



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, June 12, 2017**

Present: Hess-Mahan (Chair), Leary, Albright, Sangiolo, Baker, Kalis, Yates and Danberg

Also Present: Councilors Cote, Auchincloss, Norton, Crossley and Brousal-Glaser

Planning & Development Board: Scott Wolf (Chair), Peter Doeringer, Sonia Parisca and Barney Heath

City Staff: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Rachel Blatt (Long Range Planner), Katy Hax Holmes (Preservation Planner), Deb Youngblood (Commissioner, Health and Human Services), Karyn Dean (Committee Clerk)

### **Referred to Programs & Services and Zoning & Planning Committees**

**#81-17**

#### **Ordinance amendments relative to rDNA technology and research facilities**

THE BIOSAFETY COMMITTEE, COUNCILORS AUCHINCLOSS, HESS-MAHAN, LIPOF, AND SCHWARTZ requesting amendments to Sections 12-21 through 12-30 in order to update guidelines and procedures for the regulation of recombinant DNA technology; and requesting amendments to Section 12-24 and Chapter 30 to remove the requirement that laboratories or research facilities obtain a special permit from the City Council in order to utilize recombinant DNA research or technology.  
[03/27/17 @4:31 PM]

Programs & Services Approved 06/07/12

Planning & Development Board Approved 4-0

**Action:** **Hearing Closed; Zoning & Planning Approved 8-0**

**Note:** Councilor Hess-Mahan opened the public hearing and noted that this item was previously discussed in Zoning & Planning. James Freas, Deputy Director of Planning, explained that the proposal is to update the City's Recombinant DNA ordinance. The Biosafety Committee, Law Department and staff from the Health Department collaborated on the proposed amendments. Carl Cohen and Bill Dietrich, members of the Biosafety Committee are in attendance to answer questions.

A redlined ordinance was provided in the Planning Memo. This public hearing is required to amend Chapter 30 so that the special permit requirement is removed for rDNA uses. Laboratory uses would still be subject to special permit requirements in all Business districts and by-right in the Manufacturing and Mixed Use 1 and 2 districts. The changes in Chapter 12 are not subject to a public hearing requirement. These would include updates to refer to the most current version of the National Institute of Health guidelines, restructure the make-up of the 8 member Biosafety

Committee, and others. Those amendments were approved in the Programs & Services Committee on June 7<sup>th</sup>.

The ordinance provides municipal oversight over rDNA lab activity and has a mechanism that insures coordination between the City and these entities on an ongoing basis to maintain public safety. The ordinance includes requirements for detailed review of proposed facilities by a group of highly skilled and qualified individuals selected by both the Mayor and the City Council. A summary of that review process and the biographies of the members of the Biosafety Committee members were included in the Planning Memo.

A PowerPoint was presented and is attached to this report. The BioReady Community Checklist was in the Planning Memo as well. This is an important aspect of the City's economic development program as Life Sciences has been identified as an important industry area for the N2 Innovation district and the City overall. The Economic Development Committee submitted a letter of support, which is attached. BioReady communities are ranked and Newton is currently at the Bronze Level, Needham is at the Gold Level and Newton should rise to the Gold Level with the zoning ordinance amendments.

The Planning Department recommends approval of the ordinance amendments.

#### Committee Questions/Comments

Since the ordinance requires that the members of the Biosafety Committee have expertise in certain areas, a Councilor asked that the members be identified by which expertise they hold. That listing is attached. The ordinance states that at least one member be a scientist knowledgeable in the field of rDNA research and technology and that the other three represent the fields of public health, occupational health, infectious disease or environmental health and shall preferably include one member of the Newton health advisory council. Please see attached.

Carl Cohen, member of the Biosafety Committee, reminded the Committee that each institution has to have, on-site, an institutional biosafety committee that includes members of their organization as well as two members that Newton's Committee appoints. Any experiment or technique they use has to be reviewed by that on-site Committee as well, so there are two bodies of oversight.

It was asked if anyone could speak to a lab accident in Boston that resulted in the death of a lab worker. Carl Cohen, member of the Biosafety Committee said he was unaware of any accidents. The Chair said that there was an incident at the Harvard Dental School and was not related to rDNA. Beyond that there was not much information provided by police.

A Councilor asked Mr. Cohen to explain what rDNA is, briefly. Mr. Cohen explained that rDNA refers to the ability to take the genetic material of one organism and either clip out a piece or insert a piece of DNA to create a new DNA, then insert that new DNA with its genetic information, back into an organism of choice in order to observe new or different behaviors or characteristics. It

simply refers to the lab techniques involved in modifying the genetic information of microorganisms or animals. It is the single most important tool in modern biology today and is practiced in high schools, universities, medical center, biotechnology companies, pharmaceutical companies and private research institutes all over the world. Without it, it is virtually impossible to do modern biology.

It was asked which levels of labs would be allowed in the City. Mr. Cohen explained that BL1-3 labs would be allowed in the City, but BL3 would be allowed only with a special application and extra scrutiny. BL4 would not be allowed at all in Newton and there are very few in the country. The majority of work that would be done in Newton would be conducted in BL1 and BL2 labs. The BL1 lab would involve organisms that are not generally known to be harmful or cause disease; BL2 would involve organisms or entities that could cause disease, but not too severe and for which there are readily available cures, and even if they could cause disease, they are not easily transmittable in an aerosolic manner; and BL3 labs involve seriously hazardous entities which could make one gravely ill or possibly cause death, but for many of which there are treatments. The BL4 labs involve the most hazardous and are forbidden in Newton and could never be approved. There are currently no BL3 labs in the City.

A Councilor noted that she has worked in a building that conducts rDNA research in Boston and has done so for a very long time. It is very safe work. She noted that Newton is extremely lucky to have so many experts in this field who are willing to serve on the Biosafety Committee.

A Committee member asked if any of the gold communities have special permits for Level 3 labs. Planning staff said they would provide that information. See attached.

#### Public Comment

*Rob Finkel, 6 Stearns Street* said he was Vice Chair of Newton's Economic Development Commission and was in favor of the rDNA ordinance amendments. The EDC has long supported efforts by the City to be more welcoming to the biotech community and attract more biotech companies to relocate to this area. The special permit requirements put the City at a disadvantage. The EDC feels these amendments will position the City to attract companies and increase the community rating from Bronze to Gold and possibly Platinum. This will send a strong message to the biotech community. This is such a strong growth industry in Massachusetts so this will strengthen the economic vitality of Newton and increase the commercial tax base as well. He thanked Mayor Warren, the Biosafety Commission, Barney Heath, James Freas, Councilors Auchincloss, Hess-Mahan, Lipof and Schwartz for their help and leadership on this initiative.

*Janice Bourque, 238 Lincoln Street* said she is Managing Director of Life Sciences at Hercules Capital as well as the former CEO of the Mass Biotechnology Council. Her comments are attached to this report.

*Beth Nicholas, 100 Algonquin Road* said she is the general counsel and vice president of Academic and Workforce Programs at the Massachusetts Life Sciences Center, which is an economic

development engine which works to attract life sciences companies to Massachusetts. Newton has an opportunity to participate in the great economic vitality that is happening in the state. In 2007 there were 7 of the top 20 pharmaceutical companies with a presence in Massachusetts and today there are 18. In 2007 there were 16.1 million gross square feet of lab inventory space and today there are 25.1 million gross square feet which is a 56% increase. Venture capital funding has increased by 75% in the last 10 years; life sciences employment has increased by 30% in the last 10 years. As a resident and as an employee of the Mass Life Sciences Center she supports these amendments. The Biosafety Committee will do a great job protecting the City and there will be a great increase in the commercial tax base to support all the wonderful services in Newton.

*Chuck Tanowitz, 51 Hardy Street* said he is a member of the EDC and Director of the N2 Innovation District. He is in favor of the proposed changes. The N2 is an effort to drive innovation in the commercial districts in parts of Wards 5 and 8. A study was conducted a year ago funded by the federal government to look at key drivers of innovation in the area. The report indicated biotech as a primary opportunity for future growth. Between 2015 and 2020 it is estimated that biotech will show an 8.3% growth rate, which is 4x GDP. The related industries as part of the clustering are pharmaceutical manufacturing and medical equipment and supplies. These are also expected to outpace GDP. This is a tremendous opportunity for growth. Needham is Mass Bio Gold certified so Newton, as their partner in N2 needs to be on par with them. Newton has the right work force with a highly educated population, more than half with advanced degrees many of those in life sciences, but few of those live and work in the City. Instead, we are sending our commercial tax base off to Boston, Cambridge, Lexington and Waltham. Let us keep those jobs in the City. Businesses need to feel they can come here and get up and running quickly. This ordinance speeds up the permitting and eliminates uncertainty. This will help the N2 districts achieve its goals.

*Chris Steele, 254 Elliot Street* said that he served as Chair and Vice Chair of the EDC and he is recalling a meeting in 2009 when the City was just certified at the Bronze level. It was the Planning Director's hope at that time to move on to Silver or Gold in the next few years. Not only have opportunities been missed in biotech, there are also opportunities the City is not even aware of. Because Newton is not on the Bio certified list, the City is not being marketed to an international market of biotechnology decision makers. This conversation has been going on for many years and action needs to be taken as quickly as possible.

*Philip Plottel, 50 Roslyn Road* said he is in favor of the proposal. He has worked as head of real estate for several biotech companies in Cambridge with responsibility for site selection, leasing, construction and operations of research labs including BL2 labs that use rDNA techniques. As a long time EDC commissioner, he has worked to make Newton a more attractive place for life science companies. Creating as of right rDNA use and removing the uncertainty of time required for approval by the City Council, will make Newton a real and credible option for life science research in the Boston area. He urges the Committee to pass this legislation.

Councilor Marc Laredo, Chair of the Land Use Committee sent an email stating his support for these amendments. The Land Use Committee reviews special permits. He did not see a need for a

special permit process so long as the Newton Biosafety Committee is reviewing applications. It will encourage appropriate business development and growth in the City.

Peter Doeringer, member of the Planning Board said he this is genuinely an improvement over the current arrangements from all perspectives. He would like to point out that BL3 category labs are rated by NIH for high individual risk and moderate community risk. Having served as Chair of the RIB at Boston University and being responsible for biology and chemistry lab activities at Boston University, he explained that it is not the kinds of program design, technology, monitoring and safety arrangements that are usually at fault in creating risks, but instead there can be a lot of human error. That kind of risk is hard to identify and anticipate in advance. So when he looks at the current Biosafety Committee in Newton it is heavily weighted with those with industry background and experience. Because there is moderate community risk involved, he hopes the future appointments would give stronger weight to those who come from a strong public and community health background to provide that perspective within the Committee.

Both the Zoning & Planning Committee and the Planning & Development Board voted unanimously to close their public hearings.

The Planning & Development Board moved approval and voted in favor unanimously 4-0.

Councilor Baker moved approval and the Committee voted in favor unanimously 8-0.

The Draft Council Order is attached.

**#136-17      Recommendation to establish a West Newton Historic District**  
NEWTON HISTORICAL COMMISSION submitting a recommendation, pursuant to MGL Chapter 40C, Section 3, that Article III, Historical Provisions, and Division 1, Commissions and Districts, of the City of Newton Ordinances, be amended by establishing a local historic district in West Newton. [04/26/17 @ 9:34 AM]

**Action:      Hearing Continued; Zoning & Planning Held 8-0**

**Note:** Councilor Hess-Mahan opened the public hearing on this item. Presentations were made and public comment was taken. The hearing was held open and the Committee voted to hold the item. The Committee will meet again in September for further discussion. A report will be forthcoming.

**Meeting adjourned.**

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**

City of Newton



Setti D. Warren  
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT

Deborah C. Youngblood, PhD, Commissioner

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Public Health  
Prevent. Promote. Protect.

June 15, 2017

Staffing of Biosafety Committee

In response to city council questions regarding the required expertise on the biosafety committee both with regards to the committee's current membership and the recruitment of potential future members we would like to clarify the requirements of committee member's credentials.

The Recombinant DNA Research newly drafted ordinance states (with regards to committee membership):

Sec. 12- 22 Newton biosafety committee.

- (a) There shall be a Newton biosafety committee (NBC) which shall be comprised of nine members which include the following:

The commissioner of health and human services or his/her designee

Four members appointed by the mayor, at least one of whom is a scientist knowledgeable in the field of rDNA research and technology. The other three shall represent the fields of public health, occupational health, infectious disease or environmental health and shall preferably include one member of the Newton health advisory council.

Four members appointed by the board of aldermen, at least one of whom represent the fields of public health, occupational health, infectious disease **or** environmental health. (emphasis added)

Our current committee includes the following:

Commissioner of HHS

- Deborah Youngblood, PhD

Mayoral appointees

- Ted Marple  
CEO, Blue Sky Biotech, Inc  
Represents the fields of public health and occupational health

City of Newton



Setti D. Warren  
Mayor

## HEALTH AND HUMAN SERVICES DEPARTMENT

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**Public Health**  
Prevent. Promote. Protect.

- Jay Schwartz  
CEO and President, AcuityBio, Inc .  
Knowledgeable in the field of rDNA research and technology and  
Represents the fields of public and environmental health
- Thekla S. Diehl  
Senior Grant Administrator, Partners Health Care  
Represent the fields of public health and environmental health
- Aric Parnes, MD  
Physician at Brigham and Womens and Dana Farber Hospitals  
Also a member of the Health Advisory Council

### Board of Alderman appointees

- Bill Dietrich  
Director, Discovery and Translational Pharmacology, Novartis  
Knowledgeable in the field of rDNA research and technology and  
Represents the fields of public health and environmental health
- Carl M. Cohen  
President, Science Management Associates  
Knowledgeable in the field of rDNA research and technology and  
Represents the fields of public health and environmental health
- Gary du Moulin  
Senior Director Quality, Aseptic Control  
Knowledgeable in the field of rDNA research and technology and  
Represents the fields of public health and environmental health

\*We are recruiting for the one open position



Setti D. Warren  
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Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

**DATE:** June 16, 2017

**TO:** Councilor Ted Hess-Mahan, Chairman  
Members of the Zoning and Planning Committee

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

**RE:** #81-17 – THE BIOSAFETY COMMITTEE, COUNCILORS AUCHINCLOSS, HESS-MAHAN, LIPOF, AND SCHWARTZ requesting amendments to Sections 12-21 through 12-30 in order to update guidelines and procedures for the regulation of recombinant DNA technology; and requesting amendments to Section 12-24 and Chapter 30 to remove the requirement that laboratories or research facilities obtain a special permit from the City Council in order to utilize recombinant DNA research or technology.

**MEETING DATE:** June 19, 2017

**CC:** City Council  
Planning and Development Board  
Donnalyn Kahn, City Solicitor  
Deborah Youngblood, Commissioner of Health & Human Services  
Kathryn Ellis, Director of Economic Development

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The question was raised during the Public Hearing on whether a special permit could be required for laboratory facilities operating at BioLevel 3 and whether any BioReady 'Gold' Communities have such a requirement. Staff was unable to get an answer to this specific question in the time available.

The Planning and Health Departments recommend that the approach offered by the proposed amendments will appropriately address both the City's goals and interests with regard to public safety and economic development. As proposed, the amendments require the Biosafety committee to provide additional review and scrutiny for proposed BioLevel 3 laboratories. The Biosafety committee, which operates under the general oversight of both the City Council and Mayor, has the appropriate expertise to ensure public safety without requiring any additional level of review by the



City Council via a special permit. As is the practice today, the City Council would be relying on the advice and expertise of the BioSafety Committee in any special permit decision, making any such requirement simply another process step without necessarily offering additional review.



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Barney S. Heath  
Director

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## MEMORANDUM

To: Honorable Members of the Newton City Council  
Members of the Zoning and Planning Committee

From: Planning and Development Board

CC: Karyn Dean, Committee Clerk

Date: June 12, 2017

Re: **rDNA Laboratories #81-17 Ordinance Amendments relative to rDNA Technology and Research Facilities**

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### BOARD RECOMMENDATION:

**#81-17** **THE BIOSAFETY COMMITTEE, COUNCILORS AUCHINCLOSS, HESSMAHAN, LIPOF, AND SCHWARTZ** requesting amendments to Sections 12-21 through 12-30 in order to update guidelines and procedures for the regulation of recombinant DNA technology; and requesting amendments to Section 12-24 and Chapter 30 to remove the requirement that laboratories or research facilities obtain a special permit from the City Council in order to utilize recombinant DNA research or technology.

Vote: 4-0-0 Approved,  Opposed,  Abstain .

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

June 19, 2017

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

I. THAT THE REVISED ORDINANCES OF NEWTON, MASSACHUSETTS, 2012, AS AMENDED, BE AND ARE HEREBY FURTHER AMENDED WITH RESPECT TO **ARTICLE III OF CHAPTER 12 RECOMBINANT DNA RESEARCH** AS FOLLOWS:

A. **Delete** in Sec. 12-21 (b) (1) the date “July 1, 1981” and **insert** in place thereof the date “May 7, 1986.”

B. **Delete** Section 12-21 (b) (3) *Guidelines* in its entirety and **insert** in place thereof the following language:

(3) *Guidelines* are defined as:

a) National Institutes of Health Guidelines for Research involving Recombinant DNA Molecules, as published in the Federal Register on May 7, 1986.

b) Any amendments, revisions or substitutions subsequent to the above-referenced guidelines, including, but not limited to:

Notices of actions under NIH Guidelines for Research involving Recombinant DNA Molecules on August 24, 1978. July 29, 1988, October 26, 1988, March 13, 1989, March 1, 1990, September 12, 1990, July 18, 1991, November 21, 1991, January 28, 1992 and April 22, 1992.

c) Such amendments to the documents in subsections a) and b) above which are adopted by the National Institutes of Health and approved by the Commissioner. Amendments not acted upon by the Commissioner within sixty days shall be considered approved. In the event that the NIH shall discontinue or abolish its guidelines, those

guidelines in effect at the time of such discontinuance shall remain in effect in Newton.

- C. **Delete** Section 12-21 (b) (4) in its entirety.
- D. **Delete** the language following the colon in the first sentence of Sec. 12-22 (a) and **insert** in place thereof the following language:

“The commissioner of health and human services or his/her designee;

Four (4) members appointed by the mayor, at least one of whom is a scientist knowledgeable in the field of rDNA research and technology. The other three shall represent the fields of public health, occupational health, infectious disease or environmental health, and shall preferably include one member of the Newton health advisory council.

Four (4) members appointed by the board of aldermen, at least one of whom represents the fields of public health, occupational health, infectious disease or environmental health.

Members appointed by the mayor and the board of aldermen shall serve (3) year terms; provided however, that of the first three members appointed to the committee by the mayor and the board of aldermen, two (2) shall serve for a term of one (1) year, one shall serve for a term of two (2) years, and one shall serve for a term of three (3) years.

- E. **Delete**, in the catchline of Sec. 12-23, the word “biotechnology” and **insert** in place thereof the word “biosafety”.
- F. **Delete**, in the first sentence of Sec. 12-23 (a), the word “biotechnology” and **insert** in its place the word “biosafety”

**AND**

**Insert**, after the words “commissioner of health and human services” where they appear in the second sentence of said Sec. 12-23 (a), the following language:

“or his/her designee”

- G. **Insert**, after the words “upon discovery of” where they appear in the last sentence of Sec. 12-23 (b), the following language: “any incident, accident or significant deviation and/or”.

- H. **Delete** the first two sentences in subsection (b) of Sec. 12-24 in their entirety and **insert** in place thereof the following language:

(b) All institutions requesting such permit from the commissioner of health and human services must first submit the following to the NBC:"

- I. **Delete** the first clause of paragraph (3) of Sec. 12-24 (b) and **insert** in place thereof the following language:

"(3) A listing of all proposed organisms,"

- J. **Delete** paragraph (5) of Sec. 12-24 (b) in its entirety and **insert** in place thereof the following language:

"(5) A description of the training program of safeguards and procedures for personnel using rDNA, and a copy of the training manual;"

- K. **Delete** paragraph (6) of Sec. 12-24 (b) in its entirety and **insert** in place thereof the following language:

"(6) The institution's health monitoring, health surveillance and safety manuals, together with the plan for an appropriate medical surveillance program as determined by the IBC and in accordance with NIH guidelines for all persons engaged in the use of rDNA.

- L. **Insert**, following paragraph (6) of Sec. 12-24 (b), the following new paragraph (7):

"(7) A description of the rodent and insect control programs to be used in the facility."

**AND**

**Renumber** the existing paragraphs (7) and (8) of Sec. 12-24 (b) to paragraphs (8) and (9) respectively.

- M. **Delete** the acronym "NDC" where it appears in Sec. 12-24 (c) and **insert** in place thereof the following acronym: "NBC".

- N. **Delete** the first sentence of subsection (b) of Sec. 12-25 and **insert** in place thereof the following language:

“(b) All institutions must undergo an initial inspection before the permit is granted.”

O. **Delete** subsections (c) and (d) of Sec. 12-25 in their entirety.

P. **Insert**, after the first sentence of Sec. 12-28, the following language:

“An institution shall provide the NBC with thirty days’ notice prior to recombinant DNA use requiring physical containment at the BL3 level.”

Q. **Delete** Sec. 12-29 in its entirety and **insert** in place thereof the following language:

**“12-29. Violations.**

(a) An institution which violates any provision of this article shall be subject to a fine of three hundred dollars (\$300.00) per offense, each day of violation constituting a separate and distinct offense. The commissioner of health and human services shall be empowered to enforce this ordinance.

(b) The commissioner may revoke, suspend, modify or not renew a permit upon determination, after notice and hearing, if one is requested by the permit holder in accordance with the procedures in Sec. 12-26, that the permit holder has failed to comply with this ordinance, the permit conditions or the guidelines.

(c) Notwithstanding the above, the commissioner may, upon a determination that any violation constitutes an immediate threat to the public health or environment, order the immediate closure of an institution without prior notice or hearing. Any institution aggrieved by such action shall appeal the same under the provisions of Sections 12-26 and 12-27.

II. THAT THE REVISED ORDINANCES OF NEWTON, MASSACHUSETTS, 2012, AS AMENDED, BE AND ARE HEREBY FURTHER AMENDED WITH RESPECT TO **CHAPTER 30 ZONING** AS FOLLOWS:

A. **Delete** the comma and words “no recombinant DNA” where they appear after the words “Laboratory and research facility” in the first Laboratory and research facility row in the Industrial Uses portion of the use table in Sec. 4.4.1.

AND

**Delete**, in its entirety, the following row labeled “Laboratory and research facility, recombinant DNA” in the Industrial Uses portion of the use table in Sec. 4.4.1.

- B. **Delete** Sec. 6.5.9 in its entirety and insert in place thereof the following language:

**“6.5.9. Laboratory and Research Facility**

**A. Defined.** Research and development facility, laboratory or research facility with or without recombinant DNA research or technology, as defined in Revised Ordinances Chapter 12, Sections 12-20 *et. seq.*

**B. Standards.** In the business 5 District, the facility is exclusively for research purposes with no manufacturing on the premises.”

- C. **Delete** paragraph F. of Sec. 7.3.2 in its entirety and **insert** in place thereof the following language:

“F. The Newton Biosafety Committee shall serve as an advisory body to the Board of Aldermen with regard to any application for a special permit for a research and development facility.

- D. **Delete** Sec. 7.3.5 in its entirety and **renumber** the following Sec. 7.3.6 to 7.3.5 accordingly.

- E. **Delete** the comma and words “No Recombinant DNA” where they appear after the term “Laboratory and Research Facility” in the L section of Sec. 8.3 Defined Terms.

Approved as to legal form and character:

DONNALYN LYNCH KAHN  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted

EXECUTIVE DEPARTMENT

Approved:

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor