



# **Zoning & Planning Committee Report**

## **City of Newton** **In City Council**

**Monday, February 22, 2016**

Present: Councilors Hess-Mahan (Chair), Baker, Danberg, Albright, Kalis, Yates and Leary

Absent: Councilor Sangiolo

City Staff: James Freas (Acting Director, Planning Dept.), Katie Holmes (Historic Preservation Planner), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

### ***Public hearing assigned for March 14, 2016:***

#### **#54-16      Zoning ordinance amendment relative to Health Club use**

ACTING DIRECTOR OF PLANNING proposing amendments to the Newton Zoning Ordinance to allow the "Health Club" use in Business 1, Business 2 and Business 4 districts; and to clarify the definition of "Personal Service" as it relates to health and fitness uses. [02/09/16 @ 4:24 PM]

#### **Action:      Zoning & Planning Held 7-0**

**Note:** James Freas, Acting Director of the Planning Department explained that the Zoning Ordinance, before it was reformatted in Phase One of zoning reform, included an interpretation that health clubs were "clubs" and therefore allowed in all business districts. When the ordinance was reformatted in Phase One, that interpretation was not captured and now health clubs are allowed only in the MU3 and MU4 districts as those are the only places they are specifically mentioned in the ordinance. The Planning Department would like to reintroduce the use into other business districts. Also, staff recommends clarifying the distinction between the definition of Personal Services, which includes a fitness use, and the definition of Health Clubs. Personal Services include fitness studios but not health clubs. The department is working on determining the best way to distinguish these uses.

This item is scheduled for a public hearing on March 14<sup>th</sup> and the Law and Planning Departments will provide language for the amendments.

The Committee voted to hold this item 7-0.

#### **#46-16      Resolution supporting House and Senate bills to increase number of housing courts**

COUNCILOR HESS-MAHAN requesting a Resolution by the City Council to support House Bill H. 1656 and Senate Bill S. 901 for expansion of housing courts in the Commonwealth that would allow the City of Newton to pursue housing matters in a specialized court designed to specifically deal with housing issues and better protect its residents and more swiftly resolve violations. [01/29/16 @ 9:39 AM]

**Action: Zoning & Planning Approved 7-0**

**Note:** Councilor Hess-Mahan introduced Nadine Cohen from Greater Boston Legal Services. Ms. Cohen supported the expansion of the housing courts explaining that 2/3 of the cities and towns in Massachusetts have a specialized housing court but Newton is in the 1/3 which does not. The courts have judges who specialize in housing matters such as evictions, compliance with sanitary, fire and safety codes, etc. The courts also provide mediation services and have a homelessness prevention program which helps those with mental disabilities maintain their housing. Governor Baker has proposed \$1M for housing court expansion so this is the time for Newton to join the effort and many other communities are now supporting similar resolutions.

The original housing court was set up in 1972 but was never expanded to the entire state. It has been introduced every year in the legislature and this is the year it seems to be taking hold. The \$1M provides a very high benefit for a relatively low cost to the state and there would be no cost to Newton for this. The proposal is to expand the Boston housing court to an Eastern Massachusetts housing court which would include Newton. The judges will “ride around” to the different municipalities and use existing facilities.

Councilor Hess-Mahan provided a fact sheet on this issue, which is attached, as well as the proposed Resolution.

Councilor Hess-Mahan explained that he has had to go into Boston in order to represent people in housing court and he would rather do that than have to go into District Court which is backlogged and the housing cases do not get the attention and expertise they need. There is an ongoing concern about enforcement of code violations in Newton and the City could pursue those in housing court in a more efficient and expeditious way

Ms. Cohen agreed noting that something like a summary process (eviction) has a very quick timeframe and sometimes that will be extended by asking for discovery or other means and the district court judges are so overloaded, they may allow those cases to linger. Housing court provides a more helpful way to deal with people who might be one or two months behind in their rent who would like to work with their landlord and the court for a solution. This works out for all involved as the longer a process is stretched out, the more it costs everyone in legal fees.

A Committee member asked if a housing court would in any way impact the City’s ability to go to District Court on zoning issues. Marie Lawlor, Assistant City Solicitor said it would not have an impact on that and thought those zoning issues could go to either District or Housing Court.

Clerk’s Note: Councilor Hess-Mahan later confirmed the jurisdiction of the housing courts from the Mass.gov website as follows:

*Jurisdiction of the Housing Court Department*

*The Housing Court Department has jurisdiction over civil and criminal actions, including equitable relief, which involve the health, safety, or welfare of the occupants or owners of residential housing.*

*The Court hears summary process (eviction) cases, small claims cases, and civil actions involving personal injury, property damage, breach of contract, discrimination, and other claims. The Housing Court also hears code enforcement actions and appeals of local zoning board decisions that affect residential housing. The Housing Court has 10 judges authorized to serve its five divisions – Boston, Northeast, Southeast, Western and Worcester – and conducts sessions in 18 locations every week*

<http://www.mass.gov/courts/court-info/trial-court/hc/hc-jurisdiction-gen.html>

Councilor Yates moved approval and the Committee voted in favor of the Resolution unanimously.

**#266-14 Request to restart demolition delay time period with transfer of ownership**

ALD. BLAZAR, YATES AND DANBERG requesting:

1. to amend Section 22-50 to require that in the event there is a transfer of legal or beneficial ownership of a preferably preserved property during the demolition delay period, the full demolition delay period will restart from the date of the transfer of ownership;
2. and further requesting to amend Section 22-50 to require that in the event a transfer of legal or beneficial ownership of a preferably preserved property occurs after the expiration of a demolition delay period but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures of Section 22-50(c)(5). [7/07/14 @ 12:35 PM]

**Action: Zoning & Planning Held 7-0**

**Note:** Councilor Hess-Mahan reminded the Committee that this item was discussed last year in conjunction with other demolition delay items and there seemed to be general consensus in Committee. No public hearing is required on this proposal as it is not a zoning ordinance amendment, nonetheless, he will take public comment this evening and another opportunity will be scheduled for March 14th. Draft language was attached to the agenda for review.

Katy Holmes, Historic Preservation Planner, addressed the Committee. She explained that this item came up when the Newton Historical Commission had some changes in membership. The Commission discussed ways in which it was not succeeding and administering a demolition delay with a huge loophole in it was one of them. The current demolition delays (which are currently: 1 year for any structure which is over 50 years old and deemed historically significant; or 18 months for properties that are listed on the National Register of Historic Places or were formerly determined eligible to be listed). The lengths of these delays are some of the longest of any in the state and to extend them even more would leave Newton as an outlier and in addition, with the current loophole, would not make any significant difference. The NHC would like to see this loophole closed which basically gives extra time to an end user who has no intention of exercising a demolition permit. Councilor Hess-Mahan noted that about 1/3 of the applications fall into that category. He has heard of developers and real estate brokers ask sellers to get the application for future owners' use.

Ms. Holmes agreed and said applicants come in and say that their real estate broker told them they should do this to “start the clock” on the demolition delay period. They are seeing this written into purchase and sale agreements. One of the things the Commission decided to do was demand that the signature on the application be the current owner of record. With the shift in ownership, it must be the owner at closing. These demands at least demonstrate that the seller was aware that whoever purchased the house was intending to demolish it. They were aware of developers who were purchasing homes with the intent to demolish without the seller knowing that was their intent.

These types of applications take up quite a bit of staff and Commission time. If the delay period can be strengthened in order to allow extra time for someone to possibly buy the house and not demolish it then that would be helpful. The preservation community should have that advantage, but that was lost when demolition permits became transferable by address.

Marie Lawlor, Assistant City Solicitor, asked the Committee if they might want to consider an exception for a property that is passed to a new owner by inheritance, for instance, to a widow(er); children; or through a divorce settlement. It was suggested that the Historical Commission could deal with this issue through a policy instead of through the ordinance and the Committee agreed.

It was asked if other communities have enacted similar legislation and Ms. Holmes said she believed that others are waiting to see how Newton acts. She felt very comfortable with Newton taking the lead on this and expects others will follow.

Councilor Baker explained he will not be available for the public hearing but wanted to express his support for this change. It does not serve the public interest to allow this loophole to continue. Councilor Danberg agreed with Councilor Baker, Council Hess-Mahan and Ms. Holmes comments

#### Secondary Amendment

Ms. Lawlor proposed an additional amendment after discussion with Ms. Holmes, which is to separate an existing paragraph into two paragraphs, for clarity. The existing paragraph seems to imply that the two-year period in which to exercise a demolition permit applies only to situations where there are approved plans, but in fact, it applies to anyone who does not exercise their demolition permit in two years. The same change would apply to both historically significant structures as well as those on the National Register of Historic Places (or were formerly determined to be eligible).

#### Local Historic Districts

Ms. Holmes noted that Local Historic Districts do not have a demolition delay provision as they can stop it permanently if they wish. Councilor Baker felt that in those districts, it would also be important to have the same application requirements apply in terms of having the owner of record as the applicant. He would like to docket item to be sure that happens.

Public Comment:

Peter Dimond, member of the Historical Commission, said the Commission has seen about 200 houses come before them in the last year and a half for demolition. He supported Ms. Holmes suggestions that there is a term-limit for demolitions and would even suggest doubling the current limits. He would also like the owner of the property to appear before the Commission, and not their representative such as an architect, real estate agent, developer or attorney. He believes it would slow the pace of people coming in. He would like to be able to ask them directly about the impact a demolition would have on the neighbors and neighborhood.

There were no other public comments. As mentioned earlier, Councilor Hess-Mahan will take public comment on this item again at the March 14<sup>th</sup> meeting.

The Committee voted to hold this item 7-0.

**#222-13(2) Zoning amendment to regulate front-facing garages in residential zones**

THE ZONING AND PLANNING COMMITTEE proposing to amend **Chapter 30**, City of Newton Zoning Ordinances, to regulate the dimensions and setbacks of front facing garages in residential zoning districts. [08/03/15 @ 10:15 AM]

**Action: Zoning & Planning Held 7-0**

**Note:** Councilor Hess-Mahan reminded the Committee that this item would apply to single family houses as well as two-family houses. Two single-family houses, side-by-side, in his neighborhood recently exercised their demolition permits. They will be reconstructed as two single-family houses with garages next to each other and will look like a big snout house. Another two-family house in his neighborhood has front doors of the units are on the second floors with stairs that lead all the way down to the setback. These examples are indicative of the problem and why this item was docketed.

James, Freas, Acting Director of Planning said this issue has been brought to the Urban Design Commission twice and has some feedback which he has not seen yet. The two particular questions that he would like to address are around waivers and side-by-side garages.

Waivers

The current zoning ordinance allows all requirements for garages to be waived by special permit. There are no specific criteria to give indication to potential applications as to what the City might consider acceptable or what should be avoided. Should a waiver provision still be included or should criteria be developed.

A Committee member felt that two driveways should not be allowed together via special permit. The waiver should be for those things that are ministerial in nature and it might be valuable to look at what the Land Use Committee has done in the past to tease out some criteria. The waivers should be sparing.

It was suggested that a limited waiver process could be administrative if good criteria were developed instead of going to Land Use Committee. Mr. Freas agreed that would be possible and a good idea and other communities do that. Another Committee member felt keeping it in Land Use would be a more limiting factor than an administrative body since these provisions have such a durable impact.

It was mentioned that most of these situations are related to new and can be designed in a way that contributes to the streetscape. It's not as though they have to work with existing conditions which might limit garage placement. An administrative process should be sufficient.

While several Committee members felt an administrative process might be helpful, they were not sure what the criteria would be in order to determine waivers.

#### Side-by-Side Garages

When the UDC looked at side-by-side garages, they were concerned about the notion of creating living space between the garages. The idea is to get away from the garages being the only thing separating two units and the proposed language eliminates that possibility. There is a certain degree of noise barrier advantage with this, however, and putting garages on either end creates two driveways, and increases impervious surface.

A Committee felt that side-by-side garages create a huge expanse of driveway. Among other problems, it's difficult for pedestrians to traverse safely. They require huge curb cuts. The sizes need to be limited in some way.

Corner lots can provide unique circumstances based on topography and other elements. Encroachment on the street and blocking site lines are things to keep in mind with driveways and garages on corner lots. Also, it should be considered whether 50% be allowed for garages on each frontage.

Councilor Hess-Mahan said there seemed to be not much consensus for waivers, but that language was needed for total width allowed for driveways. The Law Department would need to develop some advertising language. The Committee would like to schedule this for public hearing at the soonest possible date.

The Committee voted to hold this item 7-0.

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**

DRAFT

CITY OF NEWTON

IN CITY COUNCIL

\_\_\_\_\_, 2016

RESOLUTION

IN SUPPORT OF HOUSE BILL H. 1656 AND SENATE BILL S. 901  
TO EXPAND THE HOUSING COURT'S JURISDICTION STATEWIDE

BE IT RESOLVED:

WHEREAS, House Bill H. 1656 and Senate Bill S. 901, which would expand the Housing Court's jurisdiction to the entire Commonwealth, are currently pending before the General Court; and

WHEREAS, the jurisdiction of the Housing Court now covers approximately 80% of the Commonwealth geographically, but does not currently cover the City of Newton and other areas of the Commonwealth, and only 69 percent of Massachusetts residents have access to the Housing Court; and

WHEREAS, the Housing Court has developed a high level of specialized expertise and specialized resources, including housing specialists, to handle the multitude of housing issues that come before the Court; and

WHEREAS, only the Housing Court regularly holds special sessions to hear cases that are brought to enforce building, housing, fire, zoning, and health codes, and to respond to health and safety emergencies; and

WHEREAS, expanding the jurisdiction of the Housing Court statewide will promote and protect a variety of housing interests, whose access to the court system is currently limited by competing caseloads on the District Courts; and

WHEREAS, if passed, this legislation would allow the City of Newton to pursue housing matters in a specialized court designed to specifically to specifically deal with housing issues, allowing the City of Newton to better protect its residents and more swiftly and efficiently resolve code violations;

NOW THEREFORE BE IT RESOLVED, the City Council hereby supports the passage of House Bill H. 1656 and Senate Bill S. 901; and

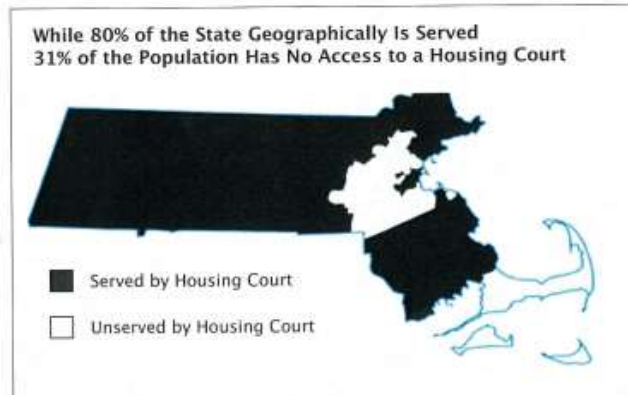
BE IT FURTHER RESOLVED, that the Clerk of the City Council shall send a copy of this RESOLUTION to members of the City of Newton's Legislative Delegation and to the House and Senate Chairs of the Joint Committee on the Judiciary, respectfully requesting that they support these bills.

# It's Time for Everyone in Massachusetts to Have Access to Housing Court

## Who Does Not Have a Housing Court?

How can it be that 2/3rds of the state's population has access to a housing court and 1/3rd does not?

The first housing court was established in Boston in 1972. Since then, constituents have successfully advocated for its expansion to five geographic divisions. Today, municipal, state, and local organizations are seeking a final expansion to cover all of Norfolk, Suffolk, Middlesex, Barnstable, Nantucket, and Dukes counties.



## Why Do We Need Housing Courts Statewide

Landlords, tenants, municipalities, and the state, all stand to benefit from a statewide housing court.

- ◆ **Housing Expertise & Housing Specialist:** Housing Court judges have expertise on housing law and only Housing Courts have housing specialists who mediate cases, saving the time and expense of litigation.
- ◆ **Homelessness:** Based only in Housing Courts, the Tenancy Preservation Program prevents homelessness among people with mental health challenges, age impairments, and dementia.
- ◆ **Code Enforcement & Blight:** Housing Court is set up to efficiently respond to emergencies and building, fire, and sanitary code violations and revitalize dilapidated properties and improve neighborhoods and local tax collection.
- ◆ **Cost Effective:** Housing Court has the lowest cost per case across all court departments.

## Time to Close the Gap

Governor Baker's FY17 budget recognizes that it is time to close the gap and includes housing court expansion.

- ◆ **Line Item 0336-0003** provides \$1 million for costs associated with the expansion of the housing court.
- ◆ **Outside Sections 15-17 and Section 46** would authorize the expansion of the housing court statewide and expand it from five divisions to six divisions effective July 1, 2016.

**Contact your Rep and urge them to keep housing court expansion funding and authorization in the FY17 budget.**

### Municipalities for Statewide Housing Court

Malden Mayor Christenson  
 Chelsea City Manager Ambrosino  
 Cambridge City Council  
 Medfield Board of Selectman  
 Somerville Board of Aldermen  
 Lexington Office of Selectman  
 Framingham Town Meeting Resolution  
 Framingham Disability Commission  
 Everett Mayor DeMaria  
 Winchester Board of Selectman  
 Framingham Board of Selectman Resolution  
 Chelsea City Council Resolution  
 Barnstable Town Council Resolution  
*Numerous Boards of Health and  
 Fire Departments (see reverse)*



# Over 100 Organizations Call for Housing Court Statewide <sup>#46-16</sup>

- Massachusetts Health Officers Association
- Fire Chiefs' Association of Massachusetts
- Fire Prevention Association of Massachusetts
- Professional Fire Fighters of Massachusetts
- Massachusetts Association of Health Boards
- Mass. Municipal Lawyers Association
- Massachusetts Bar Association
- Boston Bar Association
- Mass. Association of Public Health Nurses
- Mass. Environmental Health Association
- Massachusetts Law Reform Institute
- Barnstable Cnty Depart of Health & Environment
- Cape & Island Health Agents Coalition
- Elder Services of Cape Cod & Islands
- Citizens Housing and Planning Association
- Law Office of Heather M. Ward
- MetroWest Legal Services
- Greater Boston Legal Services
- Chelsea Collaborative
- Town of Lexington, Town Manager's Office
- Town of Bedford, Town Manager
- Town of Norwood, Board of Health
- Town of Halifax, Health Agent
- Belmont Fire Depart, Fire Prevention Bureau
- Father Bill's and Mainspring, Brockton
- Law Office of Christopher T. Saccardi
- Somerville Homeless Coalition
- Justice Center of Southeast Massachusetts
- Metrowest Workers Center, Framingham
- Barnstable Town Council (Resolution)
- Duffy Health Center, Hyannis
- Winchester Housing Partnership Board
- Adams & Sammon
- Community Action Programs Inter-City in Revere, Winthrop & Chelsea
- Housing for All Corporation
- Homes for Families
- Chelsea City Council (Resolution)
- Eliot Community Human Services
- Lawyers Clearinghouse on Affordable Housing and Homelessness
- Jewish Alliance for Law and Social Action
- Springwell - Waltham
- Advocates, Inc - Framingham
- The Second Step – Newton
- Bay Cove Human Services, Inc
- Yarmouth Fire Department
- Harwich Fire Department
- Chelsea Fire Department
- Chelsea Police Department
- American Friends Service Cmt – Cambridge
- Cape Cod Council of Churches
- Mass. Union of Public Housing Tenants
- Irene Bagdoian, Attorney at Law, Brockton
- HarborCOV: Communities Overcoming Violence
- Winchester Board of Health
- Winchester Board of Selectman
- Somerville-Cambridge Elder Services
- La Comunidad, Everett
- New Chelsea Realty
- St. Luke's-San Lucas, Episcopal Church, Chelsea
- Centro Latino, Chelsea
- Massachusetts Jobs With Justice
- Chelsea Inspectional Services Department
- The Neighborhood Developers, Chelsea
- Brazilian Women's Group, Brighton
- Suffolk University Legal Services
- Community Labor United
- Metro Credit Union, Chelsea
- Major City Police Chiefs Association
- Neighbor to Neighbor, Massachusetts
- UNITE HERE Local 26
- Brokerick Bankcroft, Attorneys at Law, Newton
- Sandwich Housing Authority
- Bourne Housing Authority
- Mass. Chapter of NAHRO (National Assoc. of Housing and Redevelopment Officials)
- Massachusetts Communities Action Network
- Brookline Public Health Depart - Environmental Health Division
- SEUI 32BJ New England District 615
- Framingham Board of Selectman
- Harvard Legal Aid Bureau
- Springfield Housing Authority
- Just-A-Start Corporation
- Brookline Council on Aging
- Legal Services Center of Harvard Law School
- National Academy of Elder Law Attorneys – Massachusetts Chapter
- Housing Families, Inc
- Westford Health Department
- Boston Area Rape Crisis Center
- Rosie's Place, Boston
- Framingham Disability Commission
- Everett, Mayor Carl DeMaria
- Framingham Town Meeting Resolution
- Lexington, Office of Selectman
- Massachusetts Coalition for the Homeless
- Community Action Agency of Somerville, Inc
- Somerville Board of Aldermen
- Medfield Board of Selectman
- Cambridge City Council
- Chelsea City Manager, Thomas G. Ambrosino
- Belmont Board of Health
- Avon Board of Health
- Chatham Health Division
- Spencer Board of Health
- Wellfleet Housing Authority
- Quincy Health Departmen