

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, JANUARY 14, 2013

7:45 PM
Room 202

ITEMS SCHEDULED FOR DISCUSSION:

Re-appointment by His Honor the Mayor

#6-13 JACK LEADER, 613 California Street, Newton, re-appointed as a member of THE ECONOMIC DEVELOPMENT COMMISSION for a term to expire November 7, 2015 (60 days 03/07/13) [12/13/12 @ 10:36 AM]

Re-appointment by His Honor the Mayor

#405-12 WILLIAM McLAUGHLIN, 117 Hammond Street, Chestnut Hill, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire November 7, 2015 (60 days 02/01/13) [11/19/12 @ 9:51 AM]

REFERRED TO PUB.FAC, ZONING&PLANNING, PROG & SERV COMMITTEES

#316-12 DEPARTMENT HEADS HAVENS, ZALEZNIK, LOJEK requesting amendments to **Sec. 26-30. Licenses for cafe furniture on sidewalks.** to streamline the procedure allowing businesses to place café furniture on public sidewalks. [09/24/12 @3:17 PM]

The Committee will also be taking up the following topics for discussion purposes only:

- Discussion regarding Village Vitality
- Update on Zoning Reform Phase I
- Discussion with the Commissioner of Inspectional Services regarding development

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Trisha Guditz, 617-796-1156, via email at TGuditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

Re-appointment by His Honor the Mayor

#332-12 DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of THE CONSERVATION COMMISSION for a term to expire October 25, 2015. (60 days 01/04/13) [10/25/12 @ 10:51AM]

#406-12 ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]

#328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#322-12 HIS HONOR THE MAYOR submitting the FY14-FY18 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter. [10/09/12 @ 2:38 PM]

#308-12 ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @ 3:59 PM]

#282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*. [09-09-12]

REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES

#273-12 ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer. [09/10/12 @ 1:17 PM]

#260-12 ALD. YATES proposing amendments to Sec. 30-19 to increase the vitality of village centers without adverse impacts on the residential neighborhoods around them. [08-17-12 @ 1:01 PM]

#220-12 RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a) be clarified with respect to "lot width," "lot area," or "lot frontage."

- #219-12 RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”
- #218-12 RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.
- #217-12 RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.
- #216-12 RECODIFICATION COMMITTEE recommending that the definition of “*Space, usable open*” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.
- #215-12 ALD. YATES proposing a RESOLUTION requesting that the Planning Department and the Economic Development Commission develop a Main Streets Program following the model of the National Trust for Historic Preservation to revitalize the Newtonville and Newton Centre business districts.
[07-17-12 @2:55PM]
- #214-12 ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.
[07-09-12]
- #162-12 THE ECONOMIC DEVELOPMENT COMMISSION requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen.
[05-17-12 @ 4:18 PM]
- #64-12 ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances Sec 30-24(f)(8)b) to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities.
[03-14-12 @8:54AM]
- #48-12 ALD. ALBRIGHT requesting a discussion with the Executive Office and the Planning Department on the creation of a housing trust. [02/10/2012 @ 9:13AM]

#25-12 TERRENCE P. MORRIS, G. MICHAEL PEIRCE, JASON ROSENBERG, JOHN LOJEK proposing a zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word “*subject*” before the word “*lot*”, the word “*and*” before the word “*such*” and the word “*adjoining*” after the word “*such*” so that the paragraph reads as follows:
(b) if the subject lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the subject lot and such adjoining lot had on it a single-family or two-family dwelling. [01/30/2012 @ 3:14PM]

#11-12 ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

#152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]

#153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05- 10-11 @3:19 PM]

#153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]

REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTES

#102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]
FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012

REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES

- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]
FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012
- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]
- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

Respectfully Submitted,

Marcia Johnson, Chairman

JACK M. LEADER

OBJECTIVE To be re-appointed to the Economic Development Commission - City of Newton.

To continue to service my clients' financial and insurance needs, providing expert advice, counsel and cost-efficient programs and services.

PROFESSIONAL ACHIEVEMENTS

MEMBER, NEWTON NEEDHAM CHAMBER OF COMMERCE 2010 to Present

ECONOMIC DEVELOPMENT COMMISSION 2004-PRESENT

Chair of Commission in 2007 and Vice Chair in 2006.

Initiated, in concert with the MBTA, a review of Riverside with the ultimate goal of redevelopment.

In 2006, the Austin Street Project was started with the backing of all Ward 2 Aldermen. In 2011, chaired the Austin Street JAPG project and co-wrote the final report with Phil Herr with enormous input from 12 citizens of Newton.

UNIVERSITY OF MASSACHUSETTS, AMHERST ALUMNI ASSOCIATION GOVERNING BOARD 1987-2001

Elected President of the UMASS Amherst Alumni Association 1992-1996

Established a dues-paying membership; negotiated the University's first Alumni Credit Card program, bringing \$3.5M to the Association

Maintained a seat on the Governing Board until 2001

TREASURER, ALBERMARLE PLAYGROUND PROJECT – PHASE II 2003-2006

Fund-raised to expand existing handicapped accessible playground to enhance the original structure.

ASSISTANT SOCCER COACH – BAYS 1998-2003

SKILLS

Over a 35 year period, of all the awards I have earned, the greatest is the 95% retention rate with my clients. I strive to find out what they need, and then find the right market for the products.

Proficient in Microsoft Office Tools

WORK HISTORY

INSURANCE BROKER, PHOENIX MUTUAL

Jan 3 1978- Jan 1988

INSURANCE BROKER, WS GRIFFITH

Jan 1988 to Jan 2001

INSURANCE BROKER, BAY FINANCIAL ASSOCIATES, LLC

Jan 2001 to Present

EDUCATION

CABOT SCHOOL 1960-1967

I had the honor of being the first class taught by Penny Smith, who went on to be the McDonald's Teacher of the Year

FRANK ASHLEY DAY JUNIOR HIGH 1967-1970

Ernest Van B. Seasholes, Principal

Newton High School 1970-1973

I was part of the Student Committee that started the SFA – Student Faculty Administration – still in existence today. Graduate Commencement Speaker – June, 1973. First recipient of the Jim Shea Memorial Award (Political Action).

University of Massachusetts, Amherst 1973-1978

Bachelor of Arts, Political Science

PERSONAL

FAMILY

Married Judith C. Haber – June 24, 1978

Two children – Nicholas H. Leader – June 7, 1987; Emma Victoria Leader – January 2, 1993.

DOMICILE

Newton, MA 1959 – 1973

107 Atwood Avenue

Amherst, MA 1973-1978

24 Merrick Circle

Newton, MA 1978-1980

55 Gay Street

Dedham, MA 1980-1983

130 Washington Street

Newton, MA 1983-Present

613 California Street

WILLIAM M. MCLAUGHLIN
117 Hammond Street
Newton MA 02467

Executive Vice President of Development and Construction
AvalonBay Communities, Inc.
51 Sleeper Street Suite 750
Boston MA 02210

RECEIVED
Newton City Clerk
2013 JAN -7 AM 11:58
David A. Olson, CMC
Newton, MA 02459

Mr. McLaughlin has been a Newton resident for almost 20 years. Bill is a Massachusetts native, having previously lived in Arlington, Belmont and Cambridge. He and his wife Linda are raising their six children in Newton, sending them through the Public schools; including Ward, Bigelow and Newton North HS.

Bill is a 1986 graduate of Harvard College, with a BA in Economics. He has extensive land use, zoning, planning, and design experience.

Mr. McLaughlin has been involved in Real Estate development and investment for over 25 years. Bill has extensive experience in both housing and commercial real estate. For the past 18+ years, he has been with AvalonBay Communities, most recently as the EVP of Development and Construction for AvalonBay's five (5) North East offices (Boston, NYC, Long Island, NJ, and CT). In that role, Mr. McLaughlin oversees approximately 100 associates and over \$3.5 Billion in planned or active multifamily and mixed use development and construction. AvalonBay Communities is a \$20 Billion publicly traded Real Estate Investment Trust (REIT), traded on the NYSE ("AVB"), and is a member of the S&P 500.

AvalonBay developed and owns 2 communities in Newton, Avalon Newton Highlands on Needham St and Avalon Chestnut Hill on Boylston St. Both were entitled under Ch 40 B.

Before joining AvalonBay, Mr. McLaughlin was with Lincoln Property Company for seven years, where he was responsible for multifamily development and acquisitions in eastern New England. Bill began his real estate career as a principal of a small residential development firm in Cambridge, MA and as a broker in Coldwell Banker Commercial's Boston office.

He was the 2008 Chairman of the Greater Boston Real Estate Board (GBREB), past Chairman of GBREB's Political Action Committee (PAC) and is a two-time past President of its Rental Housing Association (RHA) division. Bill also serves on the Board of Directors at Caritas Communities; is on the Board of Managers of the real estate holding company JWF, LLC; is on the Board of Overseers at Newton Wellesley Hospital; is on the National Association of Home Builders' (NAHB) Multifamily Leadership Board; and is a Director of National Association of Industrial and Office Properties (NAIOP) in Massachusetts. He is also an Advisor to CAN-DO, a Newton-based affordable housing CDC.

Bill has coached many Newton youth sports team over the past 15 years.



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone **#316-12**
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

MEMORANDUM

DATE: January 11, 2013

TO: Marcia Johnson, Chair of Zoning and Planning Committee
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Bob Rooney, Chief Operating Officer
Dori Zaleznik, Commissioner of Health and Human Services

SUBJECT: Sidewalk Cafés

MEETING DATE: January 14, 2013

CC: Bruce Proia, Fire Chief
Dave Turocy, Commissioner of Public Works
Chief Mintz, Police Department
Donnalyn Kahn, City Solicitor
Linda Plaut, Director of Cultural Affairs
Ana Gonzalez, Director of Community Engagement

BACKGROUND

Over the summer of 2012, department heads from Planning, ISD, Health and Human Services, and the Executive Office (Economic Development Cluster) met to discuss the potential for sidewalk cafés to enliven our streetscapes and enhance the vitality of our commercial areas. Consistent with other current initiatives of the Mayor, the Zoning and Planning Committee and Economic Development Commission, as well as the objectives of the *Comprehensive Plan*, the Economic Development Cluster has developed a proposal that also incorporates the health, safety and general welfare interests of various City departments, which could be crafted into ordinance language, if supported by the Zoning and Planning Committee.

Several City departments oversee activities that occur on City sidewalks, particularly with regards to restaurants. The Department of Health and Human Services monitors licensing of food and liquor sales, as well as “extensions of premises” through the Board of License Commissioners. The Commissioner of Public Works is generally responsible for maintenance of City sidewalks and for anything placed on them. The Fire Department oversees occupancy limits and fire safety features, especially in restaurant kitchens. The Planning Department evaluates allowed uses, with

particular attention paid to parking requirements that may be triggered by additional seating. Inspectional Services staff enforces compliance with the zoning and building codes, including accessibility standards.

The Economic Development Cluster reviewed sidewalk café ordinances from Boise, ID; Chicago, IL; Charleston, SC; Hoboken, NJ; San Luis Obispo, CA; Port Huron, MI; Lodi, CA; San Francisco, CA; Philadelphia, PA; Brookline, MA; Banff, Alberta; and several boroughs in Manhattan, NY. The group identified some common characteristics and gained insights into the kinds of controls others have used to oversee their cafés. After thorough review of these documents, the group concluded it would be best to designate one department to accept the applications and obtain feedback from the other departments noted previously. Because the Health and Human Services Commissioner is the liaison to the Board of License Commissioners, all agreed that the Health and Human Services Department would be an appropriate place for restaurateurs to apply for sidewalk café permits. The Commissioner of HHS would route proposals to Police, Fire, DPW, ISD, and Planning and schedule appropriate reviews for licensing before the Licensing Board, and would make a determination as to whether all agreed-upon standards are met.

PROGRAM FEATURES

Accessibility. There must be a minimum of four feet of unobstructed sidewalk to allow clear access for people of all abilities between the outdoor dining area (including tables, chairs, umbrellas, signs, and other dining amenities that are placed on the sidewalk adjacent to the eatery) and any other permanent or temporary structures or devices (including but not limited to trees, parking meters, utility poles, bike racks, trash cans, flower beds, or other items that may be placed between the building and the curb line).

Parking. Restaurants with parking that conforms to City standards may request up to eight chairs or 10% more seating than the maximum allowed by the Zoning Regulations, whichever is greater. If the restaurant desires more than this number of seats, parking must be provided in conformance with the City's parking regulations and may be subject to a special permit. The staff of the Departments of Planning or Inspectional Services can assist applicants in determining the parking required for a business, as well as ways to meet the requirement. No new parking spaces will be required if legally allowed seats from inside the restaurant are moved outside, and no more than eight new seats or 10% more seating than allowed by ordinance are added in order for the restaurant to begin operations; however, the "extra" outdoor spaces may not be moved inside, thus increasing their total interior seat count without requiring a recalculation of the parking requirement and assessment as to whether the extra seating triggers a requirement for additional parking and/or a special permit.

Serving of Alcohol. A restaurant that has a license to sell alcohol inside the premises may also serve alcohol outdoors within an approved area designated for restaurant service. Prior to selling alcohol outside, the restaurant must appear before the Board of License Commissioners to request an extension of the premises. All legal requirements for sale of alcohol must be honored. Such establishments must post a sign at all exits that reads, "*It is unlawful to consume alcoholic beverages not purchased on the premises or to remove them from the boundaries of this sidewalk café.*" There must also be an unobstructed view of the outdoor seats from inside the restaurant.

Designated dining area. Where alcohol is served, the area where it is consumed and/or served must be clearly delineated with a barrier such as a planter, rope, handrail, or other feature that separates it from the sidewalk or publicly accessible way and is no less than three feet in height, stable, removable, and not fastened to the sidewalk. No alcohol may be served or carried beyond this designated area. Where alcohol is not served, such barriers are allowed, but not required. Only those areas immediately adjacent to the building where the restaurant is located may be used for outdoor dining and dining may not spill over to areas in front of adjacent properties.

Maintenance. The area surrounding the café shall be free of litter, debris, food, and wrappers and sidewalks shall be washed down on a daily basis. Food from the café shall not be disposed of in city containers.

Sun protection. Umbrellas and awnings that offer protection from the elements and enliven the streetscape are encouraged, and must be fastened, weighted, and stable. Building permits may be required for awnings, so applicants should provide a rendering of any proposed awning to the Department of Inspectional Services to make that determination in advance of ordering or installing such features.

Sidewalk expansions. Restaurants located on a corner, by a mid-block crosswalk, or where an expansion of the sidewalk would be complementary to the physical design of the streetscape, may request permission to expand the sidewalk at their own expense in order to create additional seating outdoors. The applicant shall be responsible for designing the proposed expansion subject to the approval of the Traffic Council (if parking is removed), the Planning and Development Director, and the Commissioner of Public Works. Plans for the sidewalk extension shall be submitted with the application to the Commissioner of Health and Human Services, who will route the plans to the Engineering Division of the Public Works Department for review. The Department of Public Works will be responsible for installing such sidewalk extensions, if plans meet with the approval of the aforementioned departments. The cost of installations will vary, but would be charged at the current rate of construction.

ADMINISTRATION

Permit Required. A sidewalk café permit shall be required to allow sales and consumption of food and/or beverages at a sidewalk café. To be eligible for a permit, applicants must comply with the requirements listed below. Failure to comply with these requirements may result in denial of the application. Once issued, a permit is valid for one year and expires at midnight on March 31 of each year unless application for annual renewal has been made prior to the expiration date.

Renewals. Sidewalk Café permits must be renewed annually to remain in effect and are due on April 1 of each year. If conditions change, a new application must be submitted to the Commissioner of Health and Human Services, noting the changes requested, including change of ownership.

Filing Fee. A filing fee is required at the time of application for sidewalk café permit and is nonrefundable. Thereafter, an annual renewal fee shall be required. Both fees shall be as established by the Board of Aldermen.

Permit Determination. The Health and Human Services Department shall be given the authority to process, grant or deny all sidewalk café applications. The Department shall review the application for completeness, then will route the request to the Police Chief, Fire Chief, Commissioner of Public Works, Commissioner of Inspectional Services, Director of Planning and Development, and Commissioner of Health and Human Services. Each of the departments may recommend conditions or terms for approval that may be necessary to carry out the policies of the City and to protect the health, safety and welfare of the public, or to prevent disturbance or nuisance. In considering whether to approve an application, the Commissioner of Health and Human Services or designee shall verify that the applicant is qualified to apply, that all application requirements have been met, and all departments noted have been consulted and have recommended approval, with or without conditions.

Transferability. Sidewalk café permits may be transferred only to the successor in interest to any licenses or permits issued to the permittee, provided that the transferee has verified that s/he and the café meet application requirements.

Termination and Enforcement. Restaurants are expected to comply with the provisions of the ordinance. Violations will be enforced by Inspectional Services, which will contact other departments as needed to assure compliance with public health and safety violations. The restaurant will receive a warning upon the first violation; upon a second violation, the applicant must appear before the Health and Human Service Commissioner, who will consider revocation of the license and will have authority to take final action on permit approvals and renewals. Any

department shall have the authority to request revocation of a sidewalk café permit for failure to comply with the conditions of their permit or the requirements of the sidewalk café ordinance.

Liability insurance. The applicant shall be required to provide general liability insurance with limits of not less than \$500,000 for the term of the sidewalk café permit, which names the City as additional insured.

The ED Cluster also recommends a sidewalk café ordinance include:

Intent of Sidewalk Café Ordinance. Sidewalk cafes can enhance the use of public space and complement businesses operations from fixed premises, as well as to promote overall social and economic activity in the City’s villages and other commercial areas. They shall be allowed subject to the provisions of the Sidewalk Café Ordinance for legally established restaurants.

Sidewalk Café Definition. A sidewalk café is an outdoor dining or sitting area of a food retailer, contiguous to the food retailer’s premises, which is located in whole or in part on a sidewalk and containing removable tables, chairs, barriers, planters, or related appurtenances.

Sidewalk Definition. That portion of the public right of way, which is between the curb lines and adjacent property lines, and is designed for, improved, and ordinarily used for pedestrian travel.

At the present time, there are approximately 400 licensed food establishments in the City, many of which are not candidates for sidewalk seating, due to lack of frontage with sidewalks or due to the nature of the businesses. There are 26 restaurants that have requested sidewalk seating permits to date; a one-stop application process and some of the features of the ordinance are likely to incentivize other restaurants to consider setting out tables, chairs and benches in nice weather, so it is possible this number could double. Provided that the recommended standards are followed, the Economic Development Cluster does not anticipate any problems associated with this increase, particularly since seating will be limited by the space available on the sidewalks.

PREVIOUS REVIEW

In May 2012, the Zoning and Planning Committee considered two related proposals: one to waive parking requirements for outdoor seating and the other to allow additional seating in restaurants. The Board concurred that no action was necessary at that time, given that staff was reviewing parking, generally, and that the concept of sidewalk cafés merited considerations from various departments whose interests could be integrated into a more comprehensive approach.

NEXT STEPS

Staff welcomes the Board’s feedback on the proposed concept. If the Committee is generally satisfied with this proposal, staff can begin crafting suitable implementing language. If the Committee wishes to have additional information, it would be helpful to the working group if the Committee could identify their concerns so staff can perform the necessary research to further shape an appropriate ordinance. The Licensing Board normally hears requests for annual permits in April, and it would be ideal if an ordinance were in place for the upcoming requests this year.

Attachment A: Sample one-stop application





Setti D. Warren
Mayor

City of Newton, Massachusetts
1000 Commonwealth Avenue Newton, Massachusetts 02459

SIDEWALK CAFÉ PERMIT APPLICATION

ATTACHMENT A

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

To applicants: Sidewalk cafés are an outdoor dining or sitting area of an existing indoor eating establishment which is located in whole or in part on a sidewalk and containing removable furnishings and dining amenities. A sidewalk café permit is required to allow sales of food and drink and may be issued by the Department of Health and Human Services provided that the sidewalk café meets all the requirements (listed on a separate sheet). Applicants should review the requirements, complete this application, and submit with the items noted below:

- Completed Application Form.** The fee shall be set by the Board of Aldermen. The recommended current fee is \$100 for a new application and \$50 for renewals.
- Explanation of Proposal.** A letter should be submitted with the application that describes the business, indicates proposed hours of operation, explains how additional required parking will be provided, and how the dining area will be separated from the public walkway. The explanation shall also include a detailed description of the type, color, and material of all proposed outdoor furniture, such as tables, chairs, barriers, planters, umbrellas, signs, lighting, and heaters; and any new construction of the façade of the facility or adjacent sidewalk to accommodate the sidewalk café.
- Site Plan.** The site plan should show property lines, structures on the property, layout and dimensions of the outdoor dining area, proposed number and location of tables, chairs and other furnishings to be included in the dining area; the relationship of the outdoor dining area to the indoor dining area; and all permanent and temporary fixtures or objects between the curb line and the restaurant (such as trees, utility poles, trash cans, bike racks, signs, etc.). Applicant shall submit three copies on 1"=10' minimum scaled with one set reduced to an 8 ½" x 11" sheet.
- License(s) to sell food and/or alcohol.** Existing licenses to sell food or alcohol must be in place before selling alcohol; the facility must apply for an extension of premises and appear before the Board of License Commissioners.
- Proof of Liability Insurance.** Liability insurance must meet City standards, naming the City as additionally insured for the term of the permit to the approval of the City Solicitor's Office.

Applicant's Name _____ Phone _____ E-mail _____

Address _____

Property Owner's Signature _____

STAFF USE ONLY

Please return to the Department of _____ by ____ (date) _____.

Please initial and date of sign-off in space beside department below, and attach any addition comments or conditions:

Health and Human Services _____ Public Works _____ Planning _____

Inspectional Services _____ Fire _____ Police _____

ACTION: Approved Denied Date _____ BY _____



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459


Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: January 11, 2013

TO: Alderman Marcia Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner for Long Range Planning 

RE: Zoning Reform, Phase 1

MEETING DATE: Working Session on January 14, 2013

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor

The City of Newton's Zoning Ordinance is a critically important set of regulations as it is the primary determinant of what residents, business owners, and developers can do with the land they own in the City and it therefore sets the bounds for the future development of the City, affecting economic development, quality of life, and neighborhood character. The Zoning Reform Group was created in the winter of 2010/2011 to consider the existing ordinance and recommend a process for revisions that would bring it into greater consistency with Newton's *Comprehensive Plan* and address identified problems in the ordinance impacting its administration and application. Those recommendations, provided in a report released in December 2011, set in motion the Newton Comprehensive Zoning Reform project, representing the first such reform process in 25 years. The purpose of this memo is to provide ZAP with an update on the progress of this effort.

As defined in the Zoning Reform Group report, Phase 1 will focus on reorganizing and clarifying the existing zoning ordinance, setting the stage for future substantive regulatory changes in Phase 2. Phase 1 will be kicking off within the next month and a consultant, Code Studio, has been selected to work with staff for this phase. The firm is highly recognized nationally for its expertise in zoning and brings a perspective that is firmly grounded in creating a zoning code that achieves the desired design objectives of the community. This phase will include re-ordering ordinance provisions, addressing inconsistencies, clarifying language, and incorporating illustrative graphics and

tables. The final product will be a new document that will be much easier to use and understand and will be web-enabled, allowing for internet viewing with links provided between related sections.

ZAP will be closely involved in the progress of this project. Staff anticipates that in the course of clarifying the ordinance language or addressing inconsistencies between different sections of the ordinance, issues will be raised that represent substantive changes to the regulations that must be addressed. A number of existing docket items on the ZAP agenda represent good examples of these types of clarifying and inconsistency issues and will be addressed as part of Phase 1; these are identified in the table below.

Docket Number	Description
154-10	Provide new definition for Lot Area and clarify Setback Line definition.
154-10(2)	Clarify Lot Line and Structure definitions.
65-11(3)	Define "flat-roof" and "sloped-roof."
216-12	Exclude tennis courts from the definition of Useable Open Space (otherwise defined as structures).
217-12	Bring consistency to the number of tandem parking stalls allowed in setback areas between two sections of the ordinance.
218-12	Define "sideline" distance.
219-12	Correct inconsistency relative to the definition of structure.
220-12	Clarify lot width, lot area, lot frontage in the table in Sec. 30-8(b)(10)a)

The goal is to complete Phase 1 in time to allow the Board of Aldermen to adopt an updated and reorganized ordinance this summer. Phase 2 of the zoning reform project is scheduled to begin in September of this year. At that time, further consideration will be given to its underlying policies and the ways in which our ordinance could best execute the goals of the *Comprehensive Plan*.