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## MEMORANDUM

**DATE:** June 8, 2018

**TO:** Councilor Albright, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Barney S. Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development

**RE:** **Zoning Redesign**

**MEETING DATE:** June 11, 2018

**CC:** Ouida Young, City Solicitor  
Planning Board

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What follows is an outline of the draft Newton Zoning Ordinance, based on work with the Zoning and Planning Committee and the Zoning Redesign Event Series. This outline reflects work with our consultant, Sasaki Associates and the many different ideas that have been discussed in public meetings and Committee. The attached outline is intended only to express the ideas and approach of the proposed zoning ordinance; any text and numbers included should not be taken as the final proposed legal text nor do any numbers presented represent the final standards. There are no illustrations in the following outline. To the extent possible, the basis of the proposed changes and how they reflect an improvement over the current zoning ordinance are included in the notes accompanying each section below.

# Newton Zoning Ordinance – Redesign Outline

## Article 1. General Provisions

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Article 1 begins with a set of standard sections that recognize the legal authority of the City to have a zoning ordinance, address conflicts within and between this ordinance and other rules and regulations, severability, and other legal issues. Most significantly, the beginning of this Article includes the purpose statement of the overall ordinance (see below) and a section establishing the Zoning Map and the Zoning Districts depicted on it.

This proposed purpose section is intended to reflect the purpose and intentions of both the Zoning Ordinance and the review of development beyond that of the basic health and safety issues of the Building Code. Most significantly, this section recognizes that Newton has a formally adopted Comprehensive Plan and that the implementation of such a plan is an important purpose of a Zoning Ordinance. DRAFT purpose statements are below:

### Sec. 1.2. Purpose of Chapter

The provisions of this Chapter are ordained by the City for the purpose of promoting the health, safety, convenience and welfare of its inhabitants by:

- A. Implementing the Comprehensive Plan of the City of Newton as well as other plans and policies adopted by the City Council.
- B. Coordinating development and redevelopment according to neighborhood, village, and other area plans developed collaboratively with community members.
- C. Equitably balancing the interests of property owners with the interests of the community as a whole.
- D. Protecting and promoting the social, environmental, and economic benefits provided by a walkable development pattern.
- E. Preserving and enhancing the existing character of Newton's traditional walkable villages and neighborhoods in an effort to promote a sense of community, respect the existing built form, and honor the historic development pattern inherent to the city.
- F. Permitting redevelopment and infill construction that contributes to and preserves the character of Newton.
- G. Guiding reinvestment in established neighborhoods to build upon and reinforce their unique characteristics.
- H. Promoting the adaptation and preservation of existing buildings.
- I. Providing a range of housing types, unit sizes, and price points to accommodate the diverse household sizes and life stages of Newton residents at all income levels, particularly housing that is affordable to individuals and families with low and moderate incomes and is accessible for those with disabilities.

- J. Promoting a welcoming community where people of diverse demographics, origins, and income levels will be able to find a home and opportunity for success.
- K. Addressing the public aspects of private development and how building form, placement, and uses contribute to the quality of the public realm.
- L. Promoting arts and culture for community and economic benefit by improving the public realm, enhancing community life, and growing a vibrant creative sector.
- M. Assisting in the provision of transportation, water, sewage, schools, parks, open spaces and other public facilities.
- N. Encouraging the use of public transportation, bicycling, and walking.
- O. Decreasing vehicular air and water pollutant emissions, conserving energy resources and reducing ambient noise levels by reducing vehicular trips, total vehicle miles traveled, and traffic congestion within the city.
- P. Reducing the demand for parking facilities and increase the capacity and efficiency of existing transportation infrastructure.
- Q. Increasing the commercial tax base in support of the fiscal health of the City.
- R. Protecting and promoting a diverse mix of businesses and employment opportunities.
- S. Providing opportunities for businesses to remain in Newton as they develop and grow.
- T. Promoting environmentally sustainable building and site design practices.
- U. Providing clear and consistent procedures for appropriate and effective public involvement in land use and development decisions.
- V. Providing clear regulations and processes that result in predictable, efficient, and coordinated review processes.

#### Rules of Measurement [or General Standards]

The second part of Article 1 describes the Zoning Ordinance's "Rules of Measurement." These are the basic rules applicable across the entire ordinance. These include a number of definitions and descriptions of how dimensional requirements are to be measured.

Building Types - Building types collect in one place all of the applicable lot and building standards for new construction, renovation of existing structures, and redevelopment in all zoning districts. In contrast to applying generic dimensional standards to all principal structures, the use of Building Types as a regulatory tool allows dimensional standards to differ from one class or kind of structure to another within the same district and is authorized by M.G.L. Chapter 40A, Section 4. Effectively, by using building types, the City can recognize and support the diversity of buildings in Newton's neighborhoods; the current approach is to encompass that diversity into one set of building standards, resulting in a wide range of allowed massing and creating the tear-down incentive.

This section explains how building type standards are used and provides guidance on how existing buildings are classified into a specific building type to determine the applicable set of rules. Definitions

are also provided for building components, which create a clear and predictable set of rules for such things as dormers, porches, balconies, and building additions in the same illustrated and organized format as the building types. Similarly, accessory building types are defined here.

Lot Standards – Lot standards provide definitions as to what constitutes a lot and some of the rules governing lots, such as the definition of ‘lot coverage’. This section also describes how lots are measured. The only significant change in this section is that it now defines a difference between primary and secondary front lot lines, which is important for later rules governing front door locations.

Building Placement – Building placement provides definitions and rules governing how setbacks are determined. Exceptions to setback rules that apply citywide are listed here and include such things as chimneys, eaves, fire escapes, and accessible ramps, with limits on the extent to which they can encroach into setbacks.

Massing & Height - Massing and height are treated together in the proposed ordinance. As with those above, this section provides the definitions and rules for measuring height and massing. There are two main proposals highlighted in this section. The first is to replace the use of Floor Area Ratio (FAR) as a tool for regulating massing with direct rules governing the allowed width and depth of a building – coupled with height, these rules together effectively manage massing in a way that is transparent for the general public and easy to use and administer.

The second proposed change is to regulate height through setting a maximum number of stories, with each story having a maximum individual height. The current ordinance has both a total building height and stories, which results in conflicts between the two provisions in which the number of stories allowed does not fit into the allowed height.

In regulating height, there are two important considerations: the location of the ground level and the attributes allowed to exceed the top. The current ordinance outlines an array of accessory features that may extend above the roof of a structure, and that list is maintained, with the addition of solar panels. As for the ground level, the current ordinance uses the average grade at the base of the building, measured out six feet. This rule has led to some builders mounding the land up before beginning construction in order to establish a higher existing grade. Staff is proposing to use the average grade at the lot perimeter to define the base of the building for the purposes of height measurement to remove the option for builders to change the grade.

Another idea under consideration is to regulate roof types and minimum and maximum slopes. Such rules appear in some ordinances as a way to further ensure that the desired massing and height of buildings, consistent with the character and norms of a given neighborhood, is achieved. Builders often use flatter roofs to achieve greater living space within the massing requirements in a way that is out of character with the neighborhood, as has been evident in Newton over the last several years.

Front Façade Features – The front façade of a building is an essential element for defining the public realm of the adjacent street. The front façade contributes to the sense of community and safety of the street by creating an atmosphere that is welcoming and gives the sense that there are “eyes on the street.” On commercial retail streets, it is particularly important for there to be a high-level of transparency (windows) on the first floor as this feature contributes to the sense of activity and interest for pedestrians on the street, encouraging them to walk and overall making for a more

attractive and desirable shopping district. This section provides the definitions and rules of measurement for how these rules for transparency are applied to all building types.

## **Article 2. Public Use, Institutions, and Open Space Districts**

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Article 2 describes the zoning districts associated with public uses, institutions, and open space or recreational areas and explains the review processes and other provisions for any allowed buildings or activities. These districts are each described below.

Public Use District – The Public Use District encompasses all City, State, and Federally owned land in the City, except those otherwise zoned. The intent of the district is to ensure that public lands are developed and maintained so as to be positive contributions to the neighborhoods in which they exist. The uses allowed range from public governmental buildings such as city hall and the courthouse to public schools, recreational playing fields and conservation properties. Public street right-of-ways are in the Public Use District. All City public buildings are subject to review under section 5-58 of the City Ordinances and are therefore exempt from review under the Zoning Ordinance. Those buildings and activities not subject to section 5-58 or otherwise governed by Newton Ordinances are subject to site plan review according to Article 7 of this ordinance. Public buildings and uses within this district are not subject to other zoning requirements not contained within this section.

Educational Institutions District - This proposed zoning district would encompass the colleges and universities in Newton as well as private non-profit secondary schools with a campus, all of which are currently zoned residential. The intent of this district is the harmonious development of these institutions with their surrounding neighborhoods and clear and timely development review that holistically addresses any proposed development within the context of the overall campus while creating predictability for the neighborhood. The development review process will remain the administrative site plan review process currently employed, though staff will recommend that the City pursue home rule legislation in the future to allow the City to use a Campus Master Plan review process as is currently used by the City of Boston (see Article 7). This district will include standards for education facility buildings, as allowed under the “Dover” rules and drawing from the City’s existing rules for such facilities.

Open Space District - The proposed Open Space District would incorporate all privately held properties where the primary use of land is of a general open space or unbuilt character. These properties are currently zoned residential. Such properties would include the golf courses cemeteries, and privately held conservation lands subject to conservation easements. The intent of this district would be to maintain these open space areas for the environmental, public health, and community character values they contain. Permitted development would be limited to accessory uses to these primary open space uses and regulated by administrative site plan review or site plan review depending on scale.

## **Article 3. Residential Districts**

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Article 3 describes the zoning districts associated with residential uses. Residential districts make up the primary land use within the City in terms of land area and generally, these districts are constructed to

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protect and reinforce the existing character of Newton's neighborhoods. The extensive data collection of the Pattern Book informed the creation of these districts and the building type standards associated with them. The districts are largely differentiated by how buildings present from the street. The seven residential zoning districts are described below.

### **PART I: Districts**

**Neighborhood 1 District** – The proposed Neighborhood 1 District is characterized by relatively large lots with large single-unit houses, most exemplified by neighborhoods like Chestnut Hill, West Newton Hill, and Bald Pate Hill. The intent of this district is to preserve the character and history of these neighborhoods.

**Neighborhood 2 District** – The proposed Neighborhood 2 District represents the quintessential suburban neighborhood with ample lawns and single-unit homes. Developed in the middle of the last century in the spaces between Newton's villages, the intent of this district is to create predictability and preservation of neighborhood character.

**Neighborhood 3 District** – The proposed Neighborhood 3 District offers a denser version of the Neighborhood 2 District with larger single-unit homes relative to the lot size, as is characteristic of early 20<sup>th</sup> century neighborhoods like Newton Highlands south of Route 9. Again, the intent is to create predictability and preservation of neighborhood character.

**Neighborhood 4 District** – The proposed Neighborhood 4 District represents a suburban scale neighborhood composed of single, two, and possibly three-unit homes and frequently walking distance to transit and activity centers. The intent of this district is to preserve neighborhood character, support predictability, and to integrate homes in two and three-unit buildings.

**Neighborhood 5 District** – Within a short walk of the amenities, mixture of uses, and transit options of Newton's village centers, the proposed Neighborhood 5 District serves as a transition from the villages to the neighborhoods of single-unit homes beyond. With easy access to the above amenities, these areas are appropriate for a wider range of housing types, consistent in scale with the neighboring single and two-unit homes, including 2-4 unit buildings, cottage clusters and townhouses. The intent of this district is to offer a wider range of housing choices, including affordable housing options, in walkable neighborhoods close to transportation and to direct such housing to support the existing character of the neighborhood.

**Neighborhood 6 District** – The proposed Neighborhood 6 District is closest to the largest of Newton's village centers where the greatest array of amenities, shopping, and transportation options are found. With easy access to the above amenities, these areas are appropriate for a slightly wider range of housing types than the Neighborhood 5 district such as courtyard apartments, while continuing to maintain a consistent scale with the neighboring single and two-unit homes. The intent of this district is to offer a wider range of housing choices, including affordable housing options, in walkable neighborhoods close to transportation and to direct such housing to support the existing character of the neighborhood.

**Multi-Unit Residential District** – The proposed Multi-Unit Residential District represents the large scale multi-family developments built in Newton in the latter half of the last century and the early 2000s. Ranging from large townhouse-style developments on private drives to residential towers, this district

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is characterized by the large scale of the buildings, large landscaped areas, and the general isolation of these parcels from the surrounding built character. The intent of this district is to recognize these existing developments in the zoning ordinance and allow the opportunity for the City Council to approve future examples of this development type by rezoning parcels into this district.

## **Part II: Building Types**

As described in the building types introductory paragraph in Article 1, building types allow the City to set dimensional controls that vary by type of building within the same zoning district. This ability is essential in a community like Newton where individual neighborhoods express a diversity of buildings, reflective of development before the institution of zoning ordinances. Without a building types approach, the City has two options: setting dimensional standards that leave many, if not most, buildings non-conforming, or setting very broad standards that encompass the range of existing buildings and allow a wide range of building scales. Newton's current ordinance does both with the result that most of the buildings built pre-zoning are non-conforming while large homes, out of scale with the existing neighborhoods, are allowed by right.

House Types A, B, C – There are three proposed 1-2 unit house building types, with the number of units allowed in the building depending on the zoning district. These building types are primarily differentiated by height, with House A representing single story homes (ex. = ranches and capes), House B representing two-story homes, the predominant house type in Newton, and House C representing a nearly three-story home (ex. = classic Victorians). Generally, a House A type is trading height for width and as such, these homes can be a little wider, within the allowed side setbacks. House types B and C are generally narrower. These distinctions are there to limit the so-called “monster homes,” whose scale is driven by the building being both tall and wide, and therefore out of character with the neighborhood.

The proposed building types group 1 and 2 unit buildings into the same building type in order to address the significant challenge of very large, out of scale two-unit buildings in Newton's current MR districts. For these buildings to be in scale, they must present as the same scale as the existing single and two-unit buildings that make up the existing neighborhood.

Missing Middle Housing Types – The next scale of building type proposed for the Zoning Ordinance are the “Missing Middle” housing types, which allow more units within a building, but are at a scale compatible with otherwise single and two-unit neighborhoods. These building types would include the traditional triple decker, the cottage court, the multi-unit mansion, courtyard apartments, and the live-work. As proposed, these building types would be allowed in the Neighborhood 5 and 6 districts in some combination and with appropriate restrictions and standards.

Large Residential Housing Developments – The final scale of residential building type is the large multi-unit building or large secluded condominium campus as exemplified by such projects as the Avalon developments, Nahanton Woods, Hancock Estates, the Towers at Chestnut Hill and others. As proposed, new developments of this scale would require a rezoning into the Multi-Unit Residential District and would be subject to minimum lot size requirements among other standards.

Civic and Institutional Buildings – The last building type available for this district will be for civic-type buildings like religious institutions, which are allowed in all districts, subject to standards, and governed by the “Dover Amendment.”

### **Part III: Building Components**

Much as the current ordinance provides standards for adding dormers to a building, this section will provide standards for a range of add-on building components, including dormers, porches, and additions. As with the existing dormer rules, these rules would be intended to ensure that these types of components appropriately conform to the character of the City’s neighborhoods and are appropriately placed and scaled.

Building components are particularly important for consideration of additions to a building. Regulations should ensure that additions are done in a predictable way, both for neighbors and the homeowner, and in ways that respect existing character.

Roofs are a particular kind of building component that have significant meaning for both neighborhood character and the overall scale and massing of new homes. Roof standards will direct the appropriate roof slopes, helping to address the increasingly flat roofs that builders have been constructing in order to get around FAR and height restrictions.

### **Part IV: Accessory Buildings**

The draft ordinance will include standards for accessory buildings and present those standards in a similar format as the building types described above. With this approach, different types of accessory building can have standards appropriate to that type. The proposed accessory building types will include sheds, garages, carriage houses, and back cottage.

### **Part V: Other Residential District Provisions**

Rear Lots – While rear lot developments do create an opportunity to introduce additional housing into a neighborhood, they also create a range of urban design challenges as private backyards become intermingled with the public front yard of the rear home, additional density is introduced into the neighborhood, and a potential incentive is created to tear-down existing homes. Staff will be presenting additional standards and rules to govern rear lot development including potentially reducing the districts in which they are allowed, increasing lot sizes, implementing additional lot design and building placement requirements, and/or creating other new rules.

Single Unit to Multi-Unit Conversions – Currently allowed in all residential districts, the intent of this section is to allow a property owner to convert a large structure from a single-unit building into a multi-unit building in order to preserve a historic building as no exterior changes are allowed. Effectively, this approach is very similar to the multi-unit mansion building type. The proposed ordinance will retain this provision but modify the standards to be consistent with the multi-unit mansion building type.



Cluster Development – As a largely built out city, the Cluster Development provision is unlikely to be used as there are few parcels of sufficient size. Staff will analyze the viability of this section, determine if there is an alternative set of standards that would make it viable, and propose either keeping or eliminating the section.

#### **Part VI: Allowed Uses**

No significant changes are proposed to the allowed uses in the residential districts. Generally, these remain household living/dwelling units, various forms of group homes and similar, and civic and religious institutions. One addition to consider would be to allow bed & breakfasts (differentiated from short term rentals).

Accessory Uses – Accessory uses also largely remain the same, with updates to the home business accessory use, as described below under Article 6.

### **Article 4. Business, Mixed Use & Manufacturing Districts**

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Article 4 describes the zoning districts associated with the commercial areas of the City. Such areas vary widely, including Newton's traditional village centers, areas comprised of manufacturing and industrial type uses, commercial strips like Four Corners, and office areas like Wells Ave. The scale of these areas also varies widely with a 10-story office building in Newton Corner and small single story commercial clusters in various parts of the City. These districts attempt to strike a balance between increasing commercial vibrancy and tax revenue growth while also being sensitive to the adjacent residential areas. The seven commercial zoning districts are described below.

#### **Part I: Districts**

Village 1 – The proposed Village 1 District represents the smallest of the village centers in Newton, exemplified by such places as Waban and Newton Highlands. This district generally has a maximum height of two stories, perhaps allowing three stories by special permit. Buildings are required to front directly on the sidewalks and feature active storefronts and small commercial spaces to encourage local businesses. The intent is to promote these districts as locally oriented destinations for the immediate neighborhoods.

Village 2 – The proposed Village 2 District represents the middle-sized villages in Newton, exemplified by Newton Centre and West Newton. This district restricts heights to three stories, with four or five allowed by special permit. Buildings are required to front directly on the sidewalk with active storefronts and a mixture of small and medium sized commercial spaces to promote mostly local businesses with some regional or national stores also present. The intent of this district is to feature a vibrant mixed-use village with a significant residential population, primarily local serving office space, and a shopping destination for residents of Newton and neighboring municipalities.

Village 3 – The proposed Village 3 District represents Newton’s highest intensity village, exemplified by Newton Corner, but also potentially applicable to a place like Riverside. Buildings in this district would be encouraged to have a minimum height of four stories and heights greater than five would require a special permit. Buildings are required to front directly on the sidewalk with active storefronts and a mixture of small and medium sized commercial spaces to promote mostly local businesses with some regional or national stores also present. The intent of this district is to feature a vibrant mixed-use village with a significant residential population, office space targeted towards regional or national companies, and a shopping destination for residents of Newton and neighboring municipalities.

General Business District – The proposed general business district would apply to areas of the City with strictly commercial uses, generally favoring retail with some office components. Heights would be limited to two stories. The intent of this district would be to recognize these commercial areas of the City and retain them for commercial uses. Generally serving immediate neighborhood needs, like Four Corners, these areas are not appropriate for a greater intensity of mixed uses.

Regional Business District – The proposed regional business district would apply to those areas of the City that feature large commercial, mostly retail, developments that draw on a regional customer base, primarily based on the east end of Route 9. The intent of this district would be to recognize these commercial areas of the City and retain them mostly for commercial uses, while allowing some residential as appropriate.

Office District – The proposed Office District would apply most prominently to the Wells Avenue office park, though might also be appropriate for other office buildings in different parts of the City. This district would be oriented primarily toward office uses, though allowing for some complementary amenities such as restaurants, gyms, etc. This district would allow heights of up to five stories, with up to eight stories allowed by special permit. The intent of this district is to promote locations strictly for commercial space that could accommodate regional and nationally oriented companies.

Fabrication District – Applied to Newton’s many small manufacturing areas, the proposed Fabrication District is intended to preserve these areas for manufacturing/fabrication, innovation, arts, and a range of light industrial uses not appropriately placed within village centers of neighborhoods. The nature of these districts as small, scattered, and closely adjacent to many residential neighborhoods requires special attention be paid to managing any nuisances or environmental factors that might emanate from uses in these districts. This district would also include accessory uses that compliment allowed uses like food tasting cafes, artist lofts, or similar.

## **Part II: Building Types**

The specific building types for Newton’s commercial districts are still under development, but will include mixed-use buildings at different heights, standard commercial buildings, office buildings, and warehouse/industrial type buildings.

## **Part III: Other Commercial District Provisions**

Planned Multi-Use Business Development (PMBD) – The PMBD provisions were created as an option for the Chestnut Hill Square project but ultimately not used. There are currently no other properties in

the City that could qualify for the use of this provision based on the required zoning of BU4 and the minimum lot size of 10 acres. Generally, all of the requirements of this section are otherwise addressed in the proposed zoning ordinance or through the typical special permit process in Newton. Staff recommend that this section be removed.

#### **Part IV: Allowed Uses**

Newton's current ordinance lists 68 commercial uses ranging from the very specific (ATM, bowling alley) to the general (office, retail sales). The objective of the proposed changes will be to group uses into categories to which the same rules would apply uniformly while only calling out those specific uses within a category for which there would be specific requirements. A handful of new uses will be added, such as:

**Co-Working.** A commercial or non-profit organization providing multiple individuals and small firms access to workplace facilities, including but not limited to, creative studios, office suites, for-rent 'hot-desks', dedicated workstations, conference rooms, meeting rooms, event space, resource libraries, and business or administrative support services.

**Craftsman/Artisan Retail.** A retail use with an associated production/fabrication space. Goods produced in this space must be hand-made and available for sale in the establishment. Examples might include a candy or chocolate maker, a jewelry maker, a toy maker, etc.

### **Article 5. Development Standards**

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Article 5 includes standards for various aspects of development generally applicable to all uses and building types. These include parking and transportation standards, signage requirements, stormwater management, and inclusionary zoning among others.

#### **Part I: Transportation & Parking**

Draft purpose statements for the section on transportation and parking are provided below. Purpose - The intent of these provisions is that any use of land be designed and operated to:

- A. Ensure safe travel for all moving along public ways and in and out of private property;
- B. Encourage the use of public transportation, walking, and bicycling;
- C. Decrease vehicular air and water pollutant emissions, conserve energy resources, and reduce ambient noise levels by reducing vehicular trips, total vehicle miles traveled, and traffic congestion within the city;
- D. Reduce the demand for parking facilities and increase the capacity and efficiency of existing transportation infrastructure;
- E. Protect the use of adjacent property from nuisance caused by noise, fumes, and glare of headlights;
- F. Enhance and protect the visual quality of the city;

Bicycle Parking – The proposed bike parking section will expand on the existing bike parking requirement. Rather than the number of stalls required being tied to a percent of the size of the vehicle parking lot, bike parking requirements will have their own standard by land use and district. The proposed section will also include further design requirements, including separate standards for retail and other visitor oriented places and requirements in residential developments where indoor bike parking facilities for longer term bike parking make sense.

Automobile Parking – Setting parking standards in a zoning ordinance can be a challenging issue. Too small of a requirement and there is a perception that there will be insufficient parking while too high of a standard induces greater volumes of automobile traffic. Parking is also expensive to build and maintain and takes away valuable space that otherwise could be devoted to taxable buildings. Finally, parking lots themselves are detrimental to environmental health, particularly that of nearby water bodies. Modern best practices in zoning recommend setting parking maximums and removing required parking minimums from walkable mixed-use areas, instead relying on the management of on-street and public parking resources and shared parking programs in conjunction with expanded transportation options for walking, biking, and transit.

The draft zoning ordinance will reflect these best practices with reduced parking requirements, no parking requirements for ground floor uses in village center districts, and maximum parking requirements. Similarly, the proposed draft will not include a parking requirement for single and two-unit homes and will propose reducing the parking requirement for residential units in multi-family developments to one parking space per unit with a maximum of two spaces per unit. It is understood that these proposals intersect with other city policy areas around on-street parking management and transportation services.

An important strategy for reducing the negative economic and environmental impacts of parking lots is to allow property owners to share their parking. Shared parking allows for the most efficient use of the resource through the management decisions of the parking owners.

Off-street Loading - Off-street loading requirements largely will stay, though some consideration needs to be given to their universal applicability citywide. There are some places in the City, such as in village centers, where these requirements create a barrier to businesses and are better addressed through on-street loading zones and priority delivery hours outside of commuting peaks.

Transportation Demand Management – Transportation Demand Management (TDM) is a set of measures used to promote the use of alternatives to single occupancy vehicles and thereby reduce the traffic associated with development. All new development will be required to present a TDM plan and report their compliance with that plan on an annual basis. Some standard TDM measures include:

- Participation in the appropriate transportation management association (128 Business Council for properties south of Commonwealth Ave or the Watertown Transportation Management Association for properties north of Commonwealth Ave)
- Decoupling parking and rents – i.e. charging separately for rent and parking or separately selling parking and condo units. This is anticipated to apply both to residential and commercial uses.
- Subsidized transit passes for tenants in properties within ½ mile of Green Line, Commuter Rail, or Express Bus services
- Transportation options education program for new employees or residents

- Provision of secure indoor bike parking, showers, and locker rooms
- Commitment to assist the City in implementing neighborhood traffic mitigation plans, investment in sidewalks, lighting, bike network, traffic calming, etc.

All projects with transportation demand management plans will be required to set a peak hour mode-split target and track employee/resident commute mode-split, trip generation, and parking utilization periodically and report this to the City along with reports on the efficacy of transportation demand management measures utilized at the premises in that period. This section will also outline the process by which modifications can be made to a TDM plan if it is not proving effective in reaching the mode-split target.

## **Part II: Signs**

The sign regulations section of the ordinance will largely remain the same, with only two issues to address, described below. Sign regulations are intended to reduce visual clutter and ensure the visual quality of the City, particularly in its commercial areas where the proliferation of oversized, highly varied and otherwise “loud” signs would have a detrimental effect. As the purpose of a sign is generally to draw attention to one’s business, lack of regulation or a common standard might otherwise lead to an arms race environment of larger and flashier signs degrading the environment for all. Signs are also necessary and represent protected free speech.

The section will continue to include definitions and illustrations of the regulated types of signs, include rules governing all signs, specify the size of signs allowed based on use, and identify the sign review process with some signs allowed by-right and some requiring a special permit. Signage related special permits could be of a type appropriate for the Planning Board rather than the City Council, with clear guidance provided by the Council through the Zoning Ordinance.

The first issue to be addressed is a relatively recent Supreme Court ruling (*Reed v. Town of Gilbert*) essentially directing municipalities engaged in regulating signs to ensure that sign regulations do not infringe upon protected free speech. The basic rule arising from this decision is that sign regulations must be content neutral; that regulation can govern size, lighting, location and similar aspects of the physical sign, but cannot be differentiated based on the content of the sign. Newton’s sign rules include numerous examples of content-based distinctions. The temporary signs section has the most examples of such rules, with different rules governing elections signs and real estate signs, for example. As the only difference in these types of signs is the content, these rules are clearly impermissible under the Supreme Court ruling.

Staff will review the sign section to carefully remove content-based rules while preserving the current intent of these sections to the greatest extent possible. The greatest challenge will be in the rules for temporary signs, which will necessarily only include rules governing the physical characteristics, location and duration of placement of these types of signs. The other challenge will be around off-premise signs as, to determine that a sign is off-premise, one must make reference to the sign’s content. Planning will work with Law staff to find the best possible solution to preserve the intent of these rules.

The second proposed change is to define “comprehensive sign packages”, which are sign design standards created by commercial property owners to govern the various signs on different storefronts

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or businesses on a property. In this ordinance, staff is proposing that review and approval of these sign packages can replace review and approval of individual signs that are consistent with the sign package. Comprehensive sign packages are seen as a valuable clutter-management step because they require multi-tenant property owners to plan ahead and relate their signs to the building's architecture – giving space to both the first and last tenant. Right now, comprehensive sign packages are common special permit requests; this is an area recommended for opening more by-right options and for remaining special permits to be moved to the Planning Board.

### **Part III: Stormwater Management**

Draft purpose statements for the section on transportation and parking are provided below.

Purpose - The intent of these provisions is that any use of land be designed and operated to:

- A. Contribute to the protection and restoration of Newton's waterways;
- B. Reduce the burden on the City's stormwater drainage infrastructure;
- C. Mitigate the potential for flooding of neighboring properties;
- D. Encourage sustainable and environmentally friendly development efforts; and
- E. Help to address requirements under the City's National Pollutant Discharge System permit;

There are three closely inter-related issues that fall within the overall topic of stormwater management, stormwater run-off, erosion and sediment control, and groundwater. This section of the ordinance will attempt to address the first and last of these while the DPW is working on a separate ordinance addressing erosion and sediment control, which is associated with construction site management.

The fundamental tool of regulation under the proposed ordinance will be a stormwater management plan, which must be submitted by any property owner triggering the stormwater requirements and must be approved by the Engineering Division of the DPW. The proposed threshold where these rules would apply is at 400 square feet of additional impervious area, aggregate across multiple lots or across time within five years. For projects adding between 400 and 1000 square feet of impervious area, the stormwater management plan is simple, something easily completed by a homeowner, and requiring only a commitment to install one or more of the following best practices on their property:

1. Gutter downspouts leading to vegetated areas, underground dry wells or stone infiltration trenches
2. Native plantings and xeriscaping
3. Rain barrels, cisterns and similar
4. Permeable pavers/surfaces for walkways, patios, etc.
5. Routing runoff from paved areas to vegetated areas

Larger impervious area projects, those over 1,000 square feet, will require a more elaborate stormwater management plan that includes measurements of potential stormwater volume and plans to manage the quantity of stormwater run-off generated and to address water quality issues with that water by essentially separating out pollutants carried by that water before it enters Newton's storm drain system or the City's streams. These plans will include on-going management responsibilities as well as reporting requirements so that the City can track compliance. For this larger category of project on

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redevelopment sites, the management plan will require treatment not only of the new impervious area, but also require a reduction in the stormwater generated by existing impervious areas.

Any change to slopes on a property over a to be identified threshold will also trigger a requirement to provide a stormwater management plan that demonstrates no net increase in run-off to neighboring properties or the City storm drain system.

These rules will also offer an alternative compliance pathway through off-site improvements where it is demonstrated to the City engineer that on-site compliance is not possible due to site conditions.

Groundwater represents a significant issue in parts of Newton. Staff is investigating whether there is a zoning-type regulation that will help to address this issue in Newton.

### Green Design

Purpose - The purposes of this section are to:

- A. Reduce the use of energy, water, and other natural resources in Newton's building stock;
- B. Increase the use of renewable energy sources for electricity, transportation and heat;
- C. Increase the use of electricity for transportation;
- D. Increase the number of energy efficient buildings
- E. Minimize the environmental impacts of construction materials and methods, including waste reduction

The current ordinance effectively requires green design attributes. These attributes consist of construction techniques that reduce the natural resources expended in constructing and/or operating a building, for any building over 20,000 square feet as a special permit criteria. In the proposed ordinance, this topic will be taken up in the main body of the ordinance in a two-part Green Design section. The first part will identify a list of building or site design green attributes that have commonly been required of large projects in the City through the special permit process and make them required through the ordinance. These requirements include such things as a percentage of parking spaces to be equipped with electric vehicle charging stations and a percentage of roof area to have solar panels or be solar ready. The second part proposed will be an incentive for projects achieving a 'Gold' ranking under the Leadership in Energy and Environmental Design program. The incentive would likely be something like a 10% increase in allowed buildable area.

### Fences & Retaining Walls

Fences will be a reference to the City Ordinances.

Staff is investigating retaining wall rules that will more robustly address the concerns raised by these structures. As noted above, installation of a retaining wall will trigger stormwater management requirements.

### Landscaping

This section will remain reserved for a future zoning ordinance amendment.

### Great Ponds

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This section requires a special permit for any development within 300 feet of a Great Pond (water body over 10 acres in size) in a business district. The only Great Pond in Newton with an adjacent business district is Hammond Pond and this requirement seems to be targeted towards The Street at Chestnut Hill. This requirement is aimed at preserving public views and access to the pond. As these objectives seem equally applicable to Newton's other Great Pond, Crystal Lake, staff proposes that this rule be generally applicable to development adjacent to both Great Ponds.

#### Noise

Reference to City Ordinances.

#### Outdoor Lighting

Reference to City Ordinances.

#### Tree Protection

Reference to City Ordinances.

#### Floodplain, Watershed Protection

Reference to City Ordinances.

#### Inclusionary Zoning

Staff and the Zoning and Planning Committee are currently working on an amendment/rewrite of this section. When that work is complete, it will be merged into the draft ordinance.

## **Article 6. Use Regulations**

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Article 6 provides rules and regulations specific to the different land uses allowed in the Zoning Ordinance. A detailed review of every section of this Article is beyond the scope of this outline, and thus only certain sections are highlighted below.

#### Use Determination

This section provides guidance to the Commissioner of ISD on how to determine the use a particular applicant is proposing, and therefore what rules apply. This section was added in the 2015 amendments and is proposed to stay.

#### Use Standards and Rules

The majority of this article is made up of the different uses allowed through the ordinance and their associated definitions and rules. Staff will be conducting a detailed review of this article, adding in the missing definitions and reviewing the existing rules to propose deletions, modifications, and retentions. There will be no proposed changes to the accessory apartment rules nor to adult uses and similar. The Marijuana related uses will be addressed separately through ordinance amendments the Zoning and Planning Committee will be considering over this summer and fall in response to the State law. Similarly, the Law Department is considering changes to the wireless rules based on new federal requirements.



### Home Business Rules

A home business is a commercial occupation carried on by a resident of a dwelling unit where the occupation is secondary to the use of the dwelling unit for residential purposes and where the “quiet expectations” of neighbors take precedence over work needs of the occupation. Such commercial enterprises include a professional office or artist studios, but not uses that generate large numbers of visitors, noise or other nuisances that would potentially disrupt the neighborhood. Restaurants, retail, and auto repair are all not allowed.

The proposed standards are set with an objective that the home business should be effectively invisible. Most of the existing standards remain the same, with only a few changes intended to modernize the ordinance such as the removal of the limit on no more than one home business and the addition of rules governing deliveries. Parking is restricted to no more than one space as, by its nature, parking lots are not invisible and create a disruption to the neighborhood. Employment is restricted to no more than one and customers limited to no more than three at any given time. Staff recommends removing the special permit requirement to allow home businesses in multi-family buildings and accessory buildings as the standards set governing this use should adequately address any issues in those types of locations. At the same time, staff recommends removing the ability to exceed the limits set by the ordinance by special permit with preference given that if one’s business grows to the point of being potentially disruptive to the neighborhood, it should move to a village or other commercial district. Special permits stay with the property, creating a long-term right that may be inappropriate for a generally transient accessory use.

## **Article 7. Administration**

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Article 7 describes the processes by which the Zoning Ordinance is administered, covering such issues as how non-conforming buildings or land uses get treated and the process by which discretionary permits, such as special permits and variances, are decided. Some significant parts of this Article are determined by State law and therefore will remain the same.

### Purpose

The fundamental objective of the administrative section of the ordinance is to ensure that decisions are made publicly, with a clear record as to the basis of a given decision and with opportunity for the community’s voice to be heard. Decisions must also be made efficiently, with a recognition that long processes impose high costs on both applicants and on the executive function of the City.

### Development Review Bodies

No changes proposed here but definitions and roles must be described for each one.

### Amendments

This section addresses the process by which amendments to the Zoning Ordinance can be made. This process is largely defined by State law. Currently this section directs all amendments to the Zoning and Planning Committee and should be updated to reflect the role of the Land Use Committee.

### Special Permits

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The current Zoning Ordinance directs all special permits to the same process through the City Council. The proposed Zoning Ordinance identifies tiers of special permit review, with smaller projects proposed to be directed to the Planning Board, reserving only larger projects for the City Council. While the process is largely the same for either body in the basic terms of how something is processed, the objective is to begin to address some of the challenges created by the City's legislative body engaging in the executive/quasi-judicial task of administering the special permit review process. There is nothing inherently wrong with the Council filling this role, it just must be done with consciousness of the differences between this role and the normal legislative role of the Council.

Special permits represent a land right that is granted by the Zoning Ordinance to property owners, subject to review for potential impacts on the community and necessary mitigations of those impacts. Special permits implement the legislatively adopted Zoning Ordinance (hence executive) and are also adjudicating rights relative to local, state, and federal law and court cases. The permit is discretionary, but is not discretionary in the same manner that the decision as to whether or not to enact a new ordinance is discretionary – the decision as to whether the type of development should be allowed in an area of the City has already been made with the adoption of the Zoning Ordinance; the special permit review task is about the specifics of a proposed project.

Most large projects in Newton require both a rezoning and a special permit, and therefore require a legislative process to change the zoning as well as the executive/adjudicative process of the special permit. Combining these into one process makes sense for the sake of efficiency and to that end, the Council should remain a special permit granting authority. For smaller projects, to ease the burden on the City Council, the special permit granting authority role could be delegated to the Planning Board, which should be composed of experts who can efficiently advance implementation of the Council's adopted ordinances and policies. The proposed zoning ordinance will include definition of what constitutes a large project, as adopted by the City Council.

The proposed ordinance will include more special permit findings and decision-making criteria that relate more closely to the different types of special permit, providing more guidance to the granting authority. There will also be a proposed section providing rules for special permit amendments and consistency determinations related to existing special permit requirements.

#### Site Plan (and Design) Review

The proposed ordinance will create a site plan review process that is administrative in character, with two potential tiers of review. The first will be for strictly staff-based administrative review as is currently used for educational and religious facilities. The second form of site plan review will be more of a design review process, will engage the Urban Design Commission (UDC), and will include a public meeting with the UDC and opportunity for public comment.

Campus Master Plan Review – Staff is investigating the potential for the City to utilize a campus master plan review process for the review of colleges, universities, and private secondary schools. The approach is used in Boston and Cambridge and allows for the comprehensive review of a campus master plan rather than the one-off review of individual campus improvements, creating efficiencies for staff and the institutions. As proposed, the Master Plans, and amendments thereto, would be reviewed on a regular basis by the Planning Board in a public hearing. Subsequent projects that conform to the Campus Master Plan would then be reviewable by staff simply for consistency.

### Community Engagement

The proposed ordinance will include recommendations and guidance to property owners on public engagement processes, including recommended number and approaches to conducting public meetings.

### Variances

No changes.

### Appeals

No changes.

### Nonconformities

One overall intent of the zoning redesign process has been to reduce the degree of non-conformity. As the specifics of the ordinance are developed, and the nature and degree of the resulting potential non-conformity are understood, this section will be updated to reflect what rules pertaining to non-conformity remain necessary.

It should be noted that under the current ordinance, owners of non-conforming properties can extend their non-conforming status substantially by means of a special permit. There is no clear upper bound to the amount of relief someone can seek, leaving neighbors with no clear picture of what can happen in their neighborhood. After properties are made conforming, there is still an option for relief from the ordinance, but the pathway is through a variance, which sets a much higher bar for granting the relief.

## **Article 8. Definitions**

Article 8 contains definitions not otherwise provided elsewhere in the ordinance. This section will be reviewed and definitions updated or added as necessary.