

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, FEBRUARY 25, 2013

7:45 PM
Aldermanic Chamber

ITEMS SCHEDULED FOR DISCUSSION:

A Public Hearing will be held on the following item:

#316-12(3) DEPARTMENT HEADS HAVENS, LOJEK AND ZALEZNIK requesting
(#53-13) amendments to the **City Zoning Ordinance**, Chapter 30, Sections 30-11, 30-13, 30-19 and 30-21 as needed to establish parameters regarding parking requirements and maximum number of seats consistent with the Sidewalk Café Ordinance. [01/30/13 @ 5:15 PM]

The Committee will reconvene after the public hearing in Room 202 for a continuing discussion regarding Zoning Reform Phase I with the Planning Department

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

#25-13 DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of the CONSERVATION COMMISSION for a term to expire January 2, 2016.

#64-13 NEWTON HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation.
[02/05/13 @ 11:35 AM]

#65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]

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]

#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]

#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.

#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]

#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]
- #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]

#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 COMMITTEES

- #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]
- #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 T. Johnson, Chairman



Setti D. Warren
Mayor

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Candace Havens
Director

MEMORANDUM

DATE: February 22, 2013
TO: Zoning and Planning Committee
FROM: Candace Havens, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Dori Zaleznik, Commissioner of Health and Human Services

SUBJECT: Sidewalk Café Ordinance
#316-12: DEPARTMENT HEADS HAVENS, ZALEZNIK, LOJEK requesting amendments to **Sec. 26-30 Licenses for café furniture on sidewalks.** to streamline the procedure allowing businesses to place café furniture on public sidewalks.
#316-12(3): Candace Havens, Director of Planning & Development; John Lojek, Commissioner of Inspectional Services; and Dori Zaleznik, Commissioner of Health and Human Services, requesting to amend Sections 30-11(a)(9); 30-11(d)(9); 30-13(c)(11); and 30-13 (e)(12) to clarify that outdoor sidewalk seats permitted under the Sidewalk Café Ordinance shall not count against the 50 seat maximum number allowed by right for restaurants in Business and Mixed Use Districts and shall not trigger the need for a special permit; to amend Section 30-19(d)(13) to modify or eliminate the requirement of one parking stall for each (3) three seats of a restaurant for additional outdoor sidewalk seats permitted under the Sidewalk Café Ordinance; to amend Section 30-21 to clarify that additional outdoor sidewalk seats permitted under the Sidewalk Café Ordinance shall not increase the non-conformity of nor constitute an extension of use of a lawful pre-existing non-conforming restaurant in any district.

CC: Bob Rooney, Chief Operating Officer
Maura O’Keefe, Assistant City Solicitor
Marie Lawlor, Assistant City Solicitor

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the legislative decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



BACKGROUND

Consistent with other current initiatives of the Mayor, the Zoning and Planning Committee, and the Economic Development Commission, as well as the objectives of the *2007 Comprehensive Plan*, the Economic Development Cluster (Department Heads from Planning, Inspectional Services, Health and Human Services, and the Executive Office) has identified the health, safety and general welfare interests of various City departments (*Attachments A and B*) and updated the requirements for sidewalk café furniture on sidewalks. This new Sidewalk Café Ordinance also incorporates recommendations from the Zoning and Planning, Programs and Services, and Public Facilities Committees of the Board of Aldermen.

SUMMARY OF CAFÉ ORDINANCE

The current draft of the Sidewalk Café Ordinance allows restaurants to place 8 seats or 10% more seats than allowed in the interior of the premises onto the adjacent sidewalk without triggering additional parking requirements. Sun screening with awnings and umbrellas is encouraged, and outdoor activities generally must not create noise, nuisance, or litter. Any restaurant that sells alcohol indoors would be permitted to sell alcohol outside provided the restaurant complies with all applicable laws. Because a variety of laws apply to regulation of the sidewalk cafés, not all provisions discussed previously are included in the Sidewalk Café enabling language. For example, Alcohol and Beverage Control laws control the barrier requirements, as well as visibility from inside the restaurant (*Attachment C*); however, to make the various rules easy to find, understand and use, staff has prepared a summary of the applicable laws and guidelines on the back of an application form (*Attachment D*). This form is to be submitted to the Department of Health and Human Services and the Commissioner will coordinate the review process internally, so an applicant will not need to meet with multiple departments. This one-stop permitting is not only easy for the business owner, but will minimize the staff time needed to consider requests. Staff from all departments will be available to answer questions directly, as needed.

REMAINING ISSUES

Several concerns have been raised for which a consensus is unclear; it would be helpful to understand the Committee's preferences for the following so they may be properly addressed:

- Width of passageway on sidewalk. As noted in previous reports, the minimum width required by state law is three feet. City staff recommends four feet in order to allow for sufficient width for two wheelchairs to pass one another and for a single wheel chair to turn around. If the Board wishes to have some flexibility to allow narrower passageways under special circumstances, one option might be to include a provision in the text that gives the HHS Commissioner the authority to make such judgments after consulting with the Commission on Disability and/or the City's Accessibility Coordinator.
- Fees and fines. The Finance Committee will be reviewing the proposed fees of \$100 for a new application and \$50 for renewal. The Zoning and Planning Committee discussed the use of a fine for violations of the sidewalk café permit, and also for café furniture on the sidewalk without a permit; however, no dollar value has been established. Staff recommends \$100 for each day a violation persists, and that these be considered civil violations enforceable by the Departments of ISD, HHS, and the Fire Department.

As noted, some features are not included in the Ordinance language, and include the following:

- Sidewalk widening. The Department of Public Works oversees installation and maintenance of sidewalks and, therefore, expanding sidewalks for seating is not included in the Sidewalk Café Ordinance. The purview of the Department of Public Works allows for such improvements, so contact information will be provided on the handout for those interested in pursuing this option.
- Opening of buildings for indoor/outdoor cafés. The State code aims to protect food preparation areas from rodents and insects, so changes to facades must ensure this can be done when exposing the interior of a restaurant to the outdoors. Since the creation of large doors or windows doesn't include placement of café furniture on the sidewalk, this feature is not included in the Sidewalk Café Ordinance language, but staff can craft this guidance for those that may be interested in this option. This may be particularly useful where sidewalk widths are narrow.

PREVIOUS REVIEWS

January 14, 2013: The Zoning and Planning Committee reviewed an initial proposal for a sidewalk café ordinance.

January 23, 2013: Programs and Services and Public Facilities Committees reviewed the same draft and supported the concept, including change in oversight from DPW to Health and Human Services subject to second call, to allow Committee members an opportunity to review ordinance language prior to voting on this matter.

January 28, 2013: The Zoning and Planning Committee reviewed the responses from the three Committees and agreed to schedule a public hearing, subject to review of draft ordinance text.

February 11, 2013: The Zoning and Planning Committee reviewed the first draft Sidewalk Café Ordinance text.

NEXT STEPS

Staff recommends the Committee hear public comments on the proposed Ordinance and provide direction to staff regarding desired revisions, as well as clarification regarding sidewalk widths and fines. The Finance Committee will be considering the proposed fees on February 25th; if the Zoning and Planning Committee has completed its review by this date, the item can be advanced to the full Board on March 4th. If approved, the new process could be used for consideration of sidewalk café permits as of April 1st, when the previous year's permits expire.

ATTACHMENT A: Draft Sidewalk Café Ordinance

ATTACHMENT B: Draft amendments to Zoning Ordinance

ATTACHMENT C: ABCC Guidelines for patio seating

ATTACHMENT D: Draft application and handout

ATTACHMENT E: Noise Ordinance

Sec. 26-30. ~~Licenses-Permits~~ for cafe furniture on sidewalks.

(a) The ~~C~~ommissioner of ~~public-works~~Health and Human Services (the “Commissioner”), or his or her designee, may grant revocable ~~licenses-permits~~ for the placement of certain cafe furniture upon designated areas of the public sidewalk~~;~~. The Commissioner shall consult with the Fire, Police, Public Works, Inspectional Services, and Planning Departments prior to granting or denying a permit under this section. Permits shall be issued in accordance with the following standards:

(1) ~~Licenses-Permits~~ may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the ~~license~~permit. ~~Such cafe furniture may be placed upon the sidewalk only during the business hours of the licensed party.~~ All cafe furniture and trash receptacles ~~must be removed at the end of each business day and in addition,~~ must be removed at any time upon the request of the ~~C~~ommissioner or his designee when he determines~~, in his sole discretion, that public-works operations or~~that the public convenience and welfare require such removal.

(2) ~~Licenses-Permits~~ may ~~only~~ allow for the placement of tables, chairs, ~~and/or~~ benches, shade umbrellas, barriers and other appurtenances as may be approved or otherwise required by the Commissioner or other Department, in consultation with the Commissioner. ~~Shade umbrellas or tables which have shade umbrellas attached thereto shall not be allowed. The number and type of such tables, chairs and benches shall be subject to the approval of the commissioner.~~ All such tables, chairs, ~~and/or~~ benches, shade umbrellas and

other appurtenances shall be temporarily placed upon the sidewalk surface and shall not be affixed thereto. Any shade umbrellas shall be fastened, weighted and otherwise secured while in use.

(3) The number, type and placement of such tables, chairs, benches, shade umbrellas, barriers and other appurtenances shall be subject to the approval of the Commissioner, in consultation with other appropriate Departments of the City, and in conformity with any applicable zoning ordinances. Subject to the discretion of the Commissioner, after consultation with the Fire, Police, Public Works, Inspectional Services and Planning Departments, permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.

(4) Licenses-Permits may only be granted in those circumstances where the ~~e~~Commissioner, or his or her designee, of public works, after consultation with the chief of police, has determined that the placement of such cafe furniture would not interfere with adequate pedestrian passage upon the public sidewalk at the site, taking into account the flow and level of pedestrian traffic and the location of other fixtures upon the sidewalk including, but not limited to, utility poles, newspaper vending boxes and the like. ~~In making such determination, the Commissioner, or his or her designee, may consult with the Inspectional Services Department and the Commission on Disability.~~ In no event shall a license permit be granted in circumstances where the placement of such cafe furniture would result in a pedestrian

passageway upon the public sidewalk of less than four feet (4') in width.

(b) As a pre-condition of the issuance of any such license-permit the eCommissioner shall require the licensed-permitted party to indemnify, hold harmless and defend the City of Newton from any claims arising out of the licensed-permitted activity; and the eCommissioner shall require the licensed-permitted party to provide proof of adequate liability insurance and/or bond, in such form, amount, and with an insurance carrier or surety satisfactory to the eCommissioner for the performance by the licensed-permitted party of the requirements of the license-permit and this section.

(c) The term of each license-permit shall be one year and shall expire on December 31st unless renewed. ~~and t~~The fee for each such annual license-permit shall be one hundred dollars (\$100.00) for the initial issuance of the permit, and fifty dollars (\$50.00) for renewals thereafter, twenty five dollars (\$25.00). Permits under this section are transferrable to a successor in interest upon the submission and approval of an application for transfer to the Commissioner.

(d) Upon receipt of each license-permit application the eCommissioner, or his or her designee, shall consult with ~~the board of license commissioners, or its designee, and the~~ Fire, Police, Public Works, commissioners of iInspectional Sservices, and Planning -Departments and health for their determinations that the placement of cafe furniture, as described in the application, would not violate existing licensing, zoning, safety and public health requirements; respectively. Approval of the Fire, Police, Public Works, Inspectional Services, and Planning Departments are all required prior to the issuance of a permit by the Commissioner, or his or her

designee, under this section.

(e) All applicants holding alcohol licenses pursuant to M.G.L. c. 138 who wish to serve alcohol to patrons at sidewalk café seating under this section shall comply with c. 138 and the Rules and Regulations of the Board of License Commissioners.

(f) Pending the approval of a permit application, all applicants shall post a placard on the licensed premises notifying the public of the pending application. Such placard, provided by the Department of Health and Human Services, shall be readily visible to the public.

(eg) All licenses-permits granted pursuant hereto must include the following provisions:

(1) That the licensed-permitted party shall place exterior trash receptacles in the sidewalk area and, at its expense, properly dispose of the trash deposited therein.

(2) That the licensed-permitted party shall be responsible for the clean-up of trash and debris from the sidewalk area and the neighboring area within a radius of twenty-five feet (25') of the sidewalk area affected by the licensepermit.

(fh) Notice of violation: The eCommissioner of public works, or his or her designee, shall review all complaints concerning purported violations of the terms and conditions of any permit issued under this section. Prior to the imposition of any penalty, the Commissioner shall provide reasonable notice to the permit holder of the violations of the terms of the permit, and provide

the permit holder an opportunity to be heard during a public hearing on the matter.

(i) Penalties: The Commissioner may impose a fine upon the permit holder, or revoke or suspend any license-permit granted pursuant to this section for any violation of the terms of such license-permit or the provisions of this section. Violations hereunder shall be subject to a fine of (\$XX) for each violation. Each day that a violation occurs shall constitute a separate offense. Where the non-criminal disposition of specified sections of this ordinance has been provided for in sections 20-20 and 20-21 of these ordinances, as amended, pursuant to the authority granted by M.G.L. c. 40 § 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in sections 20-21(b-d).

(j) All permit holders shall comply with the requirements of the Noise Ordinance at §§ 20-13 - 20-19, as amended. The Commissioner, in consultation with the Police Department may impose reasonable limitations on the hours of operation for permit holders under this section, except upon those permit holders also licensed to sell alcohol pursuant to c. 138 who are subject to the procedures of c. 138 and the Rules and Regulations of the Board of License Commissioners.

(k) The placement of any tables, chairs, shade umbrellas, barriers or other appurtenances upon the sidewalk without prior approval hereunder shall be a violation of this ordinance and subject to penalty.

(l) Regulatory Authority: The Commissioner has the authority to promulgate rules and

regulations necessary to implement and facilitate enforcement this section.

(m) Enforcement: The Health and Human Services Department, Inspectional Services Department, and Police Department shall have the authority to enforce this section.

(n) Severability: If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.

(Ord. No. T-305, 11-1-93; Ord. No. X-175, 05-26-05)

CAFÉ FURNITURE - PROPOSED ZONING AMENDMENTS**Sec. 30-11. Business Districts.**

(a) *Allowed Uses.* In Business Districts 1, 2, 3 and 4, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Retail store, salesroom or showroom for the conduct of retail business, but not for the sale of motor vehicles;
- (3) Library or museum;
- (4) Bank, excluding drive-in facilities;
- (5) Theatre, hall or club;
- (6) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
- (7) Retail dry cleaning or laundry;
- (8) Job printing establishment, provided, that no more than three (3,000) square feet are used for work and storage;
- (9) Restaurants having not more than 50 seats, excluding any additional outdoor sidewalk seats permitted under section xx-xxx of these ordinances, which are not opened between the hours of 11:30 p.m. and 6:00 a.m., and further provided that such restaurants are not fast food establishments;
- (10) Bakery, the products of which are sold at retail and only on the premises;
- (11) Dwelling units above the first floor, provided that the first floor is used for a use allowed in section 30-11(a)(1)-(11);
- (12) Accessory parking facilities, provided that such facilities are limited to a single level;
- (13) A dwelling for one (1) or two (2) families in existence as of January 1, 2000, but only on a lot abutted on two or more sides by lots in residentially zoned districts and subject to the density and dimensional controls set out in section 30-15, Table 1 for the aforesaid abutting residentially zoned lots;
- (14) Other uses similar or accessory to those authorized by section 30-11(a).

(b) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (a) which are permitted are:

- (1) Office;
- (2) Bank, excluding drive-in facilities;
- (3) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;
- (4) Dwelling units above the first floor;
- (5) Accessory parking facilities;
- (6) Other uses similar or accessory to those authorized by section 30-11(b).

(c) In all business districts, no building, structure or alteration, enlargement or extension thereof located within three hundred (300) feet of a great pond as defined under the Massachusetts General Laws, chapter 131, section 1 shall be permitted other than under the procedure set forth in section 30-23 herein concerning site plan approval, with particular concern to the preservation of public view, enjoyment and access to said great pond. (Rev. Ords. 1973, §24-9).

(d) *Special Permits.* In Business Districts 1, 2, 3 and 4, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Hospital, sanitarium, convalescent or rest home;
- (2) Broadcasting studio;
- (3) Laboratory;
- (4) Hotel/motel;
- (5) Funeral home;
- (6) Job printing establishment using more than three thousand (3,000) square feet for work and storage;
- (7) Non-accessory parking facilities or multi-level accessory parking facilities;
- (8) Multi-family dwelling;
- (9) Restaurant having over fifty (50) seats, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances**, which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation shall not apply to a hotel or motel restaurant;

- (10) Drive-in or open-air business and appurtenant buildings or structures, or a drive-in business as part of any building or land used for the purposes authorized by section 30-11(a);
- (11) Elderly housing with services, including residential care facilities and congregate care facilities. The board of aldermen may grant a special permit according to the procedures of section 30-24 for elderly housing with services with a lot area of no less than four hundred (400) square feet per dwelling unit;
- (12) In Business District 4, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s);
- (13) Other uses similar or accessory to those authorized by section 30-11(d).

(e) *Allowed Uses in Business 2 Districts.* In all Business 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Wholesale business or storage warehouse, provided that no outside storage is permitted;
- (2) Bowling alley;
- (3) Office of a contractor, builder, electrician or plumber or similar enterprises, together with such storage buildings as are necessarily appurtenant thereto, provided that no outside storage is permitted and further provided that no more than forty (40%) percent of the total gross floor area is used for storage;
- (4) Other uses similar or accessory to those authorized by section 30-11(e).

(f) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (e) in business 2 districts that are permitted are:

- (1) Wholesale business or storage warehouse, provided that no outside storage is permitted;
- (2) Other uses similar or accessory to those authorized in section 30-11(f).

(g) *Special Permits in Business 2 Districts.* In Business 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;

- (2) Garage repair shop;
- (3) Indoor motor vehicles sales and service facility and areas for the outdoor sales, service, display or storage of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of the vehicles as the board of aldermen shall approve;
- (4) Areas for outside storage, display and sale of goods and materials; provided, that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting as the board of aldermen shall approve;
- (5) Fast food establishment, drive-in food establishment;
- (6) Place of amusement or place of assembly, whether indoor or outdoor;
- (7) Veterinary hospital;
- (8) Other uses similar or accessory to those authorized by section 30-11(g).

(h) *Allowed Uses in Business 5 Districts.* In all Business 5 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Offices for professional purposes or for business purposes, excluding the retail sale of tangible personal property from a stock of goods on the premises;
- (2) Bank, trust company or other banking institution;
- (3) Other uses similar or accessory to those authorized by section 30-11(h).

(i) *Special Permits in Business 5 Districts.* In all Business 5 Districts, the board of aldermen may grant a special permit in accordance with the procedures provided in section 30-24 for the construction, alteration, enlargement, extension or reconstruction of buildings or structures and for the use of buildings, structures or land for one or more of the following purposes:

- (1) Hospital, sanitarium, convalescent or rest home or other like institution;
- (2) Library, museum or other cultural institution;
- (3) Radio or television transmission station or broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;
- (4) Laboratory or research facility; provided, that the facility is exclusively for research purposes with no manufacturing on the premises, and further provided that no recombinant DNA research or technology is involved;

- (5) Hotel or motel; provided, that in addition to the density and dimensional controls set forth in section 30-15, the lot or tract of land shall have a minimum area of two (2) acres and twenty-five (25%) per cent of the lot or tract of land shall be in landscaped area;
- (6) Heliport in accordance with the provisions of section 30-18. The density and dimensional controls set forth in section 30-15 shall not apply to heliports;
- (7) Other uses similar or accessory to those authorized by section 30-11(i) which are not injurious to the neighborhood.

(j) *Site Plan Approval, Building Size.* In all Business Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.

(k) *Special Permit, Building Size.* In all Business Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

- (1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or
- (3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. All building(s), structure(s) and addition(s) thereto shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot. (Ord. No. T-

75, 3-5-90; Ord. No. T-183, 11-4-91; Ord. No. V-44, 11-20-95; Ord. No. V-87, 7-8-96; Ord. No. V-156, 1-5-98; Ord. No. V-173, 5-18-98; Ord. No. W-2, 7-10-00; Ord. No. X-20, 5-6-02; Ord. No. Z-16, 12-17-07)

Sec. 30-13. Mixed Use Districts.

(a) *Allowed Uses in Mixed Use 1 Districts.* In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;
- (4) Assembly or fabrication of materials manufactured off-premises;
- (5) Uses similar or accessory to those authorized by section 30-13(a).

(b) *Special Permits in Mixed Use 1 Districts.* In Mixed Use 1 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Retail store, provided that a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area;
- (2) Wholesale business;
- (3) Storage or distribution facility;
- (4) Service establishment;
- (5) Restaurants and businesses which hold a Common Victualler—All Alcoholic, or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area;
- (6) Inside sales, service, display or storage of motor vehicles;

- (7) Outside storage, display and sale of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of vehicles as the board of aldermen shall approve;
- (8) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;
- (9) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 30-18A;
- (10) Multi-family dwelling;
- (11) Garage repair shop;
- (12) Bank, excluding drive-in facilities;
- (13) Recombinant DNA research or technology, as defined in sections 12-20 et. seq. of the Revised Ordinances as amended;
- (14) Veterinary hospital;
- (15) Telecommunications and data storage facility;
- (16) Uses similar to or accessory to those authorized by section 30-13(b) which are not injurious to the neighborhood.

(c) *Allowed Uses in Mixed Use 2 Districts.* In Mixed Use 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

- (1) Office;
- (2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;
- (3) Retail store;
- (4) Library or museum;
- (5) Bank, excluding drive-in facilities;
- (6) Theatre, hall or club;

- (7) Personal services;
- (8) Retail dry cleaning or laundry;
- (9) Service establishments;
- (10) Job printing under 3,000 square feet;
- (11) Restaurants having not more than 50 seats, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances;**
- (12) Bakery, the products of which are sold at retail and only on the premises;
- (13) Dwelling units above the first floor, provided that the first floor is used for an allowed use described above;
- (14) Accessory parking facilities, provided they are limited to a single level;
- (15) Uses similar or accessory to those authorized by section 30-13(c).

(d) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (c) herein which are permitted are:

- (1) Office;
- (2) Research and development facility;
- (3) Bank, excluding drive-in facilities;
- (4) Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;
- (5) Dwelling units above the first floor;
- (6) Accessory parking facilities;
- (7) Uses similar or accessory to those authorized by section 30-13(d).

(e) *Special Permits in Mixed Use 2.* In all Mixed Use 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

- (1) Assembly or fabrication of materials manufactured off-premises in a building not exceeding 10,000 square feet of gross floor area;
- (2) Sanitarium, convalescent or rest home;

- (3) Broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;
- (4) Laboratory;
- (5) Hotel or motel;
- (6) Funeral home;
- (7) Job printing over 3,000 square feet;
- (8) Parking lots, provided that they are limited to a single level;
- (9) Multi-family dwelling;
- (10) Inside sales, service, display or storage of motor vehicles;
- (11) Garage repair shop;
- (12) Restaurants over fifty (50) seats, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances**, and such businesses which hold a Common Victualler—All Alcoholic or Common Victualler—Wine/Malt Beverages license issued by the licensing authority of the city;
- (13) Gasoline service station. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;
- (14) Recombinant DNA research or technology, as defined in sections 12-20 et. seq. of the Revised Ordinances, as amended;
- (15) Veterinary hospital;
- (16) Other uses similar or accessory to those authorized by section 30-13(e) which are not injurious to the neighborhood.

ARTICLE III. PARKING AND LOADING FACILITIES

Sec. 30-19. Parking and loading facility requirements.

(a) Intent and Purpose. It is the intent of these provisions that any use of land involving the storage or entry upon the land of vehicles be so designed and operated as to reduce hazards to pedestrians upon the public sidewalks, to protect the use of adjacent property from nuisance caused by noise, fumes, and glare of headlights which may result from the operation of cars parking off the streets, to enhance and protect the visual quality of the city, to reduce congestion in the streets and contribute to traffic safety by assuring adequate and well designed areas for the off-street parking, loading, unloading, and maneuvering of vehicles associated with any use of land.

(b) Applicability. No land shall be used and no building shall be erected, enlarged, or used in any district in the city, except as provided hereinafter, unless off-street parking and loading facilities are provided in accordance with the requirements of this section.

The regulations of this section shall not apply to parking or loading facilities in existence or for which building permits have been issued prior to the date of adoption of this section, which conformed to all applicable regulations in effect when established, except that where parking or loading facilities are increased in capacity after the adoption of this section, the expanded portion thereof shall be constructed in accordance with the regulations of this section.

(c) General Regulations.

(1) No reduction in the number of off-street parking stalls which are required by this section shall be allowed and no existing off-street parking stalls shall be eliminated unless replaced by an equal number of off-street parking stalls designed in accordance with the requirements of this section; provided, that this subparagraph shall not operate to prevent the elimination of existing parking stalls which are in excess of the number required by this section excluding the provision of subparagraphs (c)(2) and (c)(3) of this section.

(2) a) Whenever an enlargement or extension of the gross floor area in a building or structure or a change in use from one type of use to another, as those types of uses are set out in subparagraph (d) of this section, of a building or structure or portion thereof, increases the parking requirements for such building or structure under the provisions of subparagraph (d) of this section, the provisions of this section shall be complied with in accordance with the following formula: $A - B + C =$ required number of parking stalls, provided that this number shall not exceed "A",

"A" being the number of off-street parking stalls required under this section;

"B" being the number of off-street parking stalls which would have been required under the provisions of this section to the building or structure and the use thereof prior to the date of the enlargement, extension or change of use of said building or structure;

"C" being the number of off-street parking stalls located on the premises, or adjacent premises of the owner, or located off-site with the permission of the board of aldermen, prior to the date of the enlargement, extension or change of use of said building or structure.

b) In the case of a change in use of churches, synagogues, theaters, halls, clubs, funeral homes, restaurants, other places serving food and other places of amusement or assembly, the number of off-street parking stalls which would be required for the new use or uses shall be determined by the existing floor area of the existing structure and not the seating capacity thereof. When such building or structure is located in a business, manufacturing or mixed use district, the number of off-street parking stalls which would have been required for such building or structure prior to the date of the enlargement, extension or change of use ("B" of the formula set forth above), shall be calculated under subparagraph 30-19(d)(10) or (11), whichever results in a greater parking requirement.

- (3) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 to reduce or waive the requirement that parking be provided as would be required by subparagraph (c)(2) above in conjunction with the enlargement, extension or change in use of a building or structure, provided that this reduction or waiver shall not be applicable to any increase in gross floor area.
- (4) All required parking facilities shall be provided and maintained so long as the use exists which the facilities were required to serve. Reasonable precautions shall be taken by the owner or operator of particular facilities to assure the availability of required facilities for the employees or other persons whom the facilities are designed to serve. Required parking stalls shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve.
- (5) Municipal parking lots shall not be used to meet the parking requirements of this section.

(d) *Number of Parking Stalls.* The minimum number of parking stalls to be supplied for each type of building or land use shall be in accordance with the following requirements. Where the computation results in a fractional number, the fraction shall be counted as one stall.

- (1) Two parking stalls for each dwelling unit in a one- or two-family dwelling. Such parking stalls may be stacked one behind the other and may be located within the side yard setback.
- (2) Two parking stalls shall be provided for each dwelling unit in an apartment house, garden apartment, or attached dwellings, provided that the board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for the construction of apartment houses, garden apartments, attached dwellings with a lesser parking stall requirement for each dwelling unit if circumstances warrant such modification, but in no case less than one and one-quarter (1-1/4) parking stalls per dwelling unit, except multi-family housing for low-income or elderly persons built under state or federal housing programs. For such public housing projects, one parking stall for each two (2) low-income dwelling units not reserved for the elderly and one parking stall for each four (4) dwelling units reserved for the elderly shall be provided.
- (3) One stall for each room or suite designed or intended to be occupied independently by a person or a group of persons in a hotel or motor hotel, and one stall for each three (3) employees on the largest shift.
- (4) One stall for each sleeping room in a boarding house, rooming house, lodging house, tourist house, congregate living facility and one stall for each three (3) employees on the largest shift.
- (5) One stall for each five (5) occupants in a dormitory.
- (6) One stall for each forty (40) square feet of floor space within a funeral home open to the public use, or a minimum of thirty (30) spaces, whichever is larger.

- (7) Parking stalls shall be provided on the premises of an elderly housing with services facility, including residential care facilities and elderly congregate living facilities, on the basis of the following:
- a) fifty one-hundredths (0.50) parking stall per dwelling unit, except when the board of aldermen determines that adequate transportation services are available, it may grant a special permit to reduce the requirement to a minimum of twenty-five one-hundredths (0.25) parking stall per dwelling unit;
 - b) twenty-five one-hundredths (0.25) parking stall per nursing home bed;
 - c) thirty-three one-hundredths (0.33) parking stall per employee on the largest shift.
- (8) One stall for each three (3) beds in a hospital or sanitarium and one stall for each three (3) employees on the largest shift.
- (9) One stall for each four (4) beds in a convalescent or rest home or other institution devoted to the board, care or treatment of humans and one stall for each three (3) employees on the largest shift.
- (10) One stall for each 300 square feet or fraction thereof of gross floor area for use in any bank, post office, retail store, sales room, showroom or service establishment. In addition, one (1) stall shall be provided for each three (3) employees on the largest shift.
- (11) One stall for each 250 square feet or fraction thereof of gross floor area, up to 20,000 square feet, and one stall for each 333 square feet or fraction thereof of gross floor area in excess of 20,000 square feet, in any office or professional building, except that parking requirements for gross floor area used for medical offices shall be regulated under subparagraph (12) below.
- (12) One stall for each 200 square feet or fraction thereof of gross floor area used for medical offices, except that where such medical offices are in buildings used in conjunction with a hospital and located on the hospital property or abutting land, the number of parking stalls may be one-half of the requirements specified. In addition, one (1) stall shall be provided for each three (3) employees in any laboratory or pharmacy included within such building.
- (13) One stall for each three (3) seats, permanent or otherwise, **excluding any additional outdoor sidewalk seats permitted under section 26-30 of these ordinances**, for patron use of restaurants and other places serving food or beverages and of theaters, halls, clubs, auditoriums and other places of amusement or assembly and one stall for each three (3) employees to be employed or anticipated to be employed on the largest shift. Places of assembly or amusement shall also provide one parking stall for each forty-five (45) square feet of gross floor area used for meeting function purposes when such space is customarily used concurrently with the seating space. In the case of such uses in conjunction with a hotel or motor hotel and in the same or an abutting building, the parking stall requirements with respect to patron use of restaurants and other places serving food or beverages shall be one-half (1/2) and with respect to patron use of theaters, halls, clubs, auditoriums and other places of amusement or assembly shall be one-fourth (1/4) of the preceding requirements.

- (14) One stall for each six hundred (600) square feet of outdoor or open-air sales space for such uses as drive-in establishments, open-air retail businesses and amusements and other similar uses.

Sec. 30-21. Applicability of chapter to existing building; nonconforming uses; prior permits.

(a) Except as provided in section 30-21(c) below, this chapter or any amendment thereof shall not apply to buildings, structures or uses lawfully in existence or lawfully begun prior to the first publication of notice of the public hearing on such ordinance required by section five of chapter 40A, nor to the use of land to the extent that it was used at the time of adoption of the same or of any corresponding provision of any prior ordinance.

- (1) A special permit is not required from the board of aldermen for lawful nonconforming buildings or structures in the following cases, (however, such buildings or structures shall be subject to otherwise applicable regulatory provisions of this chapter and any amendment thereof, specifically including but not limited to section 30-19):

- a) Alteration, reconstruction, extension or structural change to a single or two-family residential structure which does not increase the nonconforming nature of said structure, and no such increase shall be deemed to have occurred solely because the lot area, or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;
- b) Change in use to a use permitted as of right, in a business, mixed use, manufacturing or limited manufacturing district;
- c) Alteration, reconstruction, structural change, but not an extension or enlargement of a lawful nonconforming building or structure for a use permitted as of right, in a business, mixed use, manufacturing or limited manufacturing district;
- d) Alteration, reconstruction, extension or structural change to a lawful nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of said building or structure to a use permitted as of right in any residential district.

- (2) A special permit from the board of aldermen shall be required in the following cases:

- a) Any change or substantial extension of such use, except as provided above in subsections (a)(1)b) and d);
- b) Any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in subsections (a)(1)a) and c); and
- c) As provided in section 30-21(b) below.

- (3) This chapter or any amendment thereof shall apply to the following cases:

- a) Any building or structure or the use of any building, structure or land existing in violation of the ordinances in force at the time this chapter or any corresponding provision of any prior ordinance was adopted;
- b) Any nonconforming building or structure not used for a period of two (2) years or any nonconforming use abandoned for a period of two (2) years; and
- c) Any nonconforming use which is changed to a conforming use. No reversion to a nonconforming use shall be permitted thereafter.

(b) A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided, that a special permit is obtained from the board of aldermen in accordance with the procedure provided in section 30-24. In granting such a permit, the board of aldermen shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this paragraph, the word “establishment” shall include buildings, structures and lands.

(c) Regardless of whether there are increases in the nonconforming nature of a structure, the board of aldermen deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to chapter 40A, section 6 of the General Laws. The following alterations, enlargements, reconstruction of or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that (1) relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming, (2) the resulting changes on the nonconforming side will be no closer than five feet to the side or rear property line, (3) the resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the two adjacent lots, (4) the resulting construction will meet all building and fire safety codes, and (5) the *de minimis* relief provided in this section shall not apply to buildings in which the nonconformity is due solely to FAR requirements set out in section 30-15(u) Table A, nor shall it be used to increase the FAR beyond that shown in Table A:

- (1) Dormers that do not extend above the height of the existing roof peak and do not add more than four hundred (400) square feet of floor area;
- (2) Decks or deck additions or porches less than two hundred (200) square feet in size;
- (3) First floor additions in the side and rear setbacks which do not total more than two hundred (200) square feet in size;
- (4) Second floor additions which do not total more than four hundred (400) square feet in size;
- (5) Enclosing an existing porch of any size;

- (6) Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;
- (7) Bay windows which protrude no more than three (3) feet into the front setback and are no less than five (5) feet from the alteration to the lot line;
- (8) Alterations to the front of the structure if within the existing footprint; and
- (9) Alterations and additions to the front of a structure of not more than seventy-five (75) square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

(d) This chapter or any amendment thereof shall not affect any permit issued or any building or structure lawfully begun before the first publication of notice of the public hearing on such chapter or any amendment thereto required by section 5 of chapter 40A of the General Laws, but shall apply to any building or special permit issued after the first notice of said public hearing; provided, that construction work under such a permit is commenced within six (6) months after it is issued and the work, whether under such permit or otherwise lawfully begun is continued through to completion as continuously and expeditiously as it is reasonable. Notwithstanding the foregoing provisions of this section, all land use petitions for site plan approval or special permits which were filed with the city clerk on or before April 29, 1987 and which were approved subsequent to that date shall be subject to the provisions of the Newton Zoning Ordinance, in effect on April 29, 1987.

(e) Additional outdoor sidewalk seats permitted under section 26-30 of these ordinances shall not be considered an increase in the non-conformity of nor constitute an extension of use of a lawful non-conforming restaurant in any district.

(Rev. Ords. 1973, §§ 24-26; Ord. No. 284, Pts. VIII(A), (B), XIV, 6-19-78; Ord. No. 303, Pt. VI, 11-20-78; Ord. No. T-93, 6-18-90; Ord. No. T-115, 11-19-90; Ord. No. T-313, 12-6-93; Ord. No. T-314, 12-6-93; Ord. No. W-51, 7-9-01; Ord. No. X-39, 12-2-02; Ord. No. Z-51, 08-10-09; Ord. No. Z-77, 02-22-11)

State law reference —Nonconforming uses and structures, G.L. c. 40A, §

GUIDELINES FOR EXTENSION OF PREMISES TO PATIO AND OUTDOOR AREAS

1. Alcoholic beverages cannot be served outside a licensed establishment unless and until an application to extend the licensed premises has been approved.
2. An application to extend the premises must describe the area in detail: for example, dimensions, number of tables and chairs, occupancy figures for inside area and outside area, bars, if any.
3. It is essential that the licensee have control of the area in order to preclude service to underage persons, to intoxicated persons, and other violations. The premises must be enclosed by a fence, rope or other means to prevent patrons or members of the public from wandering in and out.
4. The outdoor area must be contiguous to the licensed premises and the licensee should have a view of the outside premises from inside. Egress from the inside to the outside must be clearly established. This will assure safe, uninterrupted service of alcoholic beverages.
5. The outdoor area must have adequate exits in case of emergency.
6. The licensing authorities should consider the type of neighborhood and the potential for noise in the environs.
7. Preferred are outdoor areas where alcohol is served to patrons who are seated at tables and where food is also available.



City of Newton

1000 Commonwealth Avenue ♦ Newton, Massachusetts 02459

SIDEWALK CAFÉ PERMIT APPLICATION

Sidewalk cafés can enhance the use of public space and complement existing restaurants, as well as to promote overall social and economic activity in the City’s villages and other commercial areas. However, before placing furniture on the sidewalk, applicants should review the requirements (on reverse), complete this application, and submit the following to the Department of Health and Human Services:

Completed Application Form and Fee. The fee is \$100 for new applications and \$50 for renewals. The permit is valid for one year and expires at midnight on December 31 of the year in which it is issued, unless an application for renewal has been made, in which case the current permit shall remain in force until the Commissioner of Health and Human Services has acted on the application for renewal and has given notice of the action taken. If conditions change, a new application must be submitted, noting the changes.

Explanation of Proposal. A letter should be submitted with the application that describes the restaurant operations, including proposed business hours, 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 proposed new construction of the building façade 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 scale with one set reduced to an 8 ½” x 11” sheet.

Proof of License(s) to sell food and/or alcohol. If this is a new business, applications for a common victualler’s and/or alcohol license must be first approved by the Licensing Board of Commissioners and can be submitted to the Department of Health and Human Services at the same time as this application.

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
 Address

Phone

E-mail

Property Owner’s Signature

Date

STAFF USE ONLY

Please return to _____ in the Department of Health and Human Services by _____.
(name) (date)

Please sign and date sign-off in space beside departments below and attach any additional comments or condition

DPW _____ Date _____ Planning _____ Date _____
 ISD _____ Date _____ Fire _____ Date _____
 Police _____ Date _____ Other _____ Date _____

ACTION: Approved Denied Date _____ BY _____

NOTES:

SIDEWALK CAFÉ STANDARDS. Safe and enjoyable outdoor dining is encouraged through the provisions of the Sidewalk Café Ordinance other laws for legally established restaurants as outlined below:

■ **Accessibility.** A minimum of four feet of unobstructed sidewalk is recommended 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 on between the building and the curb line). The Commissioner of Health and Human Services may consider requests for exceptions to not less than three feet under special circumstances in consultation with the City's Accessibility Coordinator.

■ **Parking.** Restaurants with parking that conforms to City standards may request up to eight chairs without requiring additional parking spaces or triggering a special permit requirement. If more than eight new seats are desired, 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 existing seats from inside the restaurant are moved outside and no more than eight new chairs are added beyond that which were approved in order for the restaurant to begin operations.

■ **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. Before selling alcohol outside, the restaurant must get a license from the Health and Human Services Commissioner for an extension of premises. All legal requirements for sale of alcohol must be honored. Such establishments also must post a sign at all exits stating: "It is unlawful to consume alcoholic beverages not purchased on the premises or to remove them from the boundaries of this sidewalk café."

■ **Designated dining area.** Where alcohol is served, the area where it is consumed or served must be clearly delineated with a barrier such as a planter, rope, handrail, or other feature that separates it from the sidewalk 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. There are no seasonal restrictions on when tables and chairs can be placed on the sidewalk, as the weather will determine whether they will be used.

■ **Maintenance.** The area surrounding the café shall be free of litter, debris, food, and wrappers within 25 feet of the premises. Restaurants shall provide their own containers and shall not place their trash in City containers.

■ **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.

■ **Sun protection.** Umbrellas and awnings that offer protection from the elements and enliven the streetscape are encouraged. Building permits may be required for awnings, so it is best to 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. Umbrellas must be secured while in use.

■ **Noise.** Restaurants may not use loudspeakers from 9 p.m. to 7 a.m. and must comply with all other standards in the Noise Ordinance.

■ **Sidewalk widening.** In some cases, widening of the sidewalk may be appropriate to enhance the streetscape a accommodate seating. For more information, please contact the Department of Public Works at 617.796.1000.

PERMIT DETERMINATION, TRANSFERABILITY, AND ENFORCEMENT. The Commissioner of Health and Human Services will review the application for completeness and consult with the Police, Fire, Public Works, Inspectional Services, and Planning Departments prior to approving or denying a request. Each department may recommend conditions or terms for approval to protect the health, safety and welfare of the public, or to prevent disturbance or nuisance. 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 provided evidence to the Commissioner of Health and Human Services that s/he the café application requirements are met. Violations will be actively enforced with a fine of \$100 a day and may be revoked upon further violation,

ARTICLE II. NOISE

(a) This ordinance may be cited as the "Noise Control Ordinance of the City of Newton."

(b) *Declaration of findings and policy.* Whereas excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and, whereas the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life; now therefore it is the policy of the City of Newton to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(c) *Scope.* This ordinance shall apply to the control of all sound originating within the limits of the City of Newton except as follows:

(1) the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work or in training exercises related to emergency activities; and

(2) all snow clearance activities; and

(3) any program or activity supervised by the parks and recreation department of the city in effect and as it exists on June 1, 1983.

(d) *Definitions.* For the purposes of this ordinance the following words and phrases shall have the meanings respectively ascribed to them by this section:

Construction and demolition: Any excavation, highway construction, land development or land clearing work, or the erection, demolition, alteration, repair, or relocation of any building or structure, which uses powered equipment such as backhoes, trucks, tractors, excavators, earth moving equipment, compressors, motorized, or power hand tools, manual tools, or equipment of a similar nature as well as two-way radios or other communication equipment; or use of any equipment for recycling, screening, separating, or any other processing of soil, rocks, concrete, asphalt or other raw material.

Electronic devices: any radio, tape recorder or player, television, phonograph, public address system, loudspeaker, amplified musical instrument or any other similar device, except two-way communication radios.

Emergency: any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work: any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR): the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Motorcycle: any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters, minibikes, and mopeds.

Motor vehicles: any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

Noise pollution: a condition caused by a noise source that increases noise levels 10dB(A) or more above background noise level, except that if the noise source produces a tonal sound, an increase at 5dB(A) or more above background noise level is sufficient to cause noise pollution.

Tonal sound: any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz. (e)

Noise Pollution prohibited.

(1) No person shall willfully, negligently, or through failure to provide necessary equipment or facilities or to take necessary precautions permit the establishment or continuation of a condition of noise pollution caused by a noise source (other than a dog or bird) owned, leased, kept, or controlled by such person, or caused by any activity of such person.

(2) When the offending noise source is located in public spaces, noise measurements shall be made at, and noise pollution determinations made in relation to, any location a passerby might reasonably occupy. When the offending noise source is located on private property, noise measurements shall be made at, and noise pollution determinations made in relation to, the boundary line of the property within which the offending source is located, or as close thereto as feasible.

(3) All noise level measurements made pursuant to subsection (e) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(f) *Time Restrictions.*

(1) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from all electric motors and/or internal combustion engines employed in yard, garden, or grounds maintenance is prohibited except during the following time periods:

(A) Between 7:00 a.m. and 8:00 p.m. on weekdays; or

(B) Between 9:30 a.m. and 8:00 p.m. on Saturdays, Sundays and legal holidays as established in section 2-26 of these revised ordinances.

(2) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from construction and demolition activity is prohibited except during the following time periods:

(A) Between 7:00 a.m. and 7:00 p.m. on weekdays; or

(B) Between: 8:00 a.m. and 7:00 p.m. on Saturdays;

(C) Generation of any noise from construction and demolition activity is prohibited at any hour on Sundays and legal holidays as established in section 2-26 of these revised ordinances, except by permit issued in accordance with subsection (h)(1).

(3) All public address loudspeakers, either mobile or stationary, shall be prohibited from operating every evening from 9:00 p.m. until 7:00 a.m. the following morning.

(4) No automobile, motorcycle, truck or vehicle-mounted refrigeration equipment or other motorized vehicle shall be left running when not in traffic, within three hundred (300) feet of any dwelling, hotel or residence, for a period of greater than five (5) minutes.

(5) Between the hours of midnight and 6:00 a.m. deliveries and pick-ups for commercial or business purposes are prohibited within 300 feet of any dwelling within a residential zone excepting deliveries to such dwellings, deliveries of gasoline to gasoline stations, deliveries or pick-ups at state or federal governmental offices and any other commercial or business delivery or pick-up operation that does not increase noise levels 5dB(A) or more above background noise level. For purposes of this subsection, "deliveries" and "pick-ups" shall include the loading and unloading of a vehicle.

(6) Between the hours of 7:00 p.m. and 7:00 a.m. trash collection shall be prohibited within five hundred (500) feet of any dwelling.

(7) Between the hours of 11:00 p.m. and 7:00 a.m. no person or persons shall disturb the peace by causing or allowing to be made any unreasonable or excessive noise, including but not limited to such noise resulting from the operation of any electronic device, or from the playing of any band or orchestra, or from the making of excessive outcries, exclamations, or loud singing or any other excessive noise by a person or group of persons, provided however, that any performance, concert, establishment, band group or person who has received and maintains a valid license or permit from any department, board, or commission of the City of Newton authorized to issue such license or permit shall be exempt from the provisions of this section. Unreasonable or excessive noise for the purposes of this section shall be defined as 5dB(A) or more above background level when measured not closer than the lot line of a residential lot or from the nearest affected dwelling unit.

(g) *Maximum Noise Levels.* Notwithstanding the provisions of subsections (e)(1) and (e)(2), the following are the maximum noise levels that are permitted for the specified purposes:

Maximum noise level dB(A) permitted: (1) Vehicles

Vehicle Class Stationary or Moving All vehicles over 10,000 lbs. GVW or GCWR86

All Motorcycles.....82 Automobiles and light

trucks.....75

Noise measurements shall be made at a distance of fifty (50) feet from the closest point of pass-by of a source or fifty (50) feet from a stationary vehicle.

(2) *Construction and demolition.*

The cumulative noise level of all construction and demolition on one site at any one time shall not exceed 90dB(A). No individual piece of equipment shall exceed a maximum noise level of 90 dB(A). If noise barriers are used that effectively shield nearby areas from a condition of noise pollution, the following devices shall be exempt from the maximum noise level limitations: jackhammers; pavement breakers; pile drivers; and rock drills.

Maximum noise level dB(A) permitted:

Backhoe, bulldozer, concrete mixer, dump truck, loader, paver,
pneumatic tools, roller, scraper90
Air compressor85
Generator90
Electric drills, sanders, saws (except chainsaws) or other power tools
of all types, whether hand held or otherwise75
Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever
distance is less.

(3) *Yard, Garden, or Grounds Maintenance Equipment*

(i) Maximum noise level dB(A) permitted:

Commercial Chipper, 3 1/2 inch or greater limb capacity
(running at full speed but not chipping).....90
Commercial truck-mounted leaf vacuum90
All other equipment, including home tractor, leaf blower,
lawn mower or trimmer65

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever
distance is less.

(4) *Tonal Sound Corrections.* When a tonal sound is emitted by a noise source specified in subsections (g)(1), (g)(2) and
(g)(3) herein, the limit on maximum noise levels shall be 5dB(A) lower than as specified in subsections (g)(1), (g)(2) and
(g)(3).

(5) *Maximum Noise Levels for HVAC systems.* No person shall operate any air conditioning, refrigeration or heating
equipment for any residence or other structure or operate any pumping, filtering or heating equipment for any pool or
reservoir in such manner as to create any noise which would cause the noise level on the premises of any other occupied
property or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, to exceed the
background noise level by more than 5 dB(A). This provision shall not apply, however, to periodic or emergency
maintenance or testing of such equipment reasonably necessary to maintain such equipment in good working order. Noise
measurements and noise pollution determinations shall be taken in accordance with subsections (e)(2) and (e)(3).

(6) *Alternative Measurement Procedures.* If it is not possible to make a good noise level measurement at the distance
specified in subsections (g)(1), (g)(2) and (g)(3), measurement may be made at an alternate distance and the noise level
subsequently calculated for the specified distance. Calculations shall be made in accordance with established engineering
procedures.

(7) All noise-level measurements made pursuant to subsection (g) shall be made with a Type I or II A-weighted sound
level meter as specified under the American National Standards Institute (ANSI) standards.

(h) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.*

(1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance
upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue
hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of
noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the
noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits,
including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his
designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such
permits shall be filed with the clerk of the board of aldermen promptly after issuance. Promptly after issuance, copies of
all such permits shall be filed with the clerk of the board of aldermen and to each ward alderman for the affected ward.

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of
any particular activity with respect to which a determination is made that such extension is necessary to provide a
reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the
effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish
appropriate procedures for the processing of requests for such extensions of time, including such hearings as the mayor or
his designee deems appropriate.

(i) *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (h)(1) or an extension of time pursuant to subsection (h)(2) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(j) *Penalties.* Violation of any of the provisions of this section shall constitute a misdemeanor and any person, upon conviction of such violation, shall be fined an amount not to exceed three hundred dollars (\$300.00). Each day that such violation continues shall be considered to be a separate offense.

(k) *Non-criminal disposition.* In addition to the penalties set forth in subsection (j), where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 20-20 and 20-21 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violations may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in Sections 20-21(c) and 20-21(d).

(l) *Severability.* If any provision(s) of this ordinance or the application of such provision(s) to any person or circumstances shall be held invalid, the validity of the remainder of this ordinance and the applicability of such provision to other persons or circumstances shall not be affected thereby. (Ord. No. R-331, 6-20-83; Ord. No. T-62, 12-4-89; Ord. No. T-200, 12-16-91; Ord. No. V-286, 3-6-00; Ord. Z-32, 7-14-08; Ord. No. Z-78, 02-22-11; Ord. No. Z-104, 04-02-12)

Cross reference—Sounding warning devices on motor vehicles, § 19-72; noise by hawkers and peddlers, § 17-26.