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Candace Havens
Director

MEMORANDUM

DATE: March 8, 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.

MEETING DATE: March 11, 2013

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.



SUMMARY

The Zoning and Planning Committee held a public hearing to consider revisions to the Sidewalk Café Ordinance on February 26, 2013. On the same night, the Finance Committee considered fees for sidewalk café permits. Both Committees will be meeting again on this date; the Finance Committee is expected to take final action on fines, and the Zoning and Planning Committee will review the revised draft ordinance, which incorporates comments from all who have reviewed the proposal in concept and in draft, including Programs and Services, Public Facilities, and the Planning and Development Board.

Attached is the red-lined version of the Sidewalk Café Ordinance with the most recent changes to date, which include:

- 1) a slight alteration to the last sentence in section (a)(4) to reflect the "unobstructed passageway" language requested by Mr. Sweet;
- 2) two sentences added to section (f) about notification to residents;
- 3) a sentence added to the beginning of section (i) about the discretion of the commissioner to mete out penalties;
- 4) a fine of \$100 to section (i), subject to review by the Finance Committee.

Also attached is a copy of those sections of the Zoning Regulations in which language has been added to clarify that legally established restaurants that desire sidewalk café seating may do so consistent with these regulations without triggering a parking requirement or special permit.

NEXT STEPS

Staff recommends the Committee review the changes and, if satisfied with the current substance and format of the ordinance, to recommend this item be considered by the full Board on March 18th.

ATTACHMENT A: Draft Sidewalk Café Ordinance

ATTACHMENT B: Draft amendments to Zoning Ordinance

ATTACHMENT C: Letter from EDC, dated March 8, 2013

ATTACHMENT D: Letter from Planning & Development Board, dated March 1, 2013

ATTACHMENT A

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

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(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:

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(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.

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(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~~

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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.

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(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 any event, shall a license permit shall only~~ be granted in circumstances where the placement of such cafe furniture would result in

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an unobstructed pedestrian passageway upon the public sidewalk of a minimum of less than four feet (4') in width.

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(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.

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(c) The term of each license-permit shall be one year and shall expire on December 31st unless renewed, and 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.

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(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 Inspectional Services, 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

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Departments are all required prior to the issuance of a permit by the Commissioner, or his or her designee, under this section.

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(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.

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(f) Applicants shall be required to notify all owners of any property within three hundred feet of the proposed permitted area of the pending application. Notification shall be made by certified mail. 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.

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

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(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 ~~license~~ permit.

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(fh) ~~Notice of violation:~~ The ~~e~~Commissioner of public works, or his or her designee, shall

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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.

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(i) Penalties: The Commissioner shall have discretion to impose any penalty described herein, and as permitted by the General Laws or the Ordinances of the City. 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 (\$100.00) 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).

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(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.

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(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.

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(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.

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

ATTACHMENT B

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 XX-XX 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 XX-XX 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 sub-section (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 XX-XX 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 XX-XX 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 XX-XX 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)



CITY OF NEWTON, MASSACHUSETTS
Economic Development Commission

Alderman Marcia Johnson, Chair, Zoning and Planning Committee
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

March 8, 2013

Re: Docket Item 316-12(3) - Sidewalk Café Ordinance Amendment

Dear Alderman Johnson and Members of the Zoning and Planning Committee:

This letter is to report that at the February 12, 2013 meeting of the Economic Development Commission (EDC), the EDC voted unanimously to support the proposed amendment to the Sidewalk Café Ordinance.

The EDC believes this amendment will assist in satisfying a market demand frequently identified by our village business community to more easily provide outdoor sidewalk seating for their patrons. By clarifying and eliminating the constraints of the present Sidewalk Café Ordinance, this amendment will not only meet the needs of our village businesses but also satisfy our established economic development goals identified in the Newton Comprehensive Plan to create more vibrant Village Centers, attract people to the village centers, and streamline the permitting process.

We commend Candace Havens, John Lojek, and Dori Zaleznik for proposing this amendment which continues to build on the positive business/economic development climate of our City. We hope this exciting new amendment will be adopted and ready for the 2013 Spring/Summer season.

Thank you for your time and consideration.


Darryl Settles, Chair
Economic Development Commission

CC: Candace Havens, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services
Dori Zaleznik, Commissioner of Health and Human Services

Setti D. Warren
Mayor

Candace Havens
Director
Planning & Development

Amanda Stout
Senior Economic
Development Planner

Commissioners

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Christopher Steele, Vice Chair
Robert Finkel, Secretary

Barry Abramson
David Abromowitz
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Scott Wolf, Vice Chair
David Banash, Treasurer
Leslie Burg, CPC Liaison
Candace Havens, *ex officio*
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CITY OF NEWTON, MASSACHUSETTS

Planning and Development Board

March 1, 2013

The Honorable Marcia Johnson
Chair, Zoning and Planning Committee
Members, Zoning and Planning Committee
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Dear Alderman Johnson and Members of the Zoning and Planning Committee:

This letter documents the voting action of the Planning and Development Board (P&D Board) and an advisory opinion the members developed on February 25, 2013.

The P&D Board members present voted unanimously to support the amendments within docketed item #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.

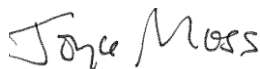
In discussing the items, several issues arose that P&D Board members feel warrant attention.

- Width of passageway – We feel strongly that the minimum width required should be four feet of clearance, rather than three feet.
- Flexibility – P&D Board members believe that attention to context needs to be built into licensing procedures to allow for unique situations in which a standard, as written, may not be adequate to address the issue under consideration. For example:
 - Even though our board agrees that a four-foot wide passageway should be required, we feel there may be spaces with minor deviations that would argue for a more nuanced approach. If, say, the passageway width for 95% of the restaurant frontage is four feet, but for 5% of it the clearance is limited to three feet, ten

inches, relevant staff should be able to allow for a reduced path of travel for that small amount of space.

- Or, perhaps there is an unusual sidewalk layout which may allow for a different configuration of tables and chairs on the sidewalk. An example is a sidewalk that dead ends, which would not require the same passageway width since you do not have to walk around it, and therefore could allow for a layout of tables and chairs that fills the sidewalk space from the restaurant to the curb.
- Following from the concept of a context-appropriate layout, there might be a restaurant that could easily accommodate ten seats on the sidewalk. The license review should allow some degree of flexibility in case the eight chair limit (or 10% of the total seating capacity) could be slightly exceeded with minimal negative impacts on the community.
- Finally, context is especially appropriate for restaurants in primarily residential areas. While we believe that enforcement of the noise ordinance will address such concerns, we also think that each restaurant's annual alcohol license hearing can provide a forum for public feedback on the compatibility of sidewalk café seating in residential areas.
- Seating Area Barriers – P&D Board members also believe that barriers surrounding the seating area must be substantial, such as a fence enclosure or a structure with low-to-the ground bars that can be felt by the cane of individuals who have visual impairments. A rope is not sufficient in providing warning to someone with low vision that there is seating on the sidewalk. For establishments that do not serve alcohol and therefore do not need full enclosures, we recommend the use of fences or similar barriers that would be placed at either end of the seating area, providing warning to pedestrians walking parallel to the restaurant that there is an outdoor seating area.
- Café Furniture Storage – During those periods when the sidewalk café furniture is not being used regularly, the outdoor furniture should not be stored on the sidewalk, because doing so would create another hazard for pedestrians with low vision.

Respectfully submitted on behalf of the Planning & Development Board,



Joyce Moss, AICP
Chairman

Cc: Planning & Development Board
Candace Havens, Director of Planning & Development