

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JUNE 10, 2013

Present: Ald. Johnson, Danberg, Baker, Kalis, Swiston and Yates

Absent: Ald. Lennon and Sangiolo

Also Present: Ald. Hess-Mahan, Blazar and Albright

Others Present: James Freas (Chief Long Range Planner), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Dori Zaleznik (Commissioner, Health and Human Services), John Lojek (Commissioner, Inspectional Services), Amanda Stout (Economic Development Planner), Karyn Dean (Committee Clerk)

Re-appointment by His Honor the Mayor

#195-13        JOHN PEARS, 102 Parker Street, Newton Centre, re-appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 14, 2016 (60 days 08/02/13) [05/15/13 @ 4:59 PM]

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

**NOTE:** Several Committee members expressed their appreciation for Mr. Pears' work in the community and endorsed his re-appointment to the Economic Development Commission. Ald. Danberg moved to approve this appointment and the Committee voted in favor.

Re-appointment by His Honor the Mayor

#196-13        CHRISTOPHER STEELE, 702 Chestnut Street, Waban, re-appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 14, 2016 (60 days 08/02/13) [05/16/13 @ 10:10 AM]

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

**NOTE:** Mr. Steele addressed the Committee. He said it was been an honor and a pleasure to serve and has been very pleased by the progress that has been made with the EDC. He looks forward to the work ahead with village vitality, business development and other issues. The Committee noted that they were very pleased as well with the work of the EDC. Ald. Danberg moved to approve this appointment and the Committee voted in favor.

#214-12        ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment.

**ACTION:**    **HELD 5-0 (Ald. Kalis not voting)**

**NOTE:** Marie Lawlor, Assistant City Solicitor explained that this item was meant to address the difficulty of dealing with neighborhood properties that some residents considered to be a significant nuisance due to large amounts of “trash” and “debris” on their sites. There is currently no such ordinance or regulation to deal with this sort of complaint. There is quite a bit of subjectivity that goes along with determining what trash, debris, junk actually is and how much is too much. As several members of the Committee stated, one person’s “trash” could be another person’s “treasure”. As it stands in Newton, violation of sanitary or fire codes would be the only method by which to address a situation. At the last discussion of this item, the Committee asked to speak with the Commissioners of Inspectional Services and Health and Human Services for their input. **A draft ordinance is attached to this report.**

Ald. Danberg and Ald. Blazar stated that they docketed this item because even though the problem properties are quite few, they have a significant impact on the neighborhood.

#### Health and Human Services

Commissioner of Health and Human Services, Dori Zaleznik, addressed the Committee. She said her office would typically get a call from a resident about a rodent problem in their neighbor’s yard. It is usually found that the rodent problem is in both properties and her department will negotiate with the neighbors to mitigate that problem and have them call a pest control professional. Standing water is also another issue for the department as it could breed mosquitos. Housing complaints are difficult because there are four inspectors that cover the entire city. That would include recreational camps, septic systems, 400 food facilities in the City, etc. More than 50% of the time, housing complaints are tenant/landlord disputes and they do what they can to help with the problem if it is health and/or safety related. Commissioner Zaleznik said that if her department were given more responsibility to handle the kinds of complaints this docket item is addressing, it would be a significant burden to resources and personnel. She has found the problems outside are generally not health related, aside from the pest problems she described earlier.

Commissioner Zaleznik noted that there is already an ordinance in Chapter 12, Section 12-1 regarding Certificates of Habitability. It states that her department would be required to certify that each apartment, tenement or room in a lodging house meets the standards set forth in the state sanitary code. This also applies to condos at their initial conversion. She said she does not have the staff to do that and they have not been doing that. She also stated that it’s impossible to even know when tenants come and go.

#### Inspectional Services

Commissioner of Inspectional Services, John Lojek addressed the Committee. He said the first issue is right of access and privacy rights. Unless his inspectors are given permission to enter the property, they may not enter. The second issue, there is nothing to enforce as there is no ordinance to address these circumstances. If an ordinance were to be crafted, it would have to be extremely narrow and specific. The current draft specifies a certain amount of cubic feet would determine what is too much, but would that be one pile, or the cumulative amount of several different piles of items? And how would an inspector determine what is debris or junk? He is concerned about the subjectivity of this ordinance and that it could easily be challenged. For

instance, there are ordinances regarding abandoned vehicles, or a shed that might be falling down and those things are clearly identifiable. The vague and wholly subjective notion of what is bad or good is not clearly identifiable in this proposed ordinance. Commissioner Lojek also suggested that any fine be civil and not criminal and could perhaps be handled by ticketing. He has found that constructive engagement tends to work better than being heavy handed. It starts people moving in the right direction which can be very difficult if they are not handled fairly.

Commissioner Lojek spoke to the former ISD Commissioner in Needham and he did not recall ever having to enforce their ordinance in the 8 years he was there.

#### Committee Comments

There was also concern in Committee that the ordinance as proposed was too vague and too subjective and would be open to interpretation and challenge. There was also issue with whether it is to address health and safety issues, or property values. When phrases like “neighborhood integrity” and “property values” come into play, there could be the appearance of trying to legislate taste and might be considered going too far. This is a slippery slope and some members felt it was best to stick with issues of health and safety. It was also pointed out that it is generally understood in law that “nuisance” can be defined as visual nuisances as well and aren’t just limited to health and safety issues. “Nuisance” would basically be defined as an interference with the use and enjoyment of one’s property. With the issues of access to properties, it may be best to work with what might be visible from public view. If the nuisance is visible to abutters, that is considered a private nuisance and dealing with public nuisance is what they should be dealing with.

There was also a suggestion that the fines associated with the ordinance should be civil and not criminal. The definitions offered in the draft ordinance should also be more narrowly crafted. Looking at other communities’ ordinances would be helpful in all aspects of drafting one for Newton. Many cities and towns across the country address this with a by-law or ordinance. A Committee member asked if any of the ordinances relating to “junkyards” would apply to any of these nuisance sites. It was noted that the ordinance (secondhand dealer) relates to a business, not a private property.

#### Follow Up

It was suggested that the docketers research what other cities and towns across the country are using and how well their ordinance works, and also to consult with Ald. Baker, Commissioner Lojek and Marie Lawlor on crafting new language considering the suggestions of the Committee. In particular, it was suggested that any reference to property values be deleted.

The Committee voted to hold this item.

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

#95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]  
**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**

**ACTION:** **APPROVED 6-0**

**NOTE:** James Freas, Chief Long Range Planner, addressed the Committee. He explained that these items were heard two years ago, approved by Zoning and Planning and sent to the Finance Committee. Finance referred both this item and the related fee item back to ZAP asking for clarification, specifically, why should the City be treating condo conversion any differently than the sale or transfer of any other kind of property. Some changes were made to the original ordinance language taking into account concerns from the Finance Committee. **The amended ordinance language is attached.**

A Committee member explained a situation in which a single family house that had an accessory apartment turned the two units into condominiums and sold them. Since this was an illegal conversion the two units were considered noncompliant and the buyers of the condos lost a significant amount of money in the transaction. Along with safety issues, this sort of situation was the impetus behind this docket item.

**Development vs. Transfer of Property**

The Planning Department and the Inspectional Services Department share the view that condo conversion should be treated more like development and less like the sale or transfer of property. People are taking action to change their property in order to increase its value and the change triggers the need for review for legitimate public interest. The three public interests would be legality, safety and data tracking. The legality concern would be to confirm that the transfer of ownership does not change the use as in the conversion of an accessory apartment to a condo. This has happened in the past and is an illegal change of use; the safety issue would be to confirm that the new units meet current safety code standards; and data on condo conversions can be helpful in tracking the availability of housing types in the City (condo, rental, etc.) which can inform the development of housing policy.

Commissioner Lojek said the Town of Brookline has this as a by-law. They do a joint inspection with Fire, Health, and Inspectional Services. Mr. Freas also noted that many communities in this area have this on the books as well. Commissioner Lojek noted that sometimes buyers are not aware of the problems that may exist when a conversion takes place and sometimes the owners who are converting units don't realize them either. He did not want anyone to be taken advantage of or to live in an unsafe unit. He added that with a condo conversion, there are now multiple owners that don't necessarily have control over each other's units. It is then incumbent upon the City to make sure different owners are not endangering each other. The City also would collect better records and data with this new provision. Commissioner Lojek did not feel a fee of \$100 per unit would be any kind of significant burden on any developer.

Identifying Condo Conversions

The Committee wondered how the City would be aware of condo conversions unless the developer was self-reporting, or a neighbor happened to make a call to ISD. Commissioner Lojek said they would need some data sharing from the Assessor's Office as they get the notification of condo conversions from the Registry of Deeds. They could then compare the list from Assessor's Dept. against the actual number of certificates they have issued. Another suggestion was sharing information with the Fire Department as well. Any new unit would need a fire certification before it could be sold. If the Fire Department does not see a condo conversion certificate, they can notify Inspectional Services. Commissioner Lojek said they have started using Community Plus with the Fire Department and they could use that database to see if the condo conversion certificate has been issued, or at least applied for.

The Committee approved this item and the proposed ordinance language which is attached. The item will go back to the Finance Committee.

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

#102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]

**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**

**ACTION: APPROVED 6-0**

**NOTE:** The Committee is in favor of establishing a fee of \$100 as outlined in the attached proposed ordinance. The Committee referred this item back to the Finance Committee.

Respectfully Submitted,

Marcia T. Johnson, Chairman

Item # 214-12 DRAFT FOR DISCUSSION PURPOSES 5/21/13:

Add the following new section:

**Sec. 5 - 22 Keeping of junk, debris, or overgrown vegetation in public view.**

(a) *Purpose:* The purpose of this ordinance is to help protect the health, safety and welfare of the citizens by preventing blight, protecting property values and neighborhood integrity, and protecting the City's resources by avoiding the creation and maintenance of nuisances on property which are detrimental to neighboring residents, properties or property values.

(b) *Definitions:*

*Junk or debris.* Any materials or combination of materials including but not limited to scrap, metal, scrap construction materials, rags, plastics, batteries, paper trash, inoperable appliances, inoperable machinery, mattresses, tires, and dilapidated or decayed furniture unusable for its intended purpose.

*Overgrown vegetation.* Weeds, grass, bushes, or other shrubbery which are untrimmed or unkempt and which may harbor or attract rats and vermin, conceal pools of stagnant water, or are otherwise detrimental to neighboring properties.

*Substantial amount.* A quantity of junk or debris which occupies more than 375 cubic feet in the aggregate on any one lot in a residential district.

*Reasonable amount of time.* Sixty (60) days.

*Public view.* Junk, debris, or overgrown vegetation which may be viewed from public property or ways, or from any location within a direct abutter's residence or property.

*Commissioner.* The commissioner of inspectional services or his designee.

(c) No owner or occupant of any lot in any residential district shall keep in the public view any substantial amount of junk and debris or a condition of overgrown vegetation for more than a reasonable amount of time. Such keeping of junk and debris or overgrown vegetation is declared a public nuisance.

(d) *Regulatory authority.* The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(e) *Enforcement.* The commissioner shall enforce the provisions of this section and shall institute all necessary administrative or legal action to assure compliance.

(f) *Notice of violation.* The commissioner shall issue a written notice of any violation of this section to the owner or occupant of the lot. Said notice shall describe the condition and order that it be remedied within thirty (30) days. If such condition is not remedied within that time, the commissioner may take action to impose the fines described in sec. 5-22 (g) by

criminal disposition or by civil disposition pursuant to authority granted by G.L. c. 40, sec. 21D and by sections 20-20 and 20-21 of these ordinances.

(g) *Penalty.* Any violation of this section, including any rules and regulations promulgated by the commissioner, shall be penalized by a fine of ~~three-one~~ hundred dollars (\$100.00) per day for days one through seven that the violation continues; two hundred dollars per day (\$200.00) for days eight through fourteen that the violation continues; and three hundred dollars (\$300.00) per day for each subsequent day the violation continues. Each day a violation continues shall constitute a separate offense.

(h) Action under this section shall not bar any separate regulation by or action by any other City department for health, fire safety, building code or any other violations.

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



Setti D. Warren  
Mayor

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Candace Havens  
Director

## WORKING SESSION MEMORANDUM

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**DATE:** June 7, 2013

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

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

**RE:** #95-11: ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies.

#102-11: ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion.

**MEETING DATE:** June 10, 2013

**CC:** Board of Aldermen  
Planning and Development Board  
Donnalyn Kahn, City Solicitor  
John Lojek, Commissioner, Inspectional Services Department

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### INTRODUCTION

Petition #95-11 and 102-11 propose to create a new regulation requiring a property inspection in conjunction with the conversion of an existing multi-unit residential lot in single ownership (typically a rental property) into condominium ownership in which each unit is individually deeded and owned. The proposed regulation would require notice to the City and a City inspection of the property as part of the conversion process with a fee to help cover the cost of this service. The two petitions were approved by ZAP on June 13, 2011 and referred to the Finance Committee for their consideration of



the proposed fee. The Finance Committee referred both items back to the Zoning and Planning Committee.

## **BACKGROUND**

These two petitions, and a third, #94-11, which was approved by the Committee and adopted by the Board of Aldermen, were originally submitted and considered in the context of a specific issue, that of an accessory apartment in a single-family residential district that had been converted to condominium ownership. Petition #94-11 addressed the definition of an accessory apartment in order to clarify that such an apartment was considered to be a use, subordinate to the primary single-family or two-family use of a given property. The language developed to address this issue is now incorporated into the Newton Zoning Ordinance. The remaining two petitions were referred to the Finance Committee where issues were raised relative to the appropriateness of the proposed regulation.

The question raised by the Finance Committee: What differentiates the sale of a condo unit in the context of a condo conversion from the sale of any other housing unit, whether it is a previously created condo or a single-family home, such that a special notice to the City and an inspection by ISD become necessary? This question relates closely to one of the fundamental issues associated with the proposed regulation and discussed in the Planning Department memo on this item from the June 13, 2011 meeting (Attached); that is the City can regulate land use and the form of development but not ownership. If ownership is outside the purview of the City, it should not matter what type of ownership was in place prior to the sale of a converted condo and therefore, should potentially have no significant difference between such a sale and any other transfer of property in the City requiring special notification and inspection.

## **ANALYSIS**

Many municipalities require property owners converting multi-unit properties to condominium ownership to submit notice and allow for an inspection. There are three primary reasons for such a condo conversion regulation:

1. Legality – As has been discussed previously, the City cannot regulate the ownership of units, only the use. In some cases though, the conversion to condo ownership does constitute a change in use, as in the case of accessory apartments. Even with the clarification previously adopted, there are likely properties in the City where a property owner may seek to convert an accessory unit to condominium ownership where this regulation would allow the City to be notified and correct the action, should an illegal condo conversion have occurred.
2. Safety – An inspection of the property confirms that the new condo units meet current safety code standards, ensuring the safety of residents and allowing for the upgrade of the City's building stock.
3. Data Tracking – Data on condo conversions can be important for tracking the availability of housing types in the City, informing the development of housing policy. Generally, rental

and condo units serve different segments of the housing market and being able to track the conversion of rental units to condos would aid in the City's overall ability to track the availability of rental housing and adjust policies as necessary to ensure a desirable supply.

The Finance Committee's question posed whether a condo conversion is just like any other sale or transfer of property in the City, or whether it is more like development in which there is a transformation of property requiring appropriate review and inspection by the City furthering legitimate public interests. Staff believes there are two primary reasons why condo conversion should be considered more like property development and less like a simple transfer of property ownership. First, unlike any other property transfer, with condo conversion there is a legal question as to whether the change in ownership type also constitutes a change in use, as in the accessory apartment scenario. Second, unlike the transfer of a single unit within a larger condominium property, the condo conversion represents the transfer of the entire building to multiple new owners with legal and physical interdependencies between the units based on a shared structure and commonly-owned areas. Safety issues in one unit or common area element can affect the entire property heightening the importance of a safety inspection at the time of the condo conversion to ensure that all standards are being met. There are many older multi-unit rental properties in the City that may not meet current standards that should be inspected before they are converted to condominium ownership where there will be multiple owners with varying degrees of attention to such health and safety issues within the individual units and shared spaces. Though the building is not new, the act of condo conversion is still a form of development in which a number of residential units will be made available for sale to numerous new owners and where a safety issue within one such unit could have significant ramifications for all other units in the structure. For the same reason as stated above, the existing Revised Ordinances of the City of Newton, Chapter 12, Section 12-1 requires that every time a rental apartment is vacated and whenever an existing building is converted to a condominium, it must be certified by the Commissioner of Health and Human Services before it can be reoccupied. Given this precedent, it would also be appropriate to address safety issues.

#### **PROPOSED TEXT AMENDMENTS**

1. Insert the following new Chapter 5, Section 22 into Chapter 5, Buildings, Article II, Inspectional Services Department. This creates a requirement for an inspection for Code compliance after condominium creation with associated fees and penalties.

##### Chapter 5, Section 22, Inspection of Condominiums

- (a) Purpose: The intent of this regulation is to ensure the health and safety of occupants in dwellings converted to condominium and to ensure compliance with applicable state and local codes, ordinances and regulations.
- (b) The provisions of this section shall apply to any structure which has been used in whole or in part for residential purposes, and which is converted to condominium after the effective date of this section.

- (c) Prior to or within forty-eight hours after the recording of a master deed under G.L. c. 183A in the registry of deeds, but in any event prior to the initial sale of the first unit, the owner or owners who create a condominium shall obtain from the commissioner of inspectional services a certificate of condominium inspection. The owner(s) shall apply for such certificate on such form as the commissioner may provide, shall list each unit, and shall provide a copy of the master deed. The application notice shall be accompanied by the inspection fee required in 5-22(f) below.
- (d) Within five (5) days after a completed application for condominium inspection is filed, the commissioner or his designee shall inspect the property and shall issue such certificate if he determines that the subject property and each subject unit therein is in compliance with applicable state and local codes, ordinances, and regulations.
- (e) The commissioner of inspectional services shall be responsible for enforcing the provisions of Section 5-22 and may issue orders, promulgate regulations, and create procedures necessary for achieving the purpose in 5-22(a).
- (f) The commissioner of inspectional services shall charge an inspection fee of one hundred dollars (\$100.00) per condominium unit in order to defray the city's costs of conducting inspections under this section.
- (g) Any owner who converts property in violation of section 5-22 or in violation of any order or regulation issued by the commissioner pursuant to section 5-22 shall be punished by a fine of not more than three hundred dollars. Each unit converted in violation of this section and each day of continued violation for each unit shall constitute a separate offense.
- (h) A certificate of condominium inspection shall be in addition to and not a replacement for any other regulatory requirement which may be applicable by law, ordinance, or regulation.

2. Insert the following into Chapter 17 Section 6, creating a new subsection (d) "Condominium Conversion," to levy the appropriate fee for the inspection required above in the proposed Section 5-22.
  - a. "17-6(d) The fee for an inspection of a condominium as required in Section 5-22 shall be \$100 per unit."

#### **NEXT STEPS**

If the Zoning and Planning Committee agrees with the analysis provided by the Planning Department staff recommends referral of , petitions #95-11 and 102-11 back to the Finance Committee with a response to their question so that the Committee can review the proposed fee. If further consideration is necessary, staff requests the Zoning and Planning Committee define what additional data and analysis it may need to inform further discussion.