



Programs & Services Committee Report

City of Newton In City Council

Wednesday, February 2, 2022

Present: Councilors Krintzman (Chair), Noel, Humphrey, Ryan, Albright, Wright, Greenberg, and Baker

Also Present: Councilors Kelley and Bowman

City Staff: Barney Heath, Director of Planning and Development; Devra Bailin, Director of Economic Development; Maura O'Keefe, Assistant City Solicitor; Jonathan Yeo, Chief Operating Officer; Nicole Freedman, Director of Transportation Planning; Nathan Giacalone, Committee Clerk

#91-22 Request to Amend Chapter 12 Section 70 of the City of Newton Revised Ordinances

HER HONOR THE MAYOR requesting to amend Health and Human Services General Ordinance Chapter 12, Section 70 of the City of Newton Revised Ordinances Permits for café furniture on sidewalks.

Action: **Programs & Services Approved 7-0-1 (Councilor Baker abstaining)**

Note: The Committee was joined for discussion on this item by Director Heath and Atty. O'Keefe.

Director Heath introduced the item, stating that there has been ongoing work over the past two years to make some of the outdoor dining features permanent due to the public's positive response. This is necessary because the Governor's executive order allowing restaurants to have additional sidewalk seating is set to expire. The proposed amendment to the ordinance will remove the existing cap of eight chairs or 10 percent (whichever is greater) that a restaurant may have on the sidewalk. This will leave the amount of outdoor seating up to the discretion of the Commissioner of Health & Human Services. Director Heath said that restaurants will still have to comply with existing protocols for pedestrian accessible routes and requirements set by the Licensing Commission and the Alcoholic Beverages Control Commission (ABCC). Atty. O'Keefe added that leeway allowed during the pandemic is set to expire and the ABCC has said that any outdoor seating will be limited strictly to area in front of the restaurant. If a restaurant wants to serve alcohol on sidewalk it will need to get its license premises expanded. The ABCC will not grant licenses beyond property boundaries.

Discussion:

A Councilor raised concerns that there is no limit on seating being imposed and that this change

will cede public sidewalk space to private use and added that a blanket change is not the right idea. The Councilor stated that this could allow a private business to occupy public space without a set fee and potentially expand beyond its area. Examples in Newton Centre were cited where two restaurants have been competing for outdoor seating in an arrangement which has pushed pedestrians into the street. It was suggested that since the proposed amendment effectively turns public space over to a private owner, it should instead go before Real Property Reuse.

Other Councilors supported the proposed ordinance amendment, stating that they have been working to support restaurants since the start of the pandemic and the experiment with outdoor dining has been a success. They stated that there has been overwhelming support for outdoor dining and are comfortable giving away sidewalk space for it. Councilors stated that this was because in addition to its benefits to the restaurants themselves and their customers, it increases traffic to other businesses in the area and makes village centers more vibrant. They stated that they had no concerns about removing the seating cap and trusted city staff to make the best decisions for this. Other points raised in support of the item include:

- This item is incredibly prescribed and ensures that it achieves the intended results.
- Other communities have allowed more outdoor seating than Newton has and nothing bad has happened from it.
- It would be good if the ABCC allowed restaurants to expand beyond their frontage if their neighbors allow it, particularly if the neighboring businesses do not serve food.
- The restaurant business is hard enough without COVID. Outdoor dining will help them and enhance village centers.

Councilors asked about the \$250 fee for restaurants and were answered that this has already been discussed through related items in the Finance and Public Safety & Transportation Committees. Director Heath said that the Finance Committee waived the fee for the current dining season. The item before Programs & Services only addresses sidewalk seating.

Councilor Baker proposed an amendment to the item which would have the amended ordinance specify that a business is limited to the boundaries of its frontage facing the street on the sidewalk for outdoor seating.

Councilors said that the amendment was unnecessary as allowing more outdoor dining helps restaurants generate more revenue, indirectly benefitting the City.

The Committee voted 1-7 (Councilors Krintzman, Noel, Albright, Ryan, Greenberg, Humphrey, and Wright opposed) on Councilor Baker's proposed amendment which failed to carry.

Councilor Albright made a motion to approve which carried 7-0-1 (Councilor Baker abstaining).

The meeting adjourned at 7:38pm.

Respectfully Submitted,

Josh Krintzman, Chair



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

#91-22/#112-22

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rfuller@newtonma.gov

January 10, 2022

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the creation of a Permanent Outdoor Dining Program for Newton restaurants to include:

(1) Granting of administrative authority to the Commissioner of Public Works, the Director of Planning and Development, and the Police Chief to seasonably approve the use of on-street parking space for restaurant outdoor dining. As the City Council decides on this permanent change, the City has docketed with the Traffic Council the continuation of a temporary policy allowing DPW to approve on-street dining in parking spaces, similar to what happened during 2021. This item will be heard by the Traffic Council on Jan. 20, 2022.

(2) Establishing an annual fee for \$250 per parking space for approved outdoor dining spaces and requesting such fee be waived for calendar year 2022.

(3) Amending the Health and Human Services General Ordinance Section 12-70 (Permits for café furniture on sidewalks) (a) (3) in the following manner:

Sec. 12-70 (c) (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 the fire, police, public works, inspectional services and planning departments, and in conformity with any applicable ordinances or general laws. ~~Subject to the discretion of the commissioner, after consultation with the fire, police, public works, inspectional services and planning departments, permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.~~

(4) Identifying the City pathway for restaurants seeking to continue to maintain outdoor dining on private property.

RECEIVED
2022 JAN 10 PM 4:55
CITY CLERK
NEWTON, MA 02459

Please see the attached memo from the Planning & Development Department's outdoor dining team (Commissioner Heath, Economic Development Director Bailin, Transportation Planning Director Freedman).

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R" and a distinct "Fuller" at the end.

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

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Department of Planning and Development
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Barney Heath
Director

MEMORANDUM

TO: Mayor Ruthanne Fuller
Jonathan Yeo, Chief Operating Officer

FROM: Barney Heath, Director, Department of Planning and Development
Nicole Freedman, Director of Transportation Planning
Devra Bailin, Director of Economic Development

DATE: January 6, 2022

RE: **Outdoor Dining Docket Request**

I would like to submit the following docket request for the Mayor's consideration:

HER HONOR THE MAYOR requesting the creation of Permanent Outdoor Dining Program for Newton restaurants to include:

- (1) Granting of administrative authority to the Commissioner of Public Works, the Director of Planning and Development, and the Police Chief to seasonably approve the use of on-street parking space for restaurant outdoor dining. As the City Council decides on a permanent change, the City has docketed with Traffic Council the continuation of allowing DPW to approve on a case by case basis the use of on-street parking spaces for outdoor dining as had been the process for 2021. This item is scheduled to be heard by Traffic Council on January 20, 2022.
- (2) Establishing an annual fee for \$250 per parking space for approved outdoor dining spaces and requesting such fee be waived for calendar year 2022
- (3) Amending the Health and Human Services General Ordinance Section 12-70 (Permits for café furniture on sidewalks) (a) (3) in the following manner:

Sec. 12-70 (c) (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 the fire, police, public works, inspectional services and

~~planning departments, and in conformity with any applicable ordinances or general laws. Subject to the discretion of the commissioner, after consultation with the fire, police, public works, inspectional services and planning departments, permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.~~

(4) Identifying the necessary pathway for restaurants seeking to maintain outdoor dining on private property.



Ruthanne Fuller
Mayor

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Department of Planning and Development
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Barney Heath
Director

MEMORANDUM

DATE: January 28, 2022
Josh Krantzman, Chair, Programs and Services Committee

TO: Members of the Programs and Services Committee

FROM: Barney Heath, Director of Planning & Development
Jennifer Caira, Deputy Director of Planning and Development
Devra Bailin, Director of Economic Development

RE: **#91-22 Request to Amend Chapter 12 Section 70 of the City of Newton Revised Ordinances**
HER HONOR THE MAYOR requesting to amend Health and Human Services General Ordinance Chapter 12, Section 70 of the City of Newton Revised Ordinances Permits for café furniture on sidewalks.

MEETING DATE: February 2, 2022

CC: City Council
Planning & Development Board
Jonathan Yeo, Chief Operating Officer
Maura O'Keefe, Assistant City Solicitor
Andrew Lee, Assistant City Solicitor
Linda Walsh, Health & Human Services Commissioner

Introduction

Amending the ordinance governing the number of seats that restaurants are allowed to have on a city sidewalk was part of the package of docket items Mayor Fuller proposed to assist Newton restaurants with outdoor dining. According to Health and Human Services, there were twenty-five Newton restaurants that sought and received licenses for sidewalk seating in 2021. During the past two years, Newton restaurants have in part survived by being able to accommodate diners who are only comfortable eating outdoors. The temporary lifting of the Newton sidewalk seating limit of eight (8) or 10% of a restaurant's entire seating capacity as part of the Governor's Emergency Outdoor order during these past two has also had a demonstrable effect on the vibrancy of our village centers as a whole, creating a fun and welcoming atmosphere. Finally, recent streetscape improvements like wide sidewalks in both West Newton Square and in Newtonville were designed in part to facilitate and accommodate table sidewalk service.

Proposed Amendment

#91-22

The current regulations governing sidewalk dining was last amended in 2013 and can be found in the City of Newton's General Ordinances **Section 12-70 Permits for café furniture on sidewalks** (attached). The simple language change proposed below would remove the last sentence of (a) (3) which limits the number of chairs a restaurant may place on the sidewalk to eight (8) or 10% of their total seating capacity. All other regulations governing the placement of seat on the sidewalk would remain in place, including the Health and Human Services Commissioner only approving a sidewalk permit after consultation with fire, police, public works, inspectional services, and planning departments.

Proposed Amended Language

Chapter 12, Section 70 (a) presently reads:

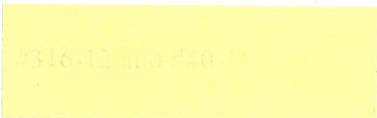
(3) The number, type and placement of such tables, chairs, benches, shade umbrellas, barriers and other appurtenances shall be subject to the approval of the commissioner, in consultation with other appropriate departments of the city, and in conformity with any applicable ordinances or general laws. Subject to the discretion of the commissioner, after consultation with the fire, police, public works, inspectional services and planning departments, Permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.

The proposed amendment would revise Chapter 12, Section 70 would delete certain provisions and revise the section as follows:

Sec. 12-70 (a) (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 the fire, police, public works, inspectional services and planning departments**, and in conformity with any applicable ordinances or general laws.

Requested Action

Given the design for Newton's restaurants to be able to file license approvals for extended premises with the Licensing Board as soon as possible, it is requested that this item receive immediate alteration.



CITY OF NEWTON
IN BOARD OF ALDERMEN
ORDINANCE NO. A-18

April 1, 2013

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

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

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

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

(a) The commissioner of health and human services (the "commissioner"), or his designee, may grant revocable permits for the placement of certain cafe furniture upon designated areas of the public sidewalk. The commissioner shall consult with the fire, police, public works, inspectional services, and planning departments prior to granting or denying a permit under this section. Permits shall be issued in accordance with the following standards:

(1) Permits may only be granted to the proprietor of the business premises which immediately abuts the sidewalk area affected by the permit. All cafe furniture and trash receptacles must be removed at any time upon the request of the commissioner or his designee when he determines that the public convenience and welfare require such removal.

(2) Permits may allow for the placement of tables, chairs, benches, shade umbrellas, barriers and other appurtenances as may be approved or otherwise required by the commissioner or other department, in consultation with the commissioner. All such tables, chairs, benches, shade umbrellas and other appurtenances shall be temporarily placed upon the sidewalk surface and shall not be affixed thereto. Any shade umbrellas shall be fastened, weighted and otherwise secured while in use.

(3) The number, type and placement of such tables, chairs, benches, shade umbrellas, barriers and other appurtenances shall be subject to the approval of the commissioner, in consultation with other appropriate departments of the city, and in conformity with any applicable ordinances or general laws. Subject to the discretion of the commissioner, after consultation with the fire, police, public works, inspectional services and planning departments. Permits may be granted to allow for the placement of up to eight (8) chairs or a number of chairs that represents ten percent (10%) of the total seating capacity for the licensed premises, whichever is greater.

(4) Permits may only be granted in those circumstances where the commissioner, or his designee, has determined that the placement of such cafe furniture would not interfere with adequate pedestrian passage upon the public sidewalk at the site, taking into account the flow and level of pedestrian traffic and the location of other fixtures upon the sidewalk including, but not limited to, utility poles, newspaper vending boxes and the like. In any event, a permit shall only be granted in circumstances where the placement of such cafe furniture would result in an unobstructed pedestrian passageway upon the public sidewalk of a minimum of four feet (4') in width.

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

(c) The term of each permit shall be one year and shall expire on December 31st unless renewed. The fee for each such annual permit shall be 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.

(d) Upon receipt of each permit application the commissioner, or his designee, shall consult with the fire, police, public works, inspectional services, and planning departments for their determination that the placement of cafe furniture, as described in the application, would not violate existing zoning, safety and public health requirements. Approval of the fire, police, public works, inspectional services, and planning departments are all required prior to the issuance of a permit by the commissioner, or his designee, under this section.

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

(f) Applicants shall be required to notify all owners of any property within three hundred feet of the proposed permitted area of the pending application, as well as the ward aldermen for the proposed permitted location. Pending the approval of a permit application, all applicants shall post a placard on the licensed premises notifying the public of the pending application. Such placard, provided by the department of health and human services, shall be readily visible to the public. Questions and comments regarding the pending application shall be directed to the commissioner of health and human services.

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

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

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

(h) *Notice of violation:* The commissioner, or his designee, shall review all complaints concerning purported violations of the terms and conditions of any permit issued under this section. Prior to the imposition of any penalty, the commissioner shall provide reasonable notice to the permit holder of the violations of the terms of the permit, and provide the permit holder an opportunity to be heard during a public hearing on the matter.

(i) *Penalties:* The commissioner shall have discretion to impose any penalty described herein, and as permitted by the General Laws or the ordinances of the city. The commissioner may impose a fine upon the permit holder, or revoke or suspend any permit granted pursuant to this section for any violation of the terms of such permit or the provisions of this section. Violations hereunder shall be subject to a fine of 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 20-20 and 20-21 of these ordinances, as amended, pursuant to the authority granted by M.G.L. c. 40 § 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in sections 20-21 (b-d).

Cross reference general penalty, § 1-6; civil fines, §20-21."

(j) All permit holders shall comply with the requirements of the noise ordinance at §§ 20-13 -20-19, as amended. The commissioner may impose limitations on the hours of operation for permit holders and conditions on the use of outdoor seating under this section, except upon those permit holders also licensed to sell alcohol pursuant to c. 138 who are subject to the procedures of c. 138 and the Rules and Regulations of the Board of License Commissioners.

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

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

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

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

And

In Sec. 20-21. Enforcing persons and revised ordinances subject to civil fine.

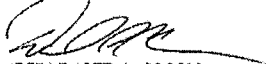
Amend paragraph (b), HEALTH AND HUMAN SERVICES DEPARTMENT, by adding after CITY ORDINANCES, Any offense, the following:


.....PENALTY
Sec. 12-70. Cafe furniture on sidewalks () Any offense\$100.00

Approved as to legal form and character:


DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted
20 yeas - 0 nays 3 absent (Aldermen Crossley, Lappin, and Lemmon) 1 vacancy


(SGD) DAVID A. OLSON
City Clerk


(SGD) SETTI D. WARREN
Mayor
Date 4-23-13

CITY OF NEWTON
IN CITY COUNCIL
ORDINANCE NO. _____
[date]

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Section 70 of Article VIII of Chapter 12**, Health and Human Services, as follows:

1. **INSERT** after the word city in the first sentence of Section 12-70(a)(3) the following language:

“, including the fire, police, public works, inspectional services and planning departments”

2. **DELETE** the last sentence of Section 12-70(a)(3) in its entirety.

Approved as to legal form and character:

(SGD) ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

(SGD) CAROL MOORE
City Clerk

(SGD) RUTHANNE FULLER
Mayor

Date: _____