



Zoning & Planning Committee Report

City of Newton In City Council

Monday, September 11, 2017

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

Absent: Councilor Sangiolo

Also Present: Councilors Crossley and Norton

City Staff Present: James Freas (Deputy Director, Planning Dept.), John Lojek (Commissioner, Inspectional Services), Kathryn Ellis (Economic Development Director), Marie Lawlor (Assistant City Solicitor), Rachel Blatt (Long Range Planner), Karyn Dean (Committee Clerk)

Referred to Programs & Services and Zoning & Planning Committees

#276-17

Ordinance amendments to allow food trucks

THE ECONOMIC DEVELOPMENT COMMITTEE, COUNCILORS FULLER, HESS-MAHAN, KALIS, LENNON, LIPOF, NORTON, AND SANGIOLO requesting to amend Chapter 17, Sections 17-46 through 17-50 to allow Food Trucks to locate and operate on public streets in Newton subject to licensing by the Health Department and to location permitting requirements, initially restricted to Wells Avenue; to introduce new rules applicable to all Food Trucks operating in the City; and requesting to amend Chapter 30 to allow Food Trucks in the Public Use District subject to the same restrictions and requirements. [08/24/17 @ 4:17 PM]

Action: Zoning & Planning Held 7-0

Note: Joyce Plotkin, Chair of the Economic Development Commission joined the Committee. She is also on the Steering Committee for N2. N2 sent out members of the Committee to interview CEOs in Newton as to why they are in Newton and what their biggest challenges have been. She interviewed two CEOs in Wells Office Park and heard that the first challenge was transportation, but surprisingly the second was food options. There is now a Wells Avenue Property Owners meeting with the City on a monthly basis and they are looking to update the park. The office park tenants believe food trucks could vitalize the street life there and they are wholeheartedly behind this proposal. The ordinance is written so that it would only apply to Wells Office Park for the first three years. If the pilot program goes well and there is interest, it could become a citywide program following all the same regulations, licensing, inspection and review processes. Mr. Freas reviewed a multitude of other food truck ordinances during this process.

Needham Crossing, which is near the Wells Office Park, has had food trucks for quite some time. Adding food trucks to Wells Office Park would keep Newton competitive. The eleven members that were present at the last Economic Development Commission meeting voted unanimously to

support the proposal. The Newton Needham Chamber of Commerce has also sent a letter of support.

The Zoning & Planning Committee is concerned with the amendments to Chapter 30. Programs & Services will work on the regulations in Chapter 17. Mr. Freas explained that there were three requests this summer for private property owners to put food trucks on their property. Food trucks are not in the zoning ordinance right now so there was a question of interpretation. It was decided that they are not an allowed use so for purposes of clarification it had to be added as an accessory use in the Public Use district. The food trucks cannot go into the parking lots of the property owners at Wells Office Park because it reduces their parking supply, which would then require them to come in for a special permit. There is also an issue of liability.

Current Ordinance

Newton currently regulates food trucks under the regulations governing “hawkers and peddlers”. Most significantly, a food truck under these rules must move every five minutes a minimum of 250 feet unless actively serving customers. Further, these trucks are prohibited from business districts or operating within 1000 feet of schools, the Crystal Lake bathhouse, and the McGrath Pool. Rules similar to these are common in the area and effectively prohibit modern food trucks from operating in Newton. Ice cream trucks and canteen trucks currently operate in Newton under these rules.

Beyond the rules above, Food Trucks operate in the City under a variety of different rules, which the proposed ordinance will largely leave intact. For example, many special event vendors happen to use food trucks, licensed by the Health Department. Similarly, businesses or residents can hire a food truck operator as a caterer for their private event. All existing licensing by the Health Department, as it applies to food trucks, will remain the same.

Proposed Ordinance

The proposed Food Truck Ordinance creates a food truck location permitting program, establishes new rules for food trucks, and for the first time identifies food trucks as a use in the Zoning Ordinance:

Sec 17-46 – Defines food trucks. This definition is based on that used in several communities in the region. In using the term “food establishment”, the definition connects directly to the health code.
Sec. 17-47 – This section confirms that a license from Newton’s Health Department is required in order to operate a food truck in Newton under this program.

Sec 17-48 – This section establishes that the Planning Board approves locations proposed to locate food trucks. As proposed, the Planning Board will conduct an annual public hearing following which the Board would approve the specific food truck locations for that year, with the limitation that they would only be able to consider locations on Wells Avenue for the first three years of the program. The Planning Board would consider whether existing food amenities and safety issues

tied to the specific locations on a given street underserve a location. Only commercial areas would be considered.

Sec 17-49 – This section establishes a food truck location permit program in the Planning Department. The Department would be responsible for approving the food trucks that apply to operate in the locations approved by the Planning Board according to Section 17-48. The application requirements are listed.

Sec 17-50 – This section provides a list of rules for all food trucks meant to address potential nuisance concerns and ensure safe and environmentally sound operation. To those ends, food truck operators are required to manage litter, control noise, limit encroachment into the sidewalk, and use environmentally friendly products and operations where possible.

Chapter 30 – Zoning Ordinance – The purpose of the zoning amendments is to establish food trucks as an allowed accessory use in the Public Use District. Newton’s streets are zoned Public Use. In defining this use and allowing it under these requirements in the Public Use District, the City is clarifying by extension that food trucks are not allowed on private property in other districts outside of special events or catering type situations. All of the requirements outlined above still apply.

Committee Questions/Comments

A Committee member asked about the possibility of on-site restaurants at Wells Office Park instead of food trucks. Mr. Freas noted that there is a new deli in one of the buildings and another has a cafeteria for their tenants. The other buildings do not have the square footage available for an on-site restaurant. Also, there is substantial capital investment necessary to build a restaurant that would be used for perhaps breakfast, but primarily lunches only. More importantly, the property owners and business owners are really interested in stimulating vitality and variety in the park. Food trucks do that by bringing people outside, causing a little excitement, and having people meet each other. Rotating the trucks provides the variety. This is what the property owners want. Employees leave the park for food, which contributes to traffic in and out of the area, but also it affects productivity because they are gone for a longer period of time.

Several Committee members supported the idea and like the concept of piloting the program at Wells Office Park. Expanding consumer choice is beneficial and makes the park a more attractive place to be. A Councilor was pleased with the environmental references in the ordinance and would like to see that apply citywide to brick and mortar restaurants as well.

Currently, the Health Department licenses food trucks for special events such as village days, the Boston Marathon, farmers market, etc. Property owners at Wells Avenue have also hosted employee appreciation days and have food trucks on their own property.

A Councilor was concerned that that food trucks would be allowed in the Public Use district, which includes every public street. He wanted to be sure that they would not be allowed in residential districts. Mr. Freas explained that if this became a citywide program, all the same regulations,

licensing, inspection and review processes would have to be followed to approve the location. Food trucks will not be allowed in residential districts and allowed in commercial areas only.

It was asked why the Planning Board would be authorizing the locations on what seems to be a zoning issue. Mr. Freas said they would be looking at issues of public safety and as an economic development tool. The Economic Development Commission does not have any permitting authority and the Planning Board does. The Board looks across planning topic areas such as land use, development, etc. and will be asked to review the locations annually. The Planning Department would be issuing the individual food truck permits after review. The Councilor was concerned that the Planning Board and the Planning Department are making decisions in areas that they have not routinely done so. He would prefer that this all stay within the zoning ordinance so that the 2/3 majority vote would apply to the location choices.

Councilor Crossley explained that the idea is to have very clear criteria so that administrative decisions can be made for simple things, therefore reducing the burden on the City Council. Mr. Freas agreed that the intent was to create a streamlined and simplified process to pre-approve locations for food trucks, without taking away the opportunity for a public hearing, conducted by the Planning Board. The administrative decisions will be made by the Planning Department to approve the food trucks applying to be in those locations. Needham has been struggling to get food trucks because their process is more cumbersome. Commissioner Lojek, did not think that Inspectional Services was the proper department to deal with this matter as the trucks are not "structures".

Other Committee members agreed that some things have to be done differently so that not every single issue has to come before the City Council. Having another body make some decisions on fairly simple matters makes sense and allows the Zoning & Planning Committee, for example, to spend time on larger matters.

Follow Up

Mr. Freas said the intent was to do the work ahead of time to allow the program to expand after the three year mark, under the assumption it is going to be a successful program. If it is not, then it can be reviewed. Some Committee members felt that the ordinance should be limited to Wells Office Park only for a pilot program and not allow it to apply citywide after three years.

Councilor Baker moved hold and the Committee voted in favor.

Economic Development Strategy

Kathryn Ellis, Economic Development Director joined the Committee. The Draft RFP for the Economic Development Strategy for the City was attached to the agenda. Ms. Ellis explained that the mission is to identify a clear set of guidelines and actions in order to competitively attract businesses into Newton as well as sustain existing businesses.

The elements of the RFP are to increase the commercial tax base; keep existing businesses vital and

sustainable; promote Newton as a center for innovation; and get a fair share of projects coming into the area. The City is commercially committed to a strategy that takes advantage of its assets. Regional approaches will help bring businesses into the City and the RFP will look at other cities best practices, such as Natick and the results of their RFP.

The hope is that the RFP will produce research, analysis, key data points and trends to identify Newton's strengths and weaknesses; develop an agreed upon baseline for the current economic development, assets and liabilities and a shared understanding of the processes, actions and trends to maintain them. There will be a clear set of near- and long-term recommendations to preserve and enhance Newton's competitiveness. The goals are to create a strong economic core, vision for the City, inform the strategic activities of the City's economic development policymakers including the Mayor, the City Council and the EDC and to have a realistic set of ideas for the beneficial use of existing commercial and industrial spaces in the City.

The process will have a 6-9 month timeline. The preferred bidder will have a clear draft of their vision for Newton; suggest descriptions of what type of activity the City should be involved in; identify significant partners who can support economic development activity; provide recommendations to the zoning ordinance and permitting process and how Newton weighs against other municipalities; provide analysis of economic development infrastructure in Newton to include resources available to support new business formation, expansion, retention and relocation; provide an inventory of existing economic assets; provide information on current local marketplace and regional trends; identify a brand for the City; develop strategy for effective use of staff and resources for economic development growth; recommend partners or allied organizations; identify ways to capture economic benefits from existing or potential connections to regional economic growth opportunities in the Boston, Cambridge, Needham area; highlight sustainable practices currently used by Newton businesses; and provide strategy for increasing environmental resiliency.

The criteria the selected candidate should work on would be to look at the wider economic development process for Newton and clear set of guidelines to help the City go forth to key sectors to attract business as well as look at existing business so that no other company leaves the City. Councilor Yates suggested an exit interview process, which is a good idea. Looking at ways to attract talent is one of the biggest objectives for companies moving into the area. Amazon moved into the area with a project for 50K employees across the east coast. This RFP will help the City look at those issues and bring sustainable companies into the area. She will be talking to each business in all the villages to discuss the challenges and how to stay competitive with the Amazon's of the market.

Committee Comments/Questions

It was noted that most of the businesses in the City are retail along with some medical use. Generally, zoning has tried to facilitate commercial uses and some office uses that allow people working here but also to serve the people who live in the City. There is a zoning reform process already underway, he wondered how the consultants zoning recommendations might impact the

City. Ms. Ellis said that the strategy is meant to attract a diversified number of businesses. There is 9% commercial inventory for office space. The Lifetime Center has 200K square feet dedicated to Dana Farber, but the other half is empty; the Nonantum Office Park has about 30K square feet of available space, but they all have the same offering of space for offices but not lab. The City just approved the rDNA ordinance which would open up the question as to why Newton is not attracting life science businesses. There are more patents more thousand people in Newton than in Boston so it should be looked at as a more competitive market for business and not just a bedroom community with fantastic housing and schools. The goal is to provide, housing, schools, transportation and jobs. Instead of clogging up highways, it would be good have more jobs in the City. Strategies for getting smaller businesses into the village centers will also be looked at.

The budget for the Economic Development Strategy is \$125K. This study will help inform the Zoning Redesign project. Ms. Ellis said the Comoyne Report for N2 gave a very good economic value of what the area can do to attract the likes of TripAdvisor. It will look at TIFF grants to see what is swaying companies away from Newton and keep the current businesses happy to stay.

A Committee member felt that the RFP was too broad and should instead look at Strengths, Weaknesses, Opportunities and Threats (SWOT). He felt that some of the money should be held back so the plan can be updated and continue evolving. He also wanted to see a role in building community.

Ms. Ellis said that Milton, Quincy and Norwood have formed an alliance to promote economic development. This is a model being used across the Commonwealth, so this would be something to look at for Newton.

A Councilor said that the residential tax base makes the City stable but it is expensive for residents. Office space tenants and other businesses pick up their own trash, do not use schools and could stabilize the tax base while expenses are going up. There needs to be a strategy to attract them.

A Committee member noted that the City has hired consultants for zoning redesign, housing, transportation, parking, etc. She sees the reports but never sees the implementation. Perhaps a consultant is the way to go on this, but the lack of follow up has been frustrating. She is not convinced at this point. A Councilor said that the City Council takes far too long to go through the process for projects and builders or developers need deep pockets to go through an 18-month or longer process. That is one reason for the lack of implementation. Another Councilor suggested that implementation does not take place because the studies were in done in isolation from those with pragmatic experience. There were resources that were not tapped into, or existing information that was not accessed.

A Councilor would like to hear what would happen to Newton if the suggestions are implemented and what would happen if not. Focusing on what the threats might be would be very important, either way. Ms. Ellis said she has seen companies who have not been able to attract millennial

employees because of lack of amenities or transportation. They do not want to come to the suburbs so there is tremendous traffic on the highways.

Ms. Ellis said the example would be to look at Waltham and Natick, which were perceived as bedroom communities. Waltham has done a tremendous job in bringing biotech from Boston with lower rents. Two Wells Avenue is a beautiful building and she is working on her international contacts to bring tenants here. Does the City look at stable companies looking for a headquarters and driving up the level of talent, or companies looking to hire 20-somethings who cannot afford to live in the City?

A Councilor reported that Wegman's generates \$100M a year in gross revenue and while that was an opportunity for economic stimulation, it also may have made it harder for other businesses to operate successfully. There needs to be sensitivity to the impacts of one business on others.

Enterprise zones are used in the UK where the whole process is seamless for companies that need to set up quickly, such as tech businesses.

A survey has been sent out to some Newton residents to see if those who work at home would be encouraged to work in a Newton Innovation Center Environment. Perhaps each village could benefit from co-working space. The NIC has 65 companies working out of there now and it is a testimonial to its success. Otherwise, those companies would have unlikely come to Newton.

A Councilor noted that there seems to be a lot of inventory and assessment in the RFP. She realized the needs assessment involves many facets but she knows that things do take a long time in government. She agreed that there are many reports and strategies and analyses that have been undertaken that do not get implemented or coordinated. She would like to see maps and visual representations of the work. The way to invite people in is to show them exactly where things should or should not be. Ms. Ellis stated that they will be asking for the proposal to be very visually oriented so that people can see how Newton can look. The Councilor suggested that statement be clearly added to the RFP.

A Councilor said that Charles River Mill district was a regional initiative. Ms. Ellis responded that they are looking at how a shuttle bus from Watertown Square can service that area, so that is a cross border initiative. The Councilor said that Waltham and Needham have had significant development that could have logically been on Newton's side. He also asked that the Main Street's Program be incorporated into the Economic Development Strategy. They have been very successful in other communities.

It was asked about Master Planning and how this strategy might fit in. Mr. Freas reminded the Committee that there is no Master Plan for the City. These studies do all build on each other and each new study starts with a review of all the existing documents, analyses and studies to determine what applies, or not, going forward. Housing and Transportation strategies along with the Comprehensive Plan are all consulted.

The Committee thanked Ms. Ellis for the update.

#140-14 Zoning amendment for lodging house ordinance

ALD. CROSSLEY AND HESS-MAHAN requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to include a "lodging house" ordinance to promulgate rules requiring annual fire, safety and health inspections and licensing of buildings providing single room occupancy and/or congregate living arrangements.

Action: Zoning & Planning Held 7-0

Note: Rachel Blatt, Long Range Planner reminded the Committee that this is the third conversation of this item, with the last being held in June. There is now a draft ordinance to consider which was provided in the Planning Memo. There are a small number of changes to the Zoning Ordinance and a much larger section in Chapter 17 for licensing. The item below, #140-14(2) must be referred to Programs & Services, Public Safety & Transportation and Finance Committees due to the several departments that will be involved in licensing and fees involved.

Lodging houses generally come to the attention of City officials when there are catastrophic or potentially catastrophic life safety concerns. The proposed ordinance has been developed jointly with the Inspectional Services, Health and Human Services, Fire and Police Departments to conduct annual safety inspections. By statute, lodging houses must be licensed by the Licensing Board, and the Board has indicated they would like clear standards for them to implement. Any new Lodging House requires a special permit so it will have already been vetted through that process before going in front of the Licensing Board.

In the zoning ordinance, the language will be changed from "Boarding house" to "Lodging house" as that has become the more modern term for such establishments. The definitions will be standardized. There will be also be standards set by which all Lodging Houses must operate, which include licensing and parking standards. The parking standards will encourage these establishments to exist in areas close to transit. It is an incentive for a property owner because the parking requirements can be waived for a Lodging House through the special permit process. A Councilor noted that some neighborhoods with little parking will petition Traffic Council to allow parking and those petitions are often granted. It is something to consider. Ms. Blatt said they will be working closely with those in Public Works and the Parking Division on this.

The license follows the operator and the special permit follows the use of the property. Once the special permit is granted to the site, it remains valid in perpetuity; the license, however, remains valid for one year and must be renewed. If there are complaints about the operator or the agent in that year, the license can be pulled and further denied. A new operator would need to apply for a license and there is a requirement for a resident supervisor.

Committee Comments/Questions

A Councilor explained that there have been some problems around Boston College with many students living in a house and being disruptive to the neighborhood fabric. He wanted to be sure

the ordinance would not contribute to that problem in any way. Ms. Blatt said Lodging houses will not be allowed in SR1, SR2 and SR3 so they will continue to be illegal around Boston College. Commissioner Lojek noted that Lodging Houses are currently allowed in the City with a special permit in Multi Residence zones. The problem is there are currently no regulations for Lodging Houses and that is what this ordinance will provide. It is difficult to enforce or correct any bad behavior when there are no regulations to do so. Once the establishment is licensed, the proper City department is allowed to go on the property to enforce the regulations.

Commissioner Lojek speculated that there will be very few, new Lodging Houses. The price of property is extremely high in Newton and making that sort of investment to rent out rooms does not make financial sense. The ordinance is mostly tailored to capture the establishments that exist and regulate them. Ms. Blatt said in Brookline, the Pine Street Inn opened two lodging houses on Beacon Street, so there it is likely than any new entrants to the market will be run by non-profit organizations.

Ms. Lawlor noted that there is a state enabling statute in Chapter 140 which gives certain standards and allows municipalities to regulate lodging houses for safety purposes. There is only part of the statute that the municipality must accept and that is for limited cooking facilities. This item has been docketed and will be scheduled. Efficiency Single Room Occupancy units (ESRO) allow limited cooking facilities in the individual units. If a Lodging House contains an ESRO, that room is considered a full unit and therefore inclusionary zoning would apply.

In a Lodging House, occupants are renting a bedroom and generally do not know each other; an Association of Persons shares a common dwelling and the occupants usually know each other and/or share a common interest such as in a fraternity.

Ms. Blatt said the determination of whether a lodging house is in an appropriate location is during the special permit process. If the permit is granted, the Licensing Board then cannot deny a license based on that consideration. If, after the fact, there becomes a specific issue that is consistently negatively impacting the neighborhood, that can be reviewed by the Licensing Board and could be cause for the loss of a license. If there is no license, the house cannot operate and tenants would have to leave. The process would start with a warning and fines before a revocation would happen. This is where the resident supervisor becomes a vital piece of the ordinance. The resident supervisor's phone number is given to the Police, Fire, ISD and Health Department and they are required to respond to an emergency within an hour, and other issues within 24 hours. They need to be certified after taking an interdepartmental training course, and licensed. The training takes place once a year, and a preliminary training would occur if that training session has already taken place. There was a suggestion that the City could partner with Brookline on the training sessions.

It was explained that existing Lodging Houses will be grandfathered in terms of use, but will be subject to all the proposed licensing procedures. Some existing houses may not choose to move forward under the licensing requirements. If updates are necessary there may be financial hardship though there could be some relief through preservation funds.

It was asked what the minimum size of a room could be in a lodging house. Commissioner Lojek said 80 square feet is the minimum, which is similar to a dorm room. When asked, he stated that students could not be prohibited as residents.

The Committee and Councilors present thanked Ms. Blatt and the Planning Team for their excellent work on this ordinance.

The item will be scheduled for a public hearing.

#140-14(2) Amend ordinances to add licensing requirements and criteria for lodging houses
ZONING & PLANNING COMMITTEE requesting to amend Chapter 17, City of Newton Ordinances, to establish licensing requirements and criteria for lodging houses.

Action: Zoning & Planning Held 7-0

Note: See note above. As noted in the discussion, this item needs to be referred to Programs & Services, Public Safety & Transportation and Finance Committees.

The Committee voted to hold this item.

Respectfully Submitted,

Ted Hess-Mahan, Chair