stalls Required	Allowed by Special Permit
Commercial		
Theaters, halls, clubs, auditoriums and other places of amusement or assembly in a hotel, motel, <u>Place of amusement</u>	1 per 12 seats plus 1 per 600 sf 1 per every 3 employees plus .25 per 45-sf used for meeting functions	

Discussion and possible amendments to change how building height is measured

Docket #76-24

Zoning and Planning Committee
May 13, 2024
Planning & Development

Agenda

- ▶ Overview (Regulation and Issues)
- ▶ Examples (Recent Projects)
- ▶ Proposed Ordinance Amendment
- ▶ Q&A

Overview

(existing regulation and issues)

Existing Regulation

Proposing Zoning Ordinance amendments to change measuring height from finished grade

- **1.5.4.E. Grade** definition does not specify whether it refers to original or finished grade
- **1.5.4.F. Grade Plane Average** uses finished grade elevations
- **1.5.5.D. Mass Below First Story** determined by finished grade

Issues

- ▶ Impact on adjacent homes and neighborhood
 - Visually
 - Environmentally
- ▶ Loss of starter homes



145 Pine Ridge Road

Before



After



Proposed Regulation

- ▶ Reviewed how neighboring communities measure height
- ▶ Original grade vs. finished / proposed grade
- ▶ Follow up to docket #76-24(2)

Examples

(recent projects)

11 Ruane Road

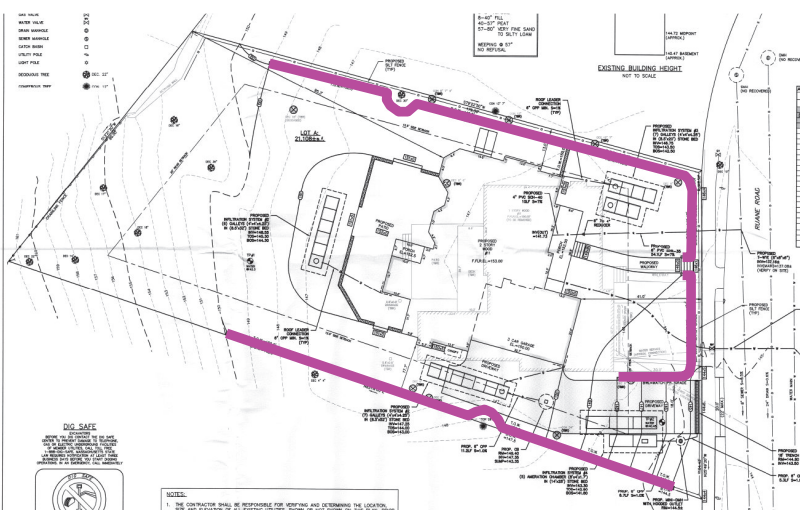
Original



Proposed

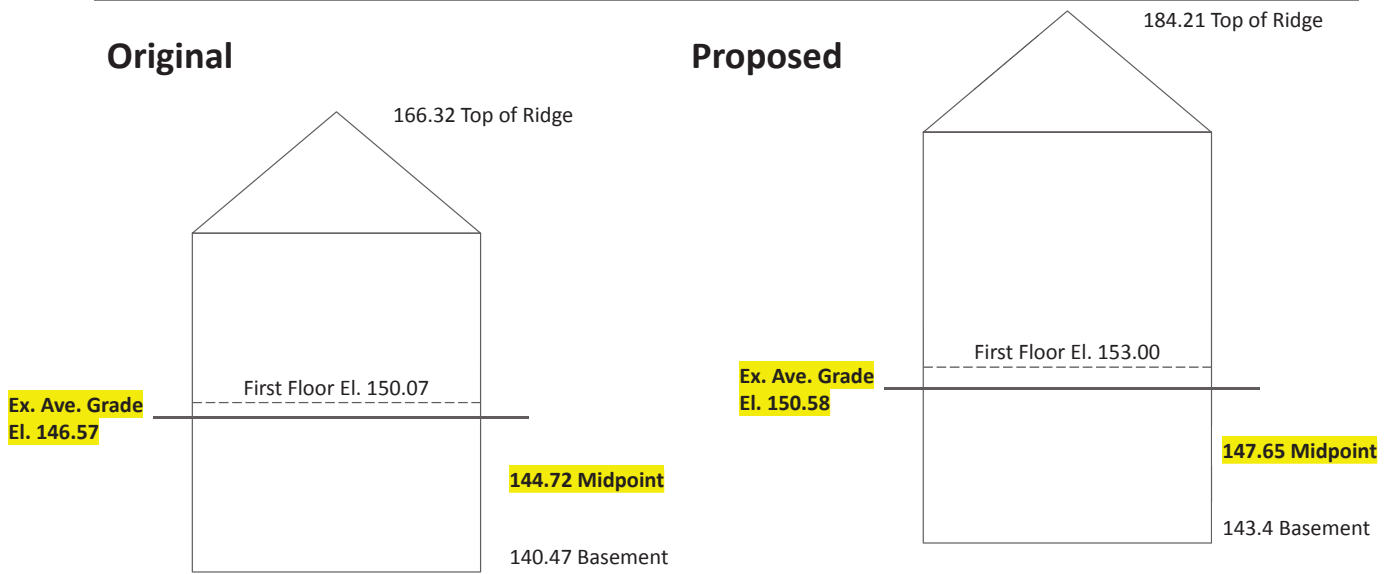


11 Ruane Road



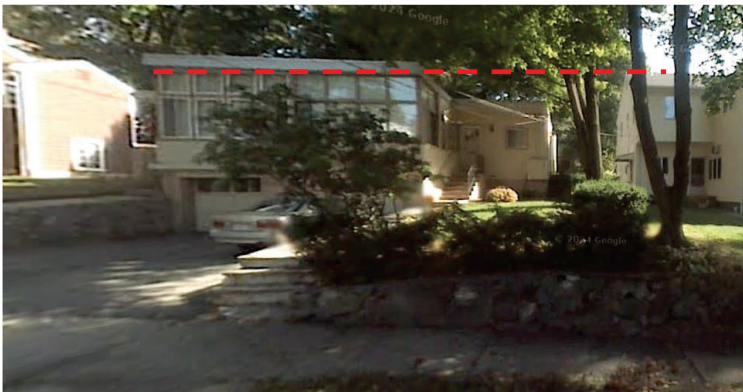
— Retaining Walls

11 Ruane Road



12-14 Princeton St

Before



After



145 Pine Ridge Road

Before



After



Proposed
Amendment

Existing Ordinance

Sec. 1.5.4. Height

E. Grade. In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

F. Grade Plane Average. A horizontal reference plane for a building as a whole representing the average of finished grade elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length greater than 6 feet shall be included in segments of consistent grade or slope.

$$\sum = (e1 + e2) / 2 \times L$$

Where:

- \sum sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments.

Existing Ordinance

Sec. 1.5.5. Floor Area

D. Mass Below First Floor. For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. Standards. The lesser of 50 percent of the floor area of mass below first story OR: ((X/Y) floor area of mass below first story) Where:

- X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet as measured from existing or proposed grade, whichever is lower, to the top of the subfloor of the first story.
- Y = Perimeter of exterior walls below first story

Proposed Amendment

(See memo)

Proposed Amendment (Clean)

1.5.4. Height

E. Original Grade. The grade of the lot before any regrading, demolition, development, or redevelopment begins based on the following standards:

1. If a lot,

- a. Has an existing building that is to be demolished or modified, the original grade of the lot shall be the grade that existed prior to any activity that caused a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, that occurred after September 1, 2024 and within five (5) years of the date of application for the building permit for such demolition or modification of the existing building; or
- b. Has no existing building on the property, the natural grade of the property, prior to any activity that causes a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, shall be considered the original grade; or
- c. Is a new subdivision, notwithstanding anything to the contrary contained in the City of Newton Zoning Ordinance, the original grade shall mean the approved and recorded grade.

2. The original grade shall be certified by a registered Massachusetts licensed professional land surveyor and shown on a certified plot plan to be verified by the Building Inspector prior to commencement of work on the property with all elevations in Newton City base.

Proposed Amendment (Clean)

F. Grade Plane Average. A horizontal reference plane for a building as a whole representing **the average of original or proposed grade, whichever is lower,** elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length six (6) feet or shall be included in segments of consistent grade or slope.

1. In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

$$\sum = (e1 + e2) / 2 \times L \times P$$

Where:

- \sum sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments

Proposed Amendment (Clean)

1.5.5. Floor Area

D. Mass Below First Story. For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. **Standards.** The lesser of 50 percent of the floor area of mass below first story OR:

((X/Y) floor area of mass below first story)

Where:

- o X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet **as measured from original or proposed grade, whichever is lower,** to the top of the subfloor of the first story.
- o Y = Perimeter of exterior walls below first story

Q&A