

Chapter 12

HEALTH AND HUMAN SERVICES*

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ARTICLE I. IN GENERAL

Sec. 12-1. Change of certificate of habitability.

Whenever an apartment, tenement, or room in a lodging house is vacated by the occupant thereof, or when an area in an existing building is converted to a condominium, it must be certified by the commissioner of health and human service, prior to being reoccupied by a new tenant, lodger or occupant, as meeting the standards set forth in "The State Sanitary Code, Chapter 11, Minimum Standards of Fitness for Human Habitation" as promulgated and from time to time amended by the Department of Public Health of the Commonwealth of Massachusetts under the authority of General Laws, Chapter 111, Section 127A. Each apartment, tenement or room in a lodging house shall be required to be certified only once in any given twenty-four month period. Condominiums are to be certified only at the time of the initial conversion. Electricity may be ordered turned off by the commissioner of health and human service if such apartment, tenement, room in a lodging house or condominium unit is not certified as being fit for human habitation. If inspection is not made within forty-eight hours after notification is received by the Newton health and human services department that the apartment, tenement or room in a lodging house is vacated or that the condominium conversion is completed, a temporary certificate of habitability may be issued upon request of the owner filed with the commissioner of health and human services, pending inspection. A temporary certificate of habitability may also be issued if, in the judgment of the commissioner of health and human services or his duly authorized agents, the owner is entitled to a reasonable period of time to make necessary repairs and the health and safety of the occupant is not thereby endangered. Certificates of habitability and temporary certificates of habitability shall be issued by the commissioner of health and human services or his duly authorized agents. Before electricity is ordered to be shut off by the commissioner of health and human services, the owner or person in control of the premises shall be given and receive three (3) days notice that such action is to be taken. (Rev. Ords. 1973, § 8-3; Ord. No. R-151, 6-1-81; Ord. No. S-306, 3-21-88; Ord. No. X-175, 05-26-05)

Cross reference—Licensing and permits generally, Ch. 17

***Cross references**—Animals and fowl, Ch. 3; recycling and trash, Ch. 11; zones of quiet around hospitals established, § 19-4; taxicabs carrying persons with contagious diseases prohibited, § 19-309

State law references—Health generally, G.L. c. 111; crimes against public health, G.L. c. 270

Secs. 12-2—12-17. Declaration and Definitions.**(a) Declaration of findings and policy-Scope.**

The City Council hereby finds that the reduction in the use of plastic bags by commercial entities in the city is a public purpose that protects the marine environment, advances solid waste reduction and protects waterways. This ordinance seeks to reduce the number of plastic bags that are being used, discarded and littered, and to promote the use of reusable checkout bags by retail stores located in the city. Further, this ordinance seeks to increase the use of reusable bags.

(b) Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Department" means the city's department of health and human services.

"Commissioner", means the Commissioner of Health & Human Services or his/her designee.

"Checkout bag", means a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include:

- (i) bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of a retail establishment;
- (ii) laundry or dry-cleaner bags;
- (iii) newspaper bags;
- (iv) a paper bag given to customers at a pharmacy for medication;
- (v) a bag without handles that is used to protect items from damaging or contaminating other items such as protecting wine bottles or vegetables;
- (vi) a bag used to contain unwrapped food.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

"Reusable checkout bag" means a sewn bag with stitched handles that (1) can carry 25 pounds over a distance of 300 feet; (2) is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Retail establishment", means any commercial entity, whether or not for profit, with retail space located in the City of Newton including but not limited to a restaurant, food or ice cream truck, convenience store, retail pharmacy, supermarket, or seasonal and temporary businesses. "Retail establishment" shall not include Meals on Wheels food delivery services to home bound persons with disabilities or home bound seniors.

(c) Requirements

(1) If any retail establishment provides a checkout bag to customers, the bag shall be either a recyclable paper bag or a reusable checkout bag.

(2) A retail establishment that provides any type of checkout bag shall sell it for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the retail establishment.

(3) Any charge for a checkout bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "Checkout Bag Charge" thereon.

(4) The Commissioner may promulgate rules and regulations to implement this section.

(d) Effective date.

This ordinance shall take effect six months from date of passage for any retail establishment with retail space of 3500 square feet or larger or with at least two locations under the same name within the city with retail space that totals 3500 square feet or larger; and shall take effect 12 months from date of passage for all other retail establishments.

(e) Exemptions

No exemptions shall be allowed.

(f) Penalties and enforcement.

(1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(g) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable.

**ARTICLE II.
HEALTH AND HUMAN SERVICES DEPARTMENT**

Sec. 12-18. Department established.

(a) There is hereby established a health and human services department which shall be under the charge of the commissioner of health and human services.

(b) The department shall carry out all public health functions of the city.

(c) The department shall carry out human services functions whose purpose shall be to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the inhabitants of the city. The department shall work towards the enrichment of the lives of all the citizens of Newton by promoting programs that develop better understanding among persons of different races, sexes, ages, colors, religious and ethnic groups, and which shall help create better communication among all of the residents of the city. The department shall operate a volunteer services program.

(d) The department shall coordinate the functions of the following boards and commissions, and shall aid in implementing their policies and programs: human rights commission and its advisory council; youth commission and its advisory board; advisory council of health; and the board of license commissioners. (Rev. Ords. 1973, § 8-1; Ord. No. X-175, 05-26-05; Ord. No. Z-98, 11-21-11; Ord. No. Z-103, 04-02-12; Ord. No. B-66, 12-21-20)

Cross references—Inspections of food sold by hawkers and peddlers, § 17-42; human rights commission Ch. 12, Art. V.; youth commission §12-60 et seq; advisory council of health §12-20.

State law references— G.L. c. 111 generally; G.L. c. 111 sections 26A to 26E.

Editor's Note— Ord. No. X-175 established a health and human services department, and a department of senior services (see chapter 14). Prior to such reorganization, there was a health department and a separate human services department.

Sec. 12-19. Commissioner; qualifications; health duties.

(a) There shall be a commissioner of health and human services who shall either (1) be the holder of a graduate degree in medicine, public health, public administration or a related field with at least two years full time administrative experience in the organization, management or delivery of public health or health care services, or (2) have any equivalent combination of education and experience in health or health care.

(b) The commissioner shall have all of the powers and duties of a commissioner of health as provided in the General Laws.

(c) The commissioner shall cause to be made all bacteriological examinations. In case of the prevalence or impendency of any infectious or contagious disease within the city, he shall give to the mayor and the city council such advice and assistance as may be required by them. (Rev. Ords. 1973, § 8-1; Ord. No. X-175, 05-26-05)

State law reference— chapter 148 of the Acts of 1980.

Sec. 12-20. Advisory council of health.

There shall be within the health and human services department an advisory council of health as provided in General Laws, chapter 111, sections 26A and 26C. (Rev. Ords. 1973, § 8-2; Ord. No. X-175, 05-26-05)

Cross references—Regulations governing appointment and service on commissions, boards, committees and councils, § 2-8; council on aging, Ch. 14, Art. II.

ARTICLE III. RECOMBINANT DNA RESEARCH

Sec. 12-21. Regulation of recombinant DNA technology.

(a) All recombinant deoxyriboneucleic acid (DNA) research or technology in the City of Newton shall be undertaken only in strict conformity with the "Guidelines", so called, of the National Institutes of Health (NIH), by other Federal Agencies, or by Act of Congress, and in conformity also with such other health regulations as the commissioner of health and human services may from time to time promulgate or as the Newton biosafety committee (NBC) may adopt.

(b) In the context of this article the following definitions are adopted:

(1) *Recombinant DNA molecules (rDNA)*, and organisms and viruses containing rDNA, are those defined in the NIH Guidelines promulgated in the Federal Register on May 7, 1986.

(2) An *institution* is any person, group of persons, business entity, association or any other organization, whether public or private, for profit or non-profit.

(3) *Guidelines* are defined as:

a) National Institutes of Health Guidelines for Research involving Recombinant DNA Molecules, as published in the Federal Register on May 7, 1986.

b) Any amendments, revisions or substitutions subsequent to the above-referenced guidelines, including, but not limited to:

Notices of actions under NIH Guidelines for Research involving Recombinant DNA Molecules on August 24, 1978, July 29, 1988, October 26, 1988, March 13, 1989, March 1, 1990, September 12, 1990, July 18, 1991, November 21, 1991, January 28, 1992 and April 22, 1992.

c) Such amendments to the documents in subsections a) and b) above which are adopted by the National Institutes of Health and approved by the Commissioner. Amendments not acted upon by the Commissioner within sixty days shall be considered approved. In the event that the NIH shall discontinue or abolish its guidelines, those guidelines in effect at the time of such discontinuance shall remain in effect in Newton. (Ord. No. R-237, 03-15-82; Ord. No. T-319, 12-20-93; Ord. No. X-175, 05-26-05; Ord. No. A-113, 06-19-17)

Sec. 12-22. Newton biosafety committee.

(a) There shall be a Newton biosafety committee (NBC) which shall be comprised of nine (9) members which include the following:

The commissioner of health and human services or his/her designee;

Four (4) members appointed by the mayor, at least one of whom is a scientist knowledgeable in the field of rDNA research and technology. The other three shall represent the fields of public health, occupational health, infectious disease or environmental health, and shall preferably include one member of the Newton health advisory council.

Four (4) members appointed by the city council, at least one of whom represents the fields of public health, occupational health, infectious disease or environmental health.

Members appointed by the mayor and the city council shall serve (3) year terms; provided however, that of the first three members appointed to the committee by the mayor and the city council, two (2) shall serve for a term of one (1) year, one shall serve for a term of two (2) years, and one shall serve for a term of three (3) years. (Ord. No. R-237, 03-15-82; Ord. No. T-319, 12-20-93; Ord. No. X-175, 05-26-06; Ord. No. A-113, 06-19-17)

Sec. 12-23. Institutional biosafety committee.

(a) An institutional biosafety committee (IBC) must be established for each institution conducting rDNA research or technology. The IBC shall include the commissioner of health and human services or his/her designee, and two community representatives with expertise in rDNA research and technology and/or safety issues. One of these representatives shall be appointed by the mayor and one shall be appointed by the city council for a term of three years. The IBC shall meet at least once a year. Each institution shall name at least three (3) members of its staff to the IBC, including the safety officer.

(b) All institutions requesting such permit from the commissioner of health and human services must first submit the following to the Newton biosafety committee (NBC). In addition, the IBC shall immediately notify the commissioner of health and human services and the NBC upon discovery of any incident, accident or significant deviation and/or non-compliance by the institution with any section of this ordinance or the NIH guidelines. (Ord. No. R-237, 03-15-82; Ord. No. T-319, 12-20-93; Ord. No. X-175, 05-26-05; Ord. No. A-113, 06-19-17)

Sec. 12-24. Permit requirement.

(a) All institutions planning to conduct rDNA research or to use rDNA technology must obtain a permit from the commissioner of health and human services with the prior approval of the NBC, before commencing said research or technology. Institutions receiving such permits shall conduct research or technology only as specifically set out in its permit application and supporting documents filed with such application.

(b) All institutions requesting a permit from the commissioner of health and human services to commence rDNA research or technology in the Limited Manufacturing Zoning District (Sec. 30-12), the Manufacturing Zoning District (Sec. 30-12), and the Mixed Use 1 and 2 Zoning Districts (Sec. 30-13), must also receive a special permit from the city council pursuant to section 30-24 prior to the original issuance, but not the renewal, of said permit. Institutions seeking such permit from the commissioner of health and human services must first submit the following to the NBC:

- (1) A completed application form obtained from the Newton health and human services department.
- (2) A plot plan showing the proposed location of the facility and a floor plan showing the internal layout of the facility.
- (3) A listing of all proposed organisms, including containment levels, to be employed in rDNA research or technology, and including the screening process to be performed by institutions conducting rDNA research or technology in order to insure the purity of the strain of host organisms used in the experiments and to test organisms resulting from such experiments for their resistance to commonly used therapeutic antibiotics. Host organisms obtained from independent laboratories shall undergo the same screening process.
- (4) A plan for systematic monitoring of waste to assure that surviving rDNA organisms will not be

released into the environment.

- (5) A description of the training program of safeguards and procedures for personnel using rDNA, and a copy of the training manual;
- (6) The institution's health monitoring, health surveillance and safety manuals, together with the plan for an appropriate medical surveillance program as determined by the IBC and in accordance with NIH guidelines for all persons engaged in the use of rDNA.
- (7) A description of the rodent and insect control programs to be used in the facility.
- (8) The name of the safety officer who shall be responsible for enforcing the policies of the IBC.
- (9) A plan for orienting representatives of the Newton health and human services, fire and police departments to the physical plant and to procedures to be utilized in the event of an emergency.

(c) The NBC shall review the institution's application for a permit and supporting documents and make its recommendation of the same to the commissioner of health and human services.

(d) Not later than sixty (60) days after an institution has commenced rDNA research or technology as determined by the commissioner of health and human services, the institution shall file with the commissioner:

- (1) The names and qualifications of members of IBC.
- (2) Copies of Newton building department and Newton fire department certification.
- (3) Evidence of certification, as necessary, from the Massachusetts Department of Environmental Quality Engineering and the Massachusetts Department of Public Health.

(e) Permits granted by the commissioner of health and human services shall be renewed annually.

(f) The fee for a permit granted by the commissioner of health and human services, or annual renewal thereof, shall be \$250. (Ord. No. R-237, 03-15-82; Ord. No. T-319, 12-20-93; Ord. No. X-175, 05-26-05; Ord. No. A-113, 06-19-17)

Sec. 12-25. Inspection and review.

(a) The institution shall allow inspections and review of the facility and of procedures and practices of rDNA use for compliance with this ordinance.

(b) All institutions must undergo an initial inspection before the permit is granted. The results shall be reported to the commissioner of health and human services, the NBC and the institution involved. (Ord. No. R-237, 3-15-82; Ord. No. X-175, 05-26-05; Ord. No. A-113, 06-19-17)

Sec. 12-26. Procedure for requesting and holding a hearing.

Institutions denied a permit, or the renewal thereof, or any person aggrieved by the granting of a permit, may request a hearing by filing a written petition with the commissioner of health and human services within ten (10) days from the denial or grant of a permit. Upon receipt of such petition the commissioner of

health and human services shall set a time and place for such hearing and shall so inform the petitioner, and the institution if other than the petitioner, in writing. At the hearing the petitioner shall be given an opportunity to be heard and to show why the permit should be granted or denied. (Ord. No. R-237, 3-15-82; Ord. No. X-175, 05-26-05)

Sec. 12-27. Appeal.

Any institution or person aggrieved by the final decision of the commissioner of health and human services with respect to the denial or grant of a permit may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this commonwealth. (Ord. No. R-237, 3-15-82)

Sec. 12-28. Restrictions.

Recombinant DNA use requiring physical containment greater than the BL3 level shall not be permitted in the City of Newton. An institution shall provide the NBC with thirty days' notice prior to recombinant DNA use requiring physical containment at the BL3 level. (Ord. No. R-237, 03-15-82; Ord. No. A-113, 06-19-17)

Sec. 12-29. Violations.

(a) An institution which violates any provision of this article shall be subject to a fine of three hundred dollars (\$300.00) per offense, each day of violation constituting a separate and distinct offense. The commissioner of health and human services shall be empowered to enforce this ordinance.

(b) The commissioner may revoke, suspend, modify or not renew a permit upon determination, after notice and hearing, if one is requested by the permit holder in accordance with the procedures in Sec. 12-26, that the permit holder has failed to comply with this ordinance, the permit conditions or the guidelines.

(c) Notwithstanding the above, the commissioner may, upon a determination that any violation constitutes an immediate threat to the public health or environment, order the immediate closure of an institution without prior notice or hearing. Any institution aggrieved by such action shall appeal the same under the provisions of Sections 12-26 and 12-27. (Ord. No. R-237, 03-15-82; Ord. No. X-175, 05-26-05; Ord. No. A-113, 06-19-17)

Sec. 12-30. Severability.

If any provision(s) or portion(s) of this article or the application of any provision(s) or portion(s) thereof to any person or circumstance is/are held to be invalid, such invalidity shall not affect the validity of the remainder of said provision or other provisions of this article. (Ord. No. R-237, 3-15-82; Ord. No. T-319, 12-20-93; Ord. No. X-175, 05-26-06)

Secs. 12-31—12-39. Reserved.

**ARTICLE IV.
EMERGENCY RELIEF FUND**

Sec. 12-40. Established; purpose.

This fund, to be known as the Emergency Relief Fund, is established to provide for emergency financial relief to eligible residents of the city of Newton who suffer physical damages to real estate and/or personal property as a result of a backup in a city sewer main. (Rev. Ords. 2001, § 14-18; Ord. No. V-245, 6-7-99; Ord.

No. X-175, 05-26-05)

Sec. 12-41. Eligibility and application.

In order for a Newton resident to be eligible for a payment from the Emergency Relief Fund, he/she must meet the moderate income schedule annually issued by the U. S. Department of Housing and Urban Development for use in the Community Development Block Grant program. Upon application for receipt of funds pursuant to this ordinance, each applicant shall submit documentation of his/her family's income in a manner satisfactory to the commissioner of health and human services. (Rev. Ords. 2001, § 14-19; Ord. No. V-245, 6-7-99; Ord. No. X-175, 05-26-05)

Sec. 12-42. Administration.

The commissioner of health and human services shall administer the Emergency Relief Fund. Upon receipt of an application for emergency financial relief from an eligible resident, the commissioner of health and human services shall expeditiously review the sewer incident, investigate the extent of the emergency and determine what payment shall be made, if any, taking into account the availability of funds. The commissioner of health and human services shall make each such determination on a case by case basis and within his/her sole discretion. In no event shall the commissioner of health and human services expend in excess of five thousand dollars (\$5000) per dwelling unit per incident except upon further approval of the city council. All funds paid pursuant to this section shall be used solely to replace and repair damaged real or personal property relating to life necessities and/or the habitability of a residence. (Rev. Ords. 2001, § 14-20; Ord. No. V-245, 6-7-99; Ord. No. X-175, 05-26-05)

Sec. 12-43. Claims and liability.

The determinations made pursuant to this section shall be made without regard to the city's legal liability in connection with the sewer backup. Any monies paid pursuant to this section shall be considered a set-off against any claim that is made against the city for damage to the same item of real or personal property for which this fund has paid to repair, replace or restore. (Rev. Ords. 2001, § 14-21; Ord. No. V-245, 6-7-99; Ord. No. X-175, 05-26-05)

Secs. 12-44—12-49. Reserved.

**ARTICLE V.
HUMAN RIGHTS COMMISSION AND ADVISORY COUNCIL**

Sec. 12-50. Policy of the city.

(a) It is the policy of the city to see that each person regardless of race, color, religious creed, national origin, sex, age, disability, ancestry, sexual orientation, or gender identify or expression, shall have equal opportunity in or access to employment, housing, education, and public accommodations; to assure that each person shall have equal access to and benefit from all public services and licensing; to protect each person in the enjoyment of his/her civil rights; and to encourage and bring about mutual understanding and respect among all persons in the city by the elimination of unlawful discrimination.

(b) *Policy of the city regarding housing practices:*

(1) It is the policy of the city to follow all of the provisions set forth in M.G. L. Chapter 151B (the Massachusetts Anti-Discrimination Law) and 42 U.S.C. § 3601, *et. seq.* (the Federal Fair Housing Act, as

amended) regarding non-discrimination in housing practices.” (Rev. Ords. 1973, § 2-282; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05; Ord. No. X-201, 04-03-06; Ord. No. A-44, 09-15-14)

Sec. 12-51. Establishment of commission; membership, term, officers.

(a) There is hereby established a municipal board to be known as the human rights commission of the city (hereinafter referred to as the commission). The commission shall consist of nine (9) members appointed by the mayor with the approval of the city council for a term of three (3) years. The members of the commission shall be citizens of the city and shall, so far as practicable, be so selected as to provide representation from the fields of religion, education, and behavioral sciences, industry, law, commerce and labor.

(b) The mayor, with the approval of the city council, shall appoint each successor to former members of the community relations commission to a term of three (3) years. Appointments to unexpired terms shall not be counted as a term for the person appointed. The members of the commission shall serve without compensation. The commission shall annually elect one of its members as chairperson, and may elect other officers as it may deem necessary, with the approval of the mayor. The commission shall meet at least eleven (11) times a year at regular intervals. The commissioner of the department of health and human services shall be given notice of said meetings and he/she or his/her designee have the right to be present. Five members of the commission shall constitute a quorum and a majority of those present shall be sufficient for any action taken by the commission. (Rev. Ords. 1973, § 2-283; Rev. Ords. 2001, § 14-34; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05)

Cross reference—Regulations governing appointment to and service on commissions and committees, § 2-8

Editor's note—As amended in 1975, this section provided for members of the then community relations commission to continue as members of the new human rights commission for the remainder of their terms.

Sec. 12-52. Executive officer.

There shall be an executive director of the commission. The commissioner of health and human services appointed under section 12-19 or his/her designee shall serve as the executive director, and shall coordinate and perform the administrative duties as determined by the commission. (Rev. Ords. 1973, § 2-284; Rev. Ords. 2001, § 14-35; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. X-175, 05-26-05)

Sec. 12-53. Function, powers, duties.

The function of the commission shall be to implement the policy of this article by the exercise of the following powers and duties:

(a) To enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations, labor organizations, fraternal and benevolent organizations, and other groups in eliminating unlawful discrimination and showing the need for mutual self-respect and the achievement of harmonious intergroup relationships in the city.

(b)(1) To initiate investigations into the existence of unlawful discrimination in the city which may deny or tend to deny equal access to or opportunity in housing, employment, education, and public accommodations, services and facilities to a person or group because of his/her race, color, sex, age, handicap, religious creed, national origin ancestry sexual orientation, or gender identity or expression and in connection therewith to hold hearings.

(2) To subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take

testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before the commission. The powers enumerated in this subparagraph (b)(2) may be exercised by a vote of two-thirds (2/3) of the members of the commission only, and in accordance with G.L. Chapter 233, Sections 8 through 11.

(c) To attempt by mediation to resolve any matter over which it has jurisdiction and after investigation of any matter, not resolved by mediation, to make written report of its findings and recommendations to the mayor on any matter within his/her jurisdiction for his/her review and for the implementation by him/her of such of the recommendations of the commission as the mayor deems justified; or, similarly, to the school committee on any matter within its jurisdiction, or to the Massachusetts Commission Against Discrimination (MCAD) on any matter within its jurisdiction; or to any court or other governmental agency having jurisdiction over the matter in question, and in all cases, urging, and using its best efforts to bring about, compliance with its recommendations.

(d) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination in housing, employment, education, and public accommodations, services, and facilities to a person or group because of his/her race, color, religious creed, national origin, sex, age, handicap, ancestry, or sexual orientation, gender identity or expression.

(e) To adopt, promulgate, amend and rescind rules and regulations to carry out the provisions of this article, and the policies and practice of the commission in connection therewith.

(f) To render to the mayor and city council a full written report of its activities and of its recommendations, not less than once a year.

(g) To obtain upon request and utilize the services of all municipal departments and agencies, unless prohibited by law.

(h) The commission may expend, with the approval of the mayor, such funds as are appropriated for the aforementioned purposes. The commission shall annually prepare an operating budget in a timely manner to permit formulation of an overall department of health and human services budget. (Rev. Ords. 1973, § 2-285; Rev. Ords. 2001, § 14-37; Ord. No. 55, 2-18-75; Ord. No. 79, 7-28-75; Ord. No. 248, 12-5-77; Ord. No. S-140, 12-16-85; Ord. No. X-175, 05-26-05; Ord. No. A-44, 09-15-14)

Sec. 12-54. Advisory council.

(a) *Establishment, appointment, term, meetings.* There is hereby established an unpaid advisory council to the commission consisting of twenty (20) members who shall be appointed by the mayor for terms of two (2) years. Six (6) of the above said members shall be representative of:

- (1) Law enforcement;
- (2) School department;
- (3) Clergy;
- (4) Fair housing or other appropriate civil rights organization;
- (5) Labor union;

(6) Real estate.

Appointments to unexpired terms shall not be counted as a term for the person appointed. The advisory council shall meet at least four (4) times a year and shall be given notice of all commission meetings. The commissioner of health and human services shall be given notice of advisory council meetings and he/she or his/her designee shall have the right to be present.

(b) *Functions and duties.* It shall be the function of the council to assist and advise the commission in the carrying out of its powers and duties, to serve on such subcommittees as may be created from time to time by the commission, and to aid the commission in obtaining the support of the citizens of Newton in effectuating the policy of this article. The advisory council shall annually elect one of its members as chairperson and may elect other officers as it deems necessary, with the approval of the mayor. (Rev. Ords. 1973, § 2-286; Rev. Ords. 2001, § 14-38; Ord. No. 55, 2-18-75; Ord. No. 70, 7-28-75; Ord. No. S-140, 12-16-85; Ord. No. V-290, 3-20-00; Ord. No. X-175, 05-26-05)

Editor's note—As amended in 1975, this section provided for members of the then community relations advisory board to continue as members of the new human rights commission advisory council for the remainder of their terms.

Sec. 12-55. Construction of article.

The provisions of this article shall be construed liberally for the accomplishment of the purposes thereof, and any ordinance inconsistent with any provision hereof shall not apply, but nothing contained in this article shall be interpreted to contravene the General Laws of the Commonwealth. (Rev. Ords. 1973, § 2-287; Rev. Ords. 2001, § 14-39; Ord. No. 55, 2-18-75; Ord. No. 70, 7-28-75; Ord. No. X-175, 05-26-05)

Secs. 12-56—12-59. Reserved.

**ARTICLE VI.
YOUTH COMMISSION**

Sec. 12-60. Created; membership; terms; removal; chairperson; officers.

There is hereby established within the city a youth commission, consisting of nine (9) members to be appointed by the mayor with the approval of the city council, who will serve without compensation. Such members must be residents of the city or enrolled in a secondary or middle school within the City and will serve for terms not exceeding three (3) years, or until such members are rendered ineligible to serve. All new members will be appointed for a term of a maximum of three (3) years, but no member may serve for more than two (2) consecutive terms. Each member will continue to serve after the expiration of the term until a successor has been appointed and has qualified, unless such member has been rendered ineligible to serve. Vacancies will be filled for the period of the unexpired term in the same manner as original appointments. Any member of the commission may, after a public hearing, if requested, be removed for cause by the appointing authority. Appointments to unexpired terms will not be counted as a term for the person appointed. The commission will annually elect one of its members as chairperson and may elect other officers as it deems necessary. Executive or administrative officers of the city government are not eligible to serve on the commission, but may advise it upon request of the commission. (Rev. Ords. 1973, § 2-315; Rev. Ords. 2001, § 14-57; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-26-05; Ord. No. A-89, 11-21-16)

Editor's note—As amended in 1970 this section provided for the original members to be appointed or staggered terms of one (1), two (2) and three (3) years."

Sec. 12-61. Purposes.

The purpose of this commission is to implement programs and policies to meet the opportunities, challenges and issues of Newton youth, pursuant to chapter 40, section 8E, of the Massachusetts General Laws. In addition, the purpose of this commission is to:

- (a) encourage youth to take leadership roles in the community;
- (b) facilitate opportunities for and access to resources on local, state and federal levels;
- (c) coordinate programs and activities carried on by both public and private agencies;
- (d) create and implement policies for the prevention of youth problems in a cooperative and professional effort;
- (e) create a sense of permanency of action and continuity of purpose for all youth activities.

To accomplish all of the foregoing, the commission will coordinate with the department of health and human services. (Rev. Ords. 1973, § 2-316; Rev. Ords. 2001, § 14-58; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-26-05; Ord. No. A-89, 11-21-16)

Sec. 12-62. Authority to establish rules and regulations.

The commission may, with the approval of the mayor and the knowledge of the commissioner of health and human services, or designee, establish its own rules and regulations to carry out its goals. (Rev. Ords. 1973, § 2-317; Rev. Ords. 2001, § 14-59; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-25-05; Ord. No. A-89, 11-21-16)

Sec. 12-63. Meetings; reports.

The commission will meet at least once each month, except for during July and August. The commission will keep accurate records as required by the open meeting law. The commission will submit an annual report to the city council. In addition to the annual report, the mayor may request written reports of the activities of the commission at any time. Five (5) members of the commission will constitute a quorum and a majority of commissioners present will be sufficient for the commission to take any action. (Rev. Ords. 1973, § 2-318; Rev. Ords. 2001, § 14-60; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-26-05; Ord. No. A-89, 11-21-16)

Sec. 12-64. Gifts; grants.

The youth commission may receive gifts of property, both real and personal, in the name of the city, subject to the approval of the city council. Such gifts, if any, may be managed and controlled by the commission for the purpose of carrying out any program or policy for which the commission was established. The commission will keep informed and remain cognizant of all state and federal legislation concerning funding and program planning for youth commissions or related activities which may inure to the benefit of the community as a whole. Any federal or state grants and private gifts or donations received for these purposes will be included in its annual budget to be approved by the mayor and city council. The commission may expend, with the approval of the mayor, such funds as are appropriated for the purposes stated in section 12-61 of this article. The commission will prepare an annual operating budget, to be included in the overall department of health and human services budget. (Rev. Ords. 1973, § 2-319; Rev. Ords. 2001, § 14-61; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-26-05; Ord. No. A-89, 11-21-16)

Sec. 12-65. Advisory Board to Youth Commission.

(a) The mayor shall appoint, with the advice of the youth commission, an unpaid advisory board to the youth commission consisting of not more than thirty (30) members, fifteen (15) of whom shall be secondary or middle school age. Membership of the advisory board, except the secondary and middle school members, shall include, so far as practicable, persons representative of existing youth agencies, social agencies, clergy, health, education, law and law enforcement, medical, school, recreation and other public or private organizations concerned with youth. the duty of the advisory board shall be to advise the youth commission and offer recommendations in respect to matters concerning Newton youth. This board shall meet at least six (6) times each year. It shall meet with the youth commission at least twice a year for the purpose of communicating to it the results of its deliberations and to present any recommendations.

(b) All members of the advisory board will be appointed for a term of two (2) years. the advisory board will annually elect one of its members as the chairperson and may elect other officers as it deems necessary. Members of the board will serve for not more than three (3) consecutive terms. (Rev. Ords. 1973, §2-320, Rev. Ords. 2001, § 14-62; Ord. No. 81, 7-28-75; Ord. No. X-175, 05-26-05; Ord. No. A-89, 11-21-16)

Editor's note—As amended in 1970, this section provided that the original members who were not high school youth were to be appointed for staggered terms of one (1) or two (2) years.

**ARTICLE VII.
HEALTH CARE ADVISORY COMMITTEE**

Sec. 12-66 Establishment; purpose and scope

There is hereby established a health care advisory committee which shall be an independent advisory body charged with making recommendations to the mayor and city council regarding ways to control the cost of employee and retiree health insurance while improving or maintaining the quality of health care available to Newton employees and retirees. Specifically, the committee is charged with reviewing the cost and efficiency of Newton's health benefits plan or plans, examining possible alternative methods of securing health insurance for its participants, and investigating possible avenues of providing better medical care and treatment outside of the traditional model at a lower cost, including wellness, prevention and early detection regimens.

Sec. 12-67. Reports and recommendations

The committee shall issue reports to the mayor and the president of the city council on its findings. The first such report shall be issued by a date certain as set by the mayor and the president of the city council. Thereafter, the committee shall issue such reports upon request of the mayor and/or the city council. (Ord. No. A-7, 10-15-12)

Sec. 12-68 Composition

(a) The committee shall be comprised of ten (10) members, five (5) of whom shall be appointed by the mayor subject to the approval of the city council and five (5) of whom shall be appointed by the city council.

(b) Persons receiving health benefits from the City of Newton shall not be eligible for membership, nor shall any current City of Newton employees, including elected officials. The appointing authorities shall endeavor to select members based solely on their expertise in the fields of health care, finance, insurance and related disciplines and their willingness to serve. In particular, the Committee should include at least

one actuary and at least one medical professional.

Sec. 12-69. Term

Duly approved members shall be appointed for a term of three (3) years, with terms staggered, so that no more than four members' terms expire in any given year.

Terms for initial appointments to the committee shall be staggered as follows so that no more than four members' terms expire in any given year: three (3) for a term of one year; three (3) for a term of two years; and four (4) for a term of three years. Thereafter, members of the committee shall be appointed for a term of three years. (Ord. No. Z-97, 11-07-11)

**ARTICLE VIII.
PERMITS FOR CAFÉ FURNITURE IN THE PUBLIC WAY**

Sec. 12-70. Permits for cafe furniture in the public way. .

(a) The commissioner of health and human services (the "commissioner"), or their 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 their designee when they determine 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, including fire, police, public works, inspectional services and planning departments, and in conformity with any applicable ordinances or general laws.
- (4) Permits may only be granted in those circumstances where the commissioner, or their 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) Notwithstanding anything to the contrary in Chapter 19 of the City of Newton Ordinances, the commissioner, or their designee, may grant revocable permits for the placement of certain café furniture upon designated municipal parking spaces in the public way, excluding municipal off-street parking areas. 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 parking spaces in the public way affected by the permit. All café furniture, trash receptacles, barriers, and any other items in the area affected by the permit must be removed at any time upon the request of the commissioner or their designee upon their determination that the public convenience and welfare require such removal.
- (2) The commissioner, or their designee, may consider parking and other needs of abutting businesses prior to granting or denying a permit.
- (3) Permits may allow for the placement of tables, chairs, benches, shade umbrellas, 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 surface and shall not be affixed thereto. Any shade umbrellas shall be fastened, weighted and otherwise secured while in use. Permits shall require the placement of protective barriers.
- (4) 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, including fire, police, public works, inspectional services and planning departments, and in conformity with any applicable ordinances or general laws.
- (5) Permits may only be granted in those circumstances where the commissioner, or their designee, has determined that the placement of such café furniture would not interfere with pedestrian and/or traffic safety.
- (6) Permits shall only allow placement of items from April 1st to January 1st.

(c) As a pre-condition of the issuance of any permit under this section 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 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.

(d) The term of each permit for sidewalk café seating shall be one year and shall expire on December 31st unless renewed. The fee for each such annual permit for parking space café seating shall be \$250.00 per parking space.” The fee for each such annual permit shall be one hundred dollars (\$100.00) for the initial issuance of the permit, and fifty dollars (\$50.00) 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.

(e) Upon receipt of each permit application the commissioner, or their designee, shall consult with the fire, police, public works, inspectional services, and planning departments for their determinations that the placement of café furniture and barriers, 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 any permit by the commissioner, or his designee, under this section.

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

(g) 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 city councilors 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.

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

- (1) That the permitted party shall place exterior trash receptacles in the area affected by the permit 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 area affected by the permit and the neighboring area within a radius of twenty-five feet (25') of the sidewalk area affected by the permit.

(i) *Notice of violation:* The commissioner, or his 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.

(j) *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 one hundred dollars (\$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 17-22 and 17-23 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 17-23(b-d).

Cross reference – general fines, §17-21; civil fines, §17-23.”

(k) All permit holders shall comply with the requirements of the noise ordinance at § 20-13 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.

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

(m) *Regulatory Authority:* The commissioner has the authority to promulgate rules and regulations necessary to implement and facilitate enforcement and administration of this section.

(n) *Enforcement:* The health and human services department, department of public works, inspectional services department, and police department shall have the authority to enforce the provisions of this section and permits granted hereunder.

(o) *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. A-18, 04-01-13; Ord. No. C-1, 02-16-22)

ARTICLE IX. PLASTIC BAG REDUCTION

Sec. 12-71. Plastic Bag Reduction Ordinance.

(a) Declaration of findings and policy-Scope.

The City Council hereby finds that the reduction in the use of plastic bags by commercial entities in the city is a public purpose that protects the marine environment, advances solid waste reduction and protects waterways. This ordinance seeks to reduce the number of plastic bags that are being used, discarded and littered, and to promote the use of reusable checkout bags by retail stores located in the city. Further, this ordinance seeks to increase the use of reusable bags.

(b) Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Department" means the city's department of health and human services.

"Commissioner", means the Commissioner of Health & Human Services or his/her designee.

"Checkout bag", means a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include:

- (1) bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of a retail establishment;
- (2) laundry or dry-cleaner bags;
- (3) newspaper bags;
- (4) a paper bag given to customers at a pharmacy for medication;

- (5) a bag without handles that is used to protect items from damaging or contaminating other items such as protecting wine bottles or vegetables;
- (6) a bag used to contain unwrapped food.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

"Reusable checkout bag" means a sewn bag with stitched handles that (1) can carry 25 pounds over a distance of 300 feet; (2) is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Retail establishment", means any commercial entity, whether or not for profit, with retail space located in the City of Newton including but not limited to a restaurant, food or ice cream truck, convenience store, retail pharmacy, supermarket, or seasonal and temporary businesses. "Retail establishment" shall not include Meals on Wheels food delivery services to home bound persons with disabilities or home bound seniors.

(c) Requirements

- (1) If any retail establishment provides a checkout bag to customers, the bag shall be either a recyclable paper bag or a reusable checkout bag.
- (2) A retail establishment that provides any type of checkout bag shall sell it for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the retail establishment.
- (3) Any charge for a checkout bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "Checkout Bag Charge" thereon.
- (4) The Commissioner may promulgate rules and regulations to implement this section.

(d) Effective date.

This ordinance shall take effect six months from date of passage for any retail establishment with retail space of 3500 square feet or larger or with at least two locations under the same name within the city with retail space that totals 3500 square feet or larger; and shall take effect 12 months from date of passage for all other retail establishments.

(e) Exemptions

No exemptions shall be allowed.

(f) Penalties and enforcement.

- (1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second

offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

- (2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(g) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable.

(Ord. No. A-56, 01-20-15; Ord. No. B-33, 07-08-19)

Sec. 12-72 Sustainable Food Containers and Packaging.

- (a) **Short Title.** This section may be cited as the “Sustainable Food and Beverage Serveware, Packaging, and Single Use Ordinance” of the City of Newton.

- (b) **Purpose:** The purpose of this ordinance is to reduce the overall environmental impact of the City of Newton, its residents, and its businesses. Single use plastic has a significant impact on the environment through its carbon footprint, waste management, pollution, and more. The provisions of this ordinance will reduce the amount of single use plastic used throughout the City.

(c) Declaration of findings and policy- Scope

The city council hereby finds that the prohibition of the sale and use of certain single use plastic items by food service and retail establishments in the City of Newton is a public purpose that protects the public health, welfare and environment, advances solid waste reduction, protects waterways, and reduces the carbon footprint of the City’s business and residents.

(d) Definitions

The following words, unless the context clearly requires otherwise, shall have the following meanings:

“Accessories” means any food and beverage serveware items that are not dishware and containers. The term “accessories” as used in this section includes, but is not limited to, straws, forks, spoons, knives, chopsticks, stirrers, condiment packages, and napkins.

“Commissioner” means the commissioner of health and human services of the City of Newton.

“Compostable” means a product comprised of i) wood or fiber-based substrate only;

or ii) bioplastic or other organic materials that break down in a compost pile within a set amount of time into safe material, and that is certified as such by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or OK Compost/TUV. Any bioplastic product must be clearly labeled with the applicable standard on the product. Products marked “compostable” or “biodegradable” that are not certified and marked as such may contain unsafe and toxic materials such as PFAS.

“Dishware and Containers” means all containers, bowls, plates, trays, cartons, cups, lids, film wrap, and other items on or in which prepared foods and beverages are packaged or directly placed.

“Foam polystyrene” means a non-biodegradable petrochemical thermoplastic made from aerated forms of polystyrene and includes several methods of manufacture. Expanded polystyrene (EPS) or extruded polystyrene (XPS) are forms of polystyrene.

“Styrofoam” is a Dow Chemical Co. trademarked form of extruded polystyrene and is commonly used to refer to foam polystyrene. These are generally used to make insulated cups, bowls, trays, clamshell containers, meat trays, foam packing materials and egg cartons. The products are sometimes identified by a #6 resin code.

“Food Establishment” means a retail establishment that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including, but not limited to, any establishment requiring a permit to operate in accordance with the Massachusetts Retail Food Code, 105 CMR 590, as it may be amended from time to time.

“Full Service Food Establishment” means a food establishment where customers are seated at a table either by waitstaff or by themselves, and where orders are taken and served by waitstaff at the table.

“Packing material” means materials used to hold, cushion, or protect an item packed in a container for shipping, transport, or storage. The term “packing material” as used in this section includes, but is not limited to, packing “peanuts”, shipping boxes, coolers, ice chests, or similar containers.

“Prepared food” means any food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises where the food or beverages are to be served. For the purposes of this Section 12-72, prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance.

“Recyclable” refers to material that can be sorted, cleansed, and reconstituted using the City’s curbside municipal collection programs for the purpose of using the altered form in the manufacture of a new product. Such materials must be accepted and recycled by the Materials Recovery Facility (MRF) that receives Newton’s residential curbside recycling. “Recycling” does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

“Retail establishment” means a business establishment engaged in the retail sale of goods directly to consumers.

“Reusable” refers to food and beverage serveware that will be used multiple times in its same form by a food establishment. Such products are intended to be washed multiple times in a commercial dishwasher and to retain their form and function over multiple usage and washing cycles.

“Single Use” means food and beverage serveware, that is not reusable, as defined above, and are designed to be used once and then discarded, and not designed for repeated use and sanitizing.

(e) Prohibited use and distribution of certain food and beverage serveware and single use items.

- (i) Prohibition of the following items took effect on January 1, 2020, and shall continue to be in effect as of the effective date of this ordinance.
 - (1) Food establishments are prohibited from dispensing prepared food or beverages to any person in single use food containers made from foam polystyrene.
 - (2) Food establishments are prohibited from dispensing plastic stirrers.
 - (3) All food establishments are strongly encouraged to use reusable food serveware in place of using single use food serveware for all food served on the premises. Food establishments using any single use food serveware and stirrers are strongly encouraged to use biodegradable, compostable, reusable or recyclable food serveware and stirrers.
 - (4) Retail establishments are prohibited from selling or distributing single use food containers made from foam polystyrene to customers.
 - (5) Retail establishments are prohibited from selling or distributing to customers any packing material that is made in whole or in part from foam polystyrene.

- (ii) The following prohibitions shall take effect on March 1, 2024.
 - (1) The intentional release of helium filled balloons is prohibited. Any helium balloons must be sold with weighted attachments designed to limit unintentional release.
 - (2) Retail establishments are prohibited from selling or distributing dishware and containers that are not reusable, compostable, or recyclable to consumers. This prohibition includes, but is not limited to, dishware and containers made from black plastic, foam polystyrene, or paper lined with polyethylene or other petroleum-based plastic.
 - (3) Retail establishments are prohibited from selling or distributing packing materials that are not reusable, compostable, or recyclable to consumers, including, but not limited to, those made from foam polystyrene.

- (4) Food establishments are prohibited from dispensing prepared food to any consumer in dishware and containers larger than 4 ounces that are not reusable, compostable, or recyclable. This prohibition includes, but is not limited to, dishware and containers made from black plastic, foam polystyrene, or paper lined with polyethylene or other petroleum-based plastic.
 - (5) Food establishments may not automatically provide single use accessories, including in takeout orders, whether orders are placed online, via phone, or in person. Such single use accessories may be provided only upon the request of the consumer either directly or in response to an inquiry by the food establishment. Single use accessories may not be prepackaged in sets. In addition, food establishments may have single use accessories available at self-service stations.
 - (6) The City of Newton is prohibited from serving a) prepared food or beverages in dishware and containers that are not reusable, compostable, or recyclable; and b) single use condiment packages. Notwithstanding the foregoing, the City of Newton may distribute condiment packages upon request.
 - (7) Full service food establishments shall utilize only reusable food and beverage serveware for dine-in customers.
- (f) **Effective date.** The effective date shall be upon passage of this ordinance or as otherwise specified herein.

(g) Enforcement.

- (i) Fine. Any food or retail establishments which violates any provision of this section or any regulation established by the Commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation continues shall constitute a separate offense.
- (ii) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, Sec 21D.
- (iii) Any retail or food establishment may contest whether specific items are allowable under this Section by providing written documentation that the item is recyclable from both their city-permitted waste/recycling hauler and associated MRF, or compostable from their commercial organics hauler and associated compost end site.
- (iv) In the event that the commissioner determines that compliance with any provision of this Section 12-72 is not feasible due to industry wide unavailability of compliant items, the commissioner may suspend enforcement of such provision for all food and retail establishments until the commissioner determines that the supply of compliant items has been sufficiently restored.

- (v) The provisions of this Section 12-72 shall be enforced by the commissioner, or their designee.

(h) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable. (Ord C-32, 09/18/23)