

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, MARCH 11, 2013

Present: Ald. Johnson (Chairman), Lennon, Yates, Danberg, Baker and Kalis

Absent: Ald. Sangiolo, Swiston

Also Present: Ald. Rice, Blazar, Fuller, Lappin, Crossley, Albright and Hess-Mahan

Others Present: Candace Havens (Director, Planning & Development), James Freas (Chief Long Range Planner), Alice Ingerson (Community Preservation Planner), Trisha Guditz (Housing Program Manager), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk), Dan Violi, Phil Herr and Josephine McNeil (Newton Housing Partnership)

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.

ACTION: **APPROVED 5-0 (Ald. Lennon not voting)**

NOTE: Mr. Green addressed the Committee. There had been some question about the Commission's opposition to a dog park proposal at Norumbega that did not require fencing. The Commission did not feel it was a good plan and wanted fencing, among other considerations. Mr. Green said the Commission was not opposed to dog parks and there are plenty of locations where dog parks would be appropriate. It had been decided, however, that the Commission would not put forth any ideas for dog parks, and would review only those that came to them. The Dog Task Force, however, was left with the impression that the Conservation Commission would not welcome any more applications. Both sides have since overcome the misunderstanding. Mr. Green explained that one charge of the Conservation Commission is to enforce the Wetland Protection Act and when there are environmentally sensitive areas, off-leash dogs can present a challenge, particularly in the buffers. He said there are ways to go onto conservation land and have the buffer zones protected especially if there are funds for fencing and there is enforcement.

There was also a comment from the Committee that Conservation land should be in the Capital Plan. It was pointed out that \$25K was added to the budget last year on top of what they were already being allocated. Candace Havens said a contract was already underway for some maintenance work using some of those funds.

Ald. Danberg moved approval and the Committee voted in favor 5-0.

Appointment by His Honor the Mayor

#78-13 MICHAEL ROSSI, 20 Rose Drive, West Newton, appointed as an *associate member* of the ZONING BOARD OF APPEALS for a term to expire on February 6, 2014. (60 days 05/03/13) [02/19/13 @ 5:43 PM]

ACTION: **APPROVED 5-0 (Ald. Yates not voting)**

NOTE: Mr. Rossi addressed the Committee. He explained that he has had a lifelong connection to the City and wanted to contribute to his community. In his work as a litigation attorney he has had extensive experience with issues of zoning and land use. He has represented various property owners, multiple zoning boards throughout the state, abutters who may be contesting the issuance of a building permit or variance, and has litigated a number of cases in Land Court and Superior Court contesting the actions of a zoning board or building inspector. He has made himself familiar with the Zoning Ordinances of the City.

Ald. Lennon moved approval and the Committee voted in favor 5-0.

Re-appointment by His Honor the Mayor

#79-13 PETER KILBORN, 31 Buswell Park, Newton, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire on February 7, 2016. (60 days 05/03/13) [02/19/13 @ 5:43 PM]

ACTION: **APPROVED 6-0**

NOTE: The Committee voted to approve Mr. Kilborn's appointment.

Re-appointment by His Honor the Mayor

#92-13 JOEL FEINBERG, 121 Eastbourne Rd., Newton Centre, re-appointed as a member of THE COMMUNITY PRESERVATION COMMITTEE representing Affordable Housing, for a term to expire February 12, 2016. (60 days 05/03/13) [02/19/13 @ 5:43 PM]

ACTION: **APPROVED 6-0**

NOTE: The Committee voted to approve Mr. Feinberg's appointment.

Re-appointment by His Honor the Mayor

#93-13 MICHAEL CLARKE, 38 Halcyon Road, Newton Centre, re-appointed as a member of THE COMMUNITY PRESERVATION COMMITTEE representing Open Space, for a term to expire February 12, 2016. (60 days 05/03/13) [02/19/13 @ 5:43 PM]

ACTION: **APPROVED 6-0**

NOTE: The Committee voted to approve Mr. Clark's appointment.

#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]

ACTION: **HELD 6-0**

NOTE: Ald. Albright explained that she first learned about housing trusts when she was on the Committee on Community Preservation. It is a vehicle with which funds can be dispersed in a more coordinated way for affordable rental and ownership housing opportunities in Newton. She has had several meetings with the Planning Department over the past year and felt it was a good time to re-present the concept to the Committee. It was first introduced to the Committee in May of 2012.

Trisha Guditz, the Housing Program Manager addressed the Committee. The Planning Department has been working on this issue with the Newton Housing Partnership (NHP) for several years now. There was a subcommittee of the NHP that worked on trying to determine the best method for streamlining the funding development process for housing projects. They ultimately felt that exploring the concept of an affordable housing trust was warranted. This initiative was also included in Newton's Comprehensive Plan from 2007 so it is not a new idea. A trust is a funding mechanism that consists of no less than 5 members of a Board of Trustees. The Board of Trustees consist of the Mayor and at least 4 others, however, the Board can be larger. Ms. Guditz said the thought was to include some number of aldermen and other individuals from the community that had experience with housing development, finance, architecture, etc. The Mayor would be the one to submit possible appointees to the Board, but the Board of Aldermen had to approve them.

The community can make the decisions about the powers of the trust. The statute can be followed precisely or the powers can be increased or decreased. There was concern that there may be a lack of citizen participation and that the trust would take the place of the multiple aldermanic committee meetings. Ms. Guditz said they would address that concern by building in a process in the program design for public participation and comment. This would probably happen at the point where the Board of Trustees is hearing the application for the first time.

There is a federal funding process that usually takes between 2 and 5 months for the Newton Housing Partnership, Planning and Development Board, and then the Mayor to approve federal funds for a housing development project. The Community Preservation funding process may then take 5-12 months for final approval and that adds an incongruity and time lapse on projects. The trust would allow for all the decision makers to be talking about the project at the same time, so there is no lag between the processes. There could be much more cohesion on a project and the timeline could be shortened. The trust would be capitalized with CPA funds and would follow all federal requirements regarding CPA funds. Inclusionary zoning cash payment funds would also be included. The statute says that Community Preservation funds may be put into a housing trust. (Please see statute attached.)

Angus Jennings addressed the Committee. He is a planning consultant and has had experience with trusts in cities and towns. His background is detailed in the attached Planning Memo. He explained that trusts can be set up in a variety of ways in terms of administrative processes,

interests, goals and accountability. It is a very flexible vehicle. He said he could offer advice on how to set up the trust in a way that the appointing authority and the citizens get what they need and fulfill their goals.

Committee Questions

There was concern about earmarking funds to the housing trust in excess of the minimum 10% per year that would be available for housing according to CPA rules. Ms. Guditz explained that she went before the Community Preservation Committee (CPC) over a year ago with a pre-proposal of \$1.5M to fund a trust. The CPC wanted to see a full proposal come back to them but they liked the concept and were reserving that money to capitalize the trust. The CPC told her she needed to work with the Board of Aldermen as well for consensus. If the trust were capitalized at just 10% a year that would be \$300K/year, so the question remained for some committee members as to why they should capitalize it for \$1.5M. This could tie up funds that might be used for other uses. There was also sentiment, however, that underfunding this could complicate the process instead of streamlining it. Alice Ingerson noted that last year 35% was spent on housing. Ms. Guditz said she would like to see the full \$1.5M go into the trust, but that could be a discussion the Board should have with the CPC. Ald. Albright noted that most of the projects that have been proposed are looking for about \$500K, so she would like to see the \$1.5M go into the trust as proposed by the CPC, as a trial to see if this funding mechanism is useful or not.

There was a question if the money could come back to the CPC if the decision was made that the trust wasn't working out. Marie Lawlor said she would have to look at the enabling Massachusetts legislation.

Another concern is that right now there is process whereby coming through the Board of Aldermen on the funding side, the Board has some decision making about the land uses that they will support. If a housing trust is created, will the Board no longer have that right? Ald. Albright explained that the Board tried to streamline the process by doing away with the Committee on Community Preservation. For example, a CAN DO project had to go through the Land Use and Finance Committees of the Board so essentially the process was not streamlined. The Board of Trustees would be responsible for reviewing housing projects instead of the process of going through several Aldermanic Committees. If there was a need for a special permit, however, the project would still have to go through Land Use Committee for the special permit. The Committee noted that although the Board of Trustees may be staffed by people who are advocates or experts in the field, sometimes the non-experts on the Board of Aldermen can ask questions that raise some relevant issues. Ms. Guditz said that the Board of Trustees could include members of the Land Use Committee, or the Finance Committee, or any number of aldermen. The Board of Aldermen has strong input in the choice of Trustees.

Follow Up

The Committee asked to see how other communities who have adopted the CPA have structured the powers of the trusts, the Board of Trustees, and how they have worked. (Sixty six communities in the Commonwealth have affordable housing trusts.) There was some general concern about oversight in terms of essentially taking the Board of Aldermen out of the process.

The Committee would like to read the state legislation. They also want to see a model of how this might work in Newton as well as the benefits over the risks. The Committee also suggested speaking with David Wilkinson, the City's Comptroller. Ms. Guditz said she would put together a proposal for their review.

The Committee voted to hold this item 6-0.

#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]

ACTION: **APPROVED 6-0**

NOTE: The Planning & Development Board approved the proposed changes to Chapter 30 at their February 25th meeting. A draft of the proposed changes to Chapter 30 as they relate to the café furniture on sidewalks ordinance is provided.

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]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Candace Havens addressed the Committee. She explained that four issues were addressed that had caused some concern at the last meeting:

1. A slight alteration to the last sentence in section (a)(4) to reflect the "unobstructed passageway" language as requested by Doug Sweet of the Planning & Development Board;
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.

The suggested revisions were added to the permits for café furniture on sidewalks ordinance and the draft is provided. The ordinance will be moved to Chapter 12 of the City of Newton Ordinances from Chapter 26 as it will now be under the jurisdiction of the Commissioner of Health and Human Services. The fines for non-compliance with the café furniture on sidewalks ordinance is on the March 18th docket and will be before the Finance Committee for determination. The Zoning and Planning Committee supported a fine of \$100 for each day of non-compliance as suggested by the Planning Department. The permit fees were held in Finance Committee as well and will be considered when the ordinance is approved.

#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]

ACTION: **NO ACTION NECESSARY 6-0**

NOTE: Ald. Hess-Mahan requested that this item be voted No Action Necessary. A parents(2) had been docketed that essentially addressed the issue and was approved. The Committee agreed to vote No Action Necessary on this item.

Respectfully Submitted,

Marcia T. Johnson, Chairman

#48-12



PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 44 MUNICIPAL FINANCE

Section 55C Municipal Affordable Housing Trust Fund

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public

#48-12

auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;

(7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;

(15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and

(16) to extend the time for payment of any obligation to the trust.

(d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.

(e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.

(f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.

(g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.

(h) The books and records of the trust shall be audited annually by an independent auditor in accordance with accepted accounting practices.

(i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.

(j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.



Setti D. Warren
Mayor

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

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

Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: March 8, 2013
TO: Alderman Marcia Johnson, Chairman
Members of the Zoning and Planning Committee
FROM: Candace Havens, Director of Planning and Development
James Freas, Chief Planner for Long-Range Planning
Trisha Kenyon Guditz, Housing Program Manager
RE: Affordable Housing Trusts Discussion
MEETING DATE: March 11, 2013
CC: Board of Aldermen

Housing Program Staff will be attending the Zoning and Planning Committee meeting to discuss the concept of a municipal affordable housing trust in anticipation of staff bringing forward a proposal to form such a trust in the City of Newton. Angus Jennings, AICP will be attending as a guest speaker to share his knowledge and experience gained as the manager of the Town of Westford's Affordable Housing Trust.

Guest speaker

Mr. Jennings is a planning consultant and the President of the Massachusetts Association of Planning Directors. Until recently, he was the Director of Land Use Management for the Town of Westford where he still works on an interim basis. His responsibilities for the Town included oversight of the Zoning, Planning, Permitting, Conservation and Building Departments, and project management for a range of public policy, infrastructure and community and economic development initiatives.

Mr. Jennings previously served as Principal Planner for Concord Square Planning & Development, Inc., a Boston-based consulting firm which played a major role in the adoption of 40R Smart Growth Zoning legislation in Massachusetts and similar "Incentive Housing Zones" legislation in Connecticut. At Concord Square, he served as project manager for

nearly 30 public-and private-sector contracts, including leading zoning amendments in 10 communities and serving as lead consultant to Federal Realty Investment Trust in securing the first "I-Cubed" infrastructure financing district in Massachusetts. Angus has also served as the Town Planner in Marshfield, MA, and a Planning Assistant for the City of Baltimore, MD.

Mr. Jennings holds a Master's Degree in City and Regional Planning from Cornell University.

Background to the discussion

Over a two-year period, members of the Newton Housing Partnership met to determine if there was more a more predictable, efficient and less time consuming way to provide the financial subsidies necessary to develop affordable rental and ownership housing in Newton. Most affordable housing developers rely on multiple sources of financing to complete a project and a protracted development process adds to the overall cost of development. Streamlining the public funding process is essential since smaller developments, like the ones that typically access City public funds, are the least able to absorb the costs that result from a lengthy development process. The Newton Housing Partnership is recommending that the City consider establishing an affordable housing trust which can shorten the process for securing funds and provide an overall degree of cohesion and continuity that is not currently in place at this time.

MUNICIPAL AFFORDABLE HOUSING TRUST BACKGROUND

State enabling legislation

The Municipal Affordable Housing Trust Fund Law at MGL c.44, s. 55C was passed by the State legislature in 2005. The purpose of creating a municipal affordable housing trust is to support the creation and preservation of affordable housing in municipalities for the benefit of low-and moderate-income households. Prior to 2005, communities could only create trusts through a home rule petition which required approval from the State legislature.

Board of Trustees

Trusts are usually managed by a nonprofit organization or a governmental agency and the statute requires that a board of trustees be established to manage and oversee it. The board must include at least five members including the chief executive officer, or designee. (In Newton, the chief executive officer is the mayor.)The remaining trustees are appointed by the chief executive officer subject to confirmation by a municipality's legislative body—in Newton, the Board of Aldermen. Trustees serve for a term not to exceed two years with the exception of the chief executive officer. Generally, board members should include individuals with experience in housing development, planning, architecture, real estate and finance/lending.

Powers of the Board of Trustees

Under the statute, a trust has broad powers characterized as "...the creation and preservation of affordable housing". Therefore, eligible uses of a trust can include acquisition,

rehabilitation, new construction, preservation and pre-development costs. To this end, a municipal affordable housing trust can:

- Accept and receive real property, personal property, or money by gift, grant, contribution, devise or transfer from a range of entities.
- Purchase, own and manage real estate property.
- Sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract.
- Execute, acknowledge, and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts and other instruments incident to any transaction in which the board uses for the accomplishment of the purposes of the trust.
- Other powers consistent with the creation and preservation of affordable housing.

A municipality can, either by ordinance or by-law, exclude or modify any of the powers identified in the statute and can also grant additional powers to the board if they are consistent with the purposes of the statute.

Funding a trust

Trusts are typically capitalized by dedicated, recurring and non-recurring revenue sources. Some possible sources of funding for an affordable housing trust, subject to existing processes such as Aldermanic approval, can include:

- Community Preservation Funds
- Funds derived from inclusionary zoning requirements
- Direct appropriations
- Donations/bequests
- Loan repayments

Establishing an affordable housing trust

Establishing an affordable housing trust in Newton requires a majority of the Board of Aldermen to vote to accept the provisions of the enabling legislation. In the same or subsequent action, the Board of Aldermen must specify how many members will constitute the board of trustees and the initial length of their terms (not to exceed two years, except for the chief executive officer). In addition, the Board of Aldermen may specify the composition of the trust board and omit, modify, or add to the powers authorized by the statute. Following the Aldermanic vote(s), individuals are appointed to the board of trustees by the chief executive officer, subject to confirmation by the Board of Aldermen.

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

March 18, 2013

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended as follows:

- I. Delete in its entirety **Sec. 26-30. Licenses for care furniture on sidewalks.**
- II. Add a new **ARTICLE VIII** to Chapter 12 as follows:

Sec. 12-70. Permits for cafe furniture on sidewalks.

(a) The Commissioner of Health and Human Services (the “commissioner”), or his or her designee, may grant revocable 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) Permits may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the permit. All cafe furniture and trash receptacles must be removed at any time upon the request of the Commissioner or his or her designee when he or she determines that the public convenience and welfare require such removal.
- (2) Permits may allow for the placement of tables, chairs, 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. All such tables, chairs, 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 ordinances or General Laws. 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) Permits may only be granted in those circumstances where the Commissioner, or his or her designee, 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 any event, a permit shall only be granted in circumstances where the placement of such cafe furniture would result in an unobstructed pedestrian passageway upon the public sidewalk of a minimum of four feet (4') in width.

(b) As a pre-condition of the issuance of any such permit the Commissioner shall require the permitted party to indemnify, hold harmless and defend the City of Newton from any claims arising out of the permitted activity; and the Commissioner shall require the 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 Commissioner for the performance by the permitted party of the requirements of the permit and this section.

(c) The term of each permit shall be one year and shall expire on December 31st unless renewed. The fee for each such annual permit shall be *TO BE DETERMINED* for the initial issuance of the permit, and *TO BE DETERMINED* for renewals thereafter. 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 permit application the Commissioner, or his or her designee, shall consult with the Fire, Police, Public Works, Inspectional Services, and Planning Departments for their determinations that the placement of cafe furniture, as described in the application, would not violate existing zoning, safety and public health requirements. 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) Applicants shall be required to notify all owners of any property within three hundred feet of the proposed permitted area of the pending application, as well as the Ward Aldermen for the proposed permitted location. 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. Questions and comments regarding the pending application shall be directed to the Commissioner of Health and Human Services.

(g) All permits granted pursuant hereto must include the following provisions:

(1) That the 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 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 permit.

(h) *Notice of violation:* The Commissioner, 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 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 permit granted pursuant to this section for any violation of the terms of such permit or the provisions of this section. Violations hereunder shall be subject to a fine of *TO BE DETERMINED* 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 may impose limitations on the hours of operation for permit holders and conditions on the use of outdoor seating 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 the provisions of this section and permits granted hereunder.

(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)

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

March 18, 2013

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 30 as follows:

- I. Delete sections 30-11(a)(9), 30-11(d)(9), 30-13(c)(11), 30-13(e)(12), and 30-19(d)(13) in their entirety and insert in place thereof the following:

Sec. 30-11 (a)(9)

“Restaurants having not more than 50 seats, excluding any additional outdoor sidewalk seats permitted under section 12-70 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;”

Sec. 30-11 (d)(9)

“Restaurants having over fifty (50) seats, excluding any additional outdoor sidewalk seats permitted under section 12-70 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;”

Sec. 30-13 (c) (11)

“Restaurants having not more than 50 seats, excluding any additional outdoor sidewalk seats permitted under section 12-70 of these ordinances;”

Sec. 30-13 (e)(12)

“Restaurants over fifty (50) seats, excluding any additional outdoor sidewalk seats permitted under section 12-70 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;”

Sec. 30-19 (d)(13)

“One stall for each three (3) seats, permanent or otherwise, excluding any additional outdoor sidewalk seats permitted under section 12-70 of these ordinances, for patron use of restaurants and other places serving food or beverages”

And

II. Amend Sec. 30-21 by adding a new paragraph (d) as follows:

“(d) Additional outdoor sidewalk seats permitted under section 12-70 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.”

III. Re-letter existing paragraph (d) to (e)