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MEMORANDUM

DATE: July 3, 2024

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

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: July 8, 2024

CC: Planning Board
Jonathan Yeo, Chief Operating Officer

At the request of the ZAP Chair, the Planning Department is providing the additional information below regarding parking requirements and a possible alternative to placing no parking requirement on the proposed "Place of Amusement" and "Business Incubator" uses in Docket Item #24-24(2).

Overview

The Planning & Development Department presented recommendations to promote desired small business uses at the June 27th, 2024 joint public hearing of the Zoning and Planning (ZAP) Committee and the Planning Board. The proposed changes included the following proposed parking requirements:

- Place of Amusement = 1 Parking Space per 600 square feet
- Business Incubator = 1 Parking Space per 1,000 square feet

Following discussion, ZAP voted three in favor, one opposed and three abstentions for removing the parking requirements for the uses above. The Planning Board members in attendance voted unanimously in approval of the amendments, without any parking requirement.

Comments on Parking Requirements

General

Due to the many economic and environmental consequences of over requiring parking, as well as the ability of commercial entities to anticipate the parking needs of their patrons the Planning Department is in support of not requiring parking in Newton. Going forward, the Planning Department recommends that changes to reduce or not require parking should be considered holistically. Staff are ready to explore these changes within Docket Item #181-24, "Request for discussion and possible amendments to remove or reduce parking minimums for commercial uses in commercial centers."

Place of Amusement and Business Incubator Uses

During the June 27th, 2024 joint ZAP and Planning Board public hearing, some councilors expressed concern that the proposed parking requirement for "Place of Amusement" and "Business Incubator" would act as a barrier for new business of these uses wishing to locate in Newton. On the other hand, other city councilors expressed concern that removing parking requirements would cause friction between new Places of Amusement/Business Incubators and existing businesses/adjacent neighborhoods due to limited parking availability. While the Planning Department is in support of no parking requirement for these uses, the proposal below is a possible compromise parking requirement that could address some councilor concerns:

- Proposed Place of Amusement: 1 Parking Space required per 1,200 square feet
- Proposed Business Incubator: 1 Parking Space required per 1,600 square feet

Staff also note that in the case of businesses locating in an existing structure, both the above proposed parking requirements and the previous proposal require fewer spaces than most of the existing uses that the new Places of Amusement or Business Incubators would replace. Therefore, most if not all businesses looking to occupy an existing space would not need parking waivers per Sec. 5.1.2.B. In other words, staff expect the parking requirement to only come into consideration within new construction.

Looking Ahead

Staff hope that this provides the City Council with the support needed to move this item at their upcoming meeting scheduled for July 8th either with no parking requirement as voted out of ZAP, or with a reduced requirement outlined above. Planning will be ready to address any further questions and make additional clarifications if needed in advance.

See the 6-27-24 ZAP Report for the ZAP and Planning Board approved language by clicking here: <https://www.newtonma.gov/government/city-clerk/city-council/council-standing-committees/zoning-planning-committee>

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>None 1 space per 1,600 square feet</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	<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.

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>	None <u>1 per 12 seats plus 1 per every 3 employees plus .25 per 45 sf used for meeting functions</u> <u>1 space per 1,200 square feet</u>	