



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
www.newtonma.gov

Barney Heath
Director

MEMORANDUM

DATE: June 6, 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
Nora Masler, Planning Associate

RE: **#24-24(2) Discussion and possible ordinance amendment to business use definitions.**
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. where appropriate.

MEETING: June 10, 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

The Planning & Development Department presented recommendations to promote desired small business uses at the May 13, 2024 meeting of the Zoning and Planning (ZAP) Committee, [see report](#). The proposed changes include defining "business incubator" to allow for co-working spaces, creative and culinary incubators, defining the use "place of amusement" with size restrictions and indoor requirements and incorporating the use "fast food" into restaurant, thereby deleting that defined use. The Committee was supportive of the initial approach proposed, while requesting additional information on the areas addressed below. Further rationale for each of these items can be found in attachment A.

Addressing Councilor Questions

Discussing the proposed changes to Section 6.4.6 “business incubator” Councilors raised concern about the distinction between the proposed “culinary incubator” and ghost kitchen businesses. To address this concern language was added to ensure that under this use kitchen facilities would be used as culinary incubators rather than for the preparation of food exclusively for delivery.

Regarding the proposed change to Section 6.4.20, the unique nature of the “design & fabrication center” use requires different regulations from the other uses in the “business incubator” definition and was therefore removed, to be considered at a later date during evaluation of Newton’s manufacturing zoning.

Regarding the parking requirements for the “business incubator” use, at the direction of the Committee further research was conducted to evaluate whether 1 space per 1,000 sq. ft. was an appropriate parking requirement. This research verified that this parking requirement is appropriate based on the successful parking requirements of similar municipalities for similar uses, such as Somerville who requires co-working businesses to provide 1 parking space per 1,200 to 800 sq. ft. (depending on the location). This is discussed further in attachment A.

The requirement for Off-Street Loading was also added to “business incubator” for businesses over 51,000 sq. ft. to ensure the provision of adequate loading space for businesses that are large enough to require significant delivery and collection of goods.

Last, at the direction of the Committee, working closely with the Economic Development Director, the Planning Department evaluated the size threshold for “Place of Amusement, Indoor or Outdoor” (Section 6.4.28) by gathering data on the square footage of existing places of amusement that are of a desired size and type as well as those that are less desirable. The data gathered and shown in the table below demonstrated that 12,500 sq. ft. is the appropriate size threshold for desired entertainment focused uses, particularly smaller businesses.

Business Types	Business	Size (Sq. Ft.)	Location
Driving Range	Top Golf	465,306	Canton
Chain Movie Theater	Showcase SuperLux Chestnut Hill	78,000	Newton
Local Movie Theater	West Newton Cinema	11,259	Newton
Golf Simulator	X Golf	10,800	Acton
Bowling Alley	American Flatbread	10,720	Somerville
Rock Climbing Gym	Central Rock Climbing Gym	~10,000	Framingham
Boxing Club	Nonantum Boxing Club	9,760	Newton
Escape Room	Puzzle Break	4,066	Newton
Art Studio	Paint Bar Newtonville	1,300	Newton

*Orange = Above 12,500 sq. ft. Threshold, Green = Sizes allowed under proposed change

Updates to Text

Working closely with Current Planning and Economic Development, Long Range Planning staff drafted the amendments for this change, including special permit criteria (see Attachment A). City staff made the following refinements for clarification to the proposed language since the May 13th ZAP meeting, which are highlighted in yellow within Attachment A:

1. In Sec. 6.4.6. “or business” was added after “organization” throughout.
2. In Sec. 6.4.6. under “culinary incubator,” “and accessory retail and office space, provided however, that the space is not used solely to provide kitchen facilities for the delivery of goods directly to consumers” was added.
3. In Sec. 6.4.6. “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” was removed.
4. In Sec. 6.4.6. “1. Business Incubators are not allowed abutting a residential district. C. Standards for Special Permit Uses. 1. Business incubators abutting a residential district” was removed.
5. In Sec. 5.1.12 “Business Incubator” was added to the “Table of Off-street Loading Requirements.
6. In Sec. 6.4.28 “12,500 square feet may seek a special permit” was changed to “12,500 square feet require a special permit.”
7. In Sec. 6.4.28 “2. All outdoor places of amusement require a special permit” was added.

Looking Ahead

Staff hope that this provides the Committee with the support needed to move this item at the upcoming public hearing scheduled for June 27. Planning will be ready to address any further questions and make additional clarifications if needed in advance.

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 of 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”, start-up spaces and co-working spaces (Sec. 4.4., Sec. 6.4.20 and 6.4.27)**

Issue:

Currently, shared working spaces (co-working, communal kitchens, shared artist studios 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 is therefore allowed, however this is not explicit in the current office definition. Furthermore, spaces that can support culinary incubators/test kitchens, and creative design spaces are not allowed. The recommendation below looks to update and define the current “business incubator” use to allow for and promote desired small businesses.

Updates as of 5/13 Meeting:

Counselors requested additional information about the distinction between the proposed use language for 2. *Culinary Incubator* and the allowance of a *ghost kitchen*. A culinary incubator is focused on business development while a ghost kitchen is intended to provide space and equipment for the food preparation of established businesses offering delivery. By including the word “start-up” and specifying the likely provision of “business or administrative support services” the definition allows for the former rather than the latter, however, to ensure this distinction is clear, the language “provided however, that the space is not used as kitchen facilities for the delivery of goods directly to consumers” was added.

Given the potential for larger equipment in the use “Design & Fabrication Center” it was separated from “Business Incubator” and removed from this proposal. This use will be further explored in the study of manufacturing districts.

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 or business 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 and accessory retail and office</u></p>

space, provided however, that the space is not used as kitchen facilities solely for the delivery of goods directly to consumers.

3. Creative Incubator. An organization or business 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.

Updates as of 5/13 Meeting: Counselors requested additional information about the business incubator parking requirement. This requirement of 1 space per 1,000 sf for the business incubator use is comparable to requirements for similar uses in the contextually and geographically similar municipality of Somerville, while Brookline has eased their parking requirements for similar uses further having no parking minimums and a maximum of 1 space per 600 sf. Requiring an appropriate amount of parking, rather than over-requiring parking, avoids the costly construction of un-used spaces while furthering the goal of Newton’s Climate Action Plan to reduce parking requirements and increase biking, walking, telecommuting, public transportation, and shared trips.

Proposed Change:

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>	

Off-Street Loading Requirements (Sec. 5.1.12) -

Table of Off-street Loading Requirements

Number of bays required for new or expanded uses by gross floor area of structure of land use (in sf)

Uses	Under 5,000 sf	5,000 – 50,999 sf	51,000 – 100,999 sf	101,000 – 150,999 sf	151,000 – 300,000 sf	Over 300,000 sf
Retail Trade, Wholesale and Storage, Transportation Terminal, Manufacturing, and Public Utility	0	1	2	3	4	1 for each additional 150,000 sf
Business Services, Office Building, Hotel, Motel & Dormitory, Microfulfillment Center, and Research Laboratory	0	1	1	2	3	1 for each additional 150,000 sf
Recreation, and Institution, <u>Business Incubator</u>	0	0	1	1	2	1 for each additional 150,000 sf

Docket #24-24(2)

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	P	P	P	P	P	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.

Updates as of 5/13 Meeting: Councilors requested additional information about the size requirements for Place of Amusement with the concern that large chain businesses, like AMC movie theaters would be allowed by-right under this use. Planning Department research found that the size of an average movie theater with 10 screens typically ranges from 30,000 to 60,000 square feet and therefore would not be permitted under this use in Newton due to the 12,500 square foot maximum. On the other hand, a small independent movie theater, like the West Newton Cinema, is just over 11,000 square feet. This maximum is set however, to permit both small businesses and desired uses to establish in the commercial locations where *Place of Amusement, Indoor and Outdoor* is allowed. *Outdoor Places of Amusement* require a special permit. For an illustrative list of the sizes of existing places of amusement in and near Newton, please see the memo for this item.

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 <u>A. Defined. [reserved] 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 require a special permit.</u> <u>2. All outdoor places of amusement require a special permit.</u>

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

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	