



## Zoning & Planning Committee Agenda

### City of Newton In City Council

Monday, February 6, 2023

7:15 pm – PLEASE NOTE START TIME

Room 204

The Zoning and Planning Committee will hold this meeting as a hybrid meeting on Monday, February 6, 2023 at 7:15 PM that the public may access in-person or virtually via Zoom. To attend this meeting via Zoom use this link: <https://us02web.zoom.us/j/85995863949> or call 1-646-558-8656 and use the following Meeting ID: 859 9586 3949

#### Item Scheduled for Discussion:

**Chair's note:** *Planning will present the proposed ordinance amendment with the intention of setting a date for the public hearing.*

**#32-23 Request for amendment to Sections 5.1.4, 6.4.29, and 7.8.2**

HER HONOR THE MAYOR requesting amendments to Sections 5.1.4, 6.4.29, and 7.8.2 to make on-street dining permanent.

Respectfully Submitted,

Deborah J. Crossley, Chair

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The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



RUTHANNE FULLER  
MAYOR

RECEIVED  
2023 JAN 13 PM 2:03  
CITY CLERK  
NEWTON, MA. 02459

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**Office of the Mayor**

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January 13, 2023

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

Councilors:

I respectfully submit a docket item to your Honorable Council requesting an update to the Zoning Ordinance Sections 5.1.4, 6.4.29, and 7.8.2 to make our on-street dining program permanent and have changes in place for the beginning of the dining season this spring (April 1).

Attached is memo from Director of Planning & Development Barney Heath regarding the zoning changes requested. Also attached is the draft zoning amendment language from the Law Department.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller  
Mayor



**Ruthanne Fuller**  
Mayor

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

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**Barney S. Heath**  
Director

January 12, 2023

City of Newton  
Planning & Development Department  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Honorable Mayor Fuller:

I am writing to respectfully request that your office docket with the Honorable City Council an amendment to the City of Newton Zoning Ordinance Sections 5.1.4, 6.4.29, and 7.8.2. to facilitate making outdoor on-street dining permissible.

City staff have been working to draft language to update City Ordinance Sec. 12-70 in order to codify Newton's existing outdoor dining program and enable it to continue on a permanent basis. As part of our efforts, the Law Department identified the need to separately amend a portion of the Zoning Ordinance cross-referenced by Sec. 12-70. Specifically, the Zoning Ordinance needs to clarify that outdoor seating within the street will be treated the same as sidewalk seating in sections 5.1.4, 6.4.29, and 7.8.2.

We have been working closely with our internal city departments and those restaurants who have sought and/or may be seeking permission for on-street dining to have these changes in place for the beginning of the on-street dining season opening date of April 1, 2023 (the date upon which the State's emergency order expires). We are confident that we can meet that deadline with these changes which would institutionalize the ability for restaurants to use on-street parking spaces for seasonal outdoor dining.

Sincerely,

Barney Heath, Director  
Planning & Development

#### 5.1.4. Number of Parking Stalls

A. The minimum number of parking stalls to be supplied for each type of building or land use shall be in accordance with the following requirements. Where the computation results in a fractional number, the fraction shall be counted as one stall.

Use	Parking Stalls Required	Allowed by Special Permit
Restaurant, food or beverage establishment (for sidewalk <del>cafe</del> <u>and parking space café seating</u> , see 12- 70)	1 per 3 patron seats, permanent or otherwise plus 1 per 3 employees excluding any sidewalk <u>and parking space</u> <del>cafe</del> seating permitted under Sec. 12-70	

#### 6.4.29. Restaurant

A. Defined. An establishment where the principal activity is the service or sale of food or drink for on-premises consumption.

##### B. Standards for Allowed Uses

1. In the Business 1 through 4, Mixed Use 2 and 4 districts, restaurants having not more than 50 seats.
2. In the Mixed Use 3 district, restaurants having not more than 5,000 square feet of gross floor area.
3. In all districts, outdoor sidewalk seats and parking space seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

##### C. Standards for Special Permit Uses

1. In the Business 1 through 4 districts, restaurants having over 50 seats which are not open for business between the hours of 11:30 p.m. and 6:00 a.m., except that such restriction as to hours of operation
2. In a Limited Manufacturing district, restaurant, pastry shop, coffee shop, fast food establishment, drive-in food service

establishment, or other such establishment when such establishment dispenses food products between 10:30 p.m. and 6:00 a.m., but not including in this paragraph any such business operated as part of a hotel or motel.

3. In a Mixed Use 1 district, restaurants and businesses which hold a Common Victualler All Alcoholic, or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area.

4. In a Mixed Use 2 district, restaurants over 50 seats, and such businesses which hold a Common Victualler – All Alcoholic or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City.

5. In the Mixed Use 3 district, restaurants with more than 5,000 square feet of gross floor area.

6. In the Mixed Use 4 district, restaurants having more than 50 seats and extended hours of operation.

7. In all districts, outdoor sidewalk and parking space seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

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#### 7.8.2. Nonconforming Buildings, Structures, or Uses

##### A. Special Permi: Not Required.

1. A special permit is not required from the City Council for nonconforming buildings or structures in the following cases:

a. Alteration, reconstruction, extension or structural change to a single- or two-family residential structure which does not increase

the nonconforming nature of the structure, and no such increase shall be deemed to have occurred solely because the lot area or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;

b. Alteration, reconstruction, structural change, but not an extension or enlargement of a nonconforming building or structure for a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district;

c. Additional outdoor sidewalk and parking space seats permitted under Revised Ordinances Chapter 12, Section 12-70 shall not be considered an increase in the nonconformity nor constitute an extension of use of a lawful nonconforming restaurant in any district; and

d. Alteration, reconstruction, extension or structural change to a nonconforming non-residential building or structure, which does not increase the nonconforming dimensional nature of said building or structure, for conversion of the building or structure to a use permitted as of right in any residential district.

e. A special permit is not required from the City Council for change in use to a use permitted as of right, in a Business, Mixed Use, Manufacturing or Limited Manufacturing district.