



# **Zoning & Planning Committee Report**

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

**Monday, March 14, 2016**

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

Absent: Councilors Sangiolo and Baker

City Staff: John Lojek (Commissioner, Inspectional Services), Katy Pax Holmes (Historic Preservation Planner), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

**Chairman's Note:** Chair of the Committee, Councilor Hess-Mahan explained that Chapter 40A of Mass General Law requires a public hearing of both the City Council and the Planning and Development Board for any zoning ordinance amendment. The Planning Board was unable to gather a quorum this evening so they will be holding a separate public hearing on another date, to be announced. While the Committee may vote on the three zoning amendment items before them tonight if they choose, the City Council may not take action until the Planning Board holds their public hearing and reports their recommendation to the Council. The Planning Board has 21 days in which to submit their recommendation after they hold their hearing and if that time elapses without a report, the Council may take action without the recommendation.

**#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]

**ITEM SPLIT INTO PART A AND PART B:**

**PART A – To allow Health Club use in BU1, BU2 and BU4;**

**PART B – To clarify the definition of Personal Services as it relates to health and fitness issues.**

**Action:      Public Hearing Closed; Approved Part A 6-0; Held Part B 6-0**

**#54-16(2)      Zoning ordinance amendment relative to Health Club Use; other districts**

ACTING DIRECTOR OF PLANNING proposing to amend the Newton Zoning Ordinance, Chapter 30, which became effective November 1, 2015 to allow the "Health Club" use in Manufacturing, Limited Manufacturing, Mixed Use 1 and Mixed Use 2 districts.

**Action:      Public Hearing Closed; Approved 6-0**

**Note:** Please note that both of the above items were discussed together. Councilor Hess-Mahan opened the public hearing.

Marie Lawlor, Assistant City Solicitor explained that this docket item has two purposes: to correct an oversight which resulted in Health Clubs being disallowed in most business districts; and to clarify the definition of Personal Services as it relates to health and fitness uses.

### Health Clubs

For many years, Health Clubs were considered an allowed use in most commercial districts under a long-standing interpretation that identified them as similar to “Clubs”. In 2002, a specific definition of Health Club was added to the zoning ordinance but its only purpose was to add a stricter parking standard for that type of club, and Health Clubs continued to be allowed in commercial districts under the same long-standing interpretation. The specific words “Health Club” first appeared in the Use Tables for the Mixed Use 3 District when that district was adopted into the zoning ordinance in 2012 and then later in the Mixed Use 4 District. Health Clubs, however, continued to be allowed in other districts as “clubs” under the previously mentioned long-standing interpretation.

The reformatting of the zoning ordinance in Phase One of zoning reform unfortunately failed to capture and codify Newton’s long-standing interpretation and the result was that Health Clubs appear only to be allowed in the Mixed Use 3 and 4 Districts in the newly formatted ordinance.

The Planning Department recommends rectifying this inadvertent omission by re-introducing Health Clubs into the Use Table for commercial districts where clubs have always been allowed.

Docket item #54-16(2) was proposed by the Planning Department to add the Health Club use to Manufacturing, Limited Manufacturing, Mixed Use 1 and Mixed Use 2 Districts as well because those districts are in many cases transitioning towards office and research/development and health clubs are a good complimentary use in such areas. Also, many of the warehouse types of buildings in Manufacturing districts lend themselves to conversions to health clubs.

### Personal Services

The current definition of personal services contains a wide range of businesses which have one thing in common which is a small ratio of clients to service providers, such as tailors, cobblers, barber shops, etc. Currently included in the definition is personal trainer or fitness studio which is causing some confusion.

The Planning Department proposes eliminating the words “fitness studio” from the definition and specifying that “personal trainer” in this category are for small group training purposes, up to 4 clients per trainer. The Planning Department will propose an amendment in the near future to define and create a studio use to include fitness, dance and other similar studio uses for larger group instruction.

Councilor Hess-Mahan invited public comment.

#### Public Comment

**Alan Schlesinger**, Buchbinder and Schlesinger, 1200 Walnut St. said he was representing the Bulfinch Company which owns the Atrium at 300 Boylston St. He spoke in support of the proposed changes to allow the Health Club use table to be amended to restore the allowance of Health Club use in the Business districts. He noted that his client tried to get a building permit for their property and were not able to due to this oversight. He related this oversight in the new ordinance to Mr. Freas, Director of Planning, and he agreed it was indeed an oversight. There is a time sensitivity to this because a lease is in process on the property and they need this issue resolved. There is another property for which this is problematic as well. He felt that the Planning Board would be supportive of this as well. He hopes they will meet as soon as possible.

**Philip Herr** said that the style of the previous formatting of the zoning ordinance ended a list of uses with a statement similar to “other uses provided that they are not too different”. When that format got changed into the new tabular format, there was suddenly a list of uses that became non-compliant in many places. This one got caught and will be cured as it had created a problem for a particular problem in the City. He wondered if there has been a systematic going over of the old ordinance to make sure there are no other such problems. This use of specifying a category of use that isn’t found anywhere else in the ordinance suddenly becomes allowable under the old ordinance if it is shown to not become harmful. This is a big change and comes from the new format. He thinks this format is a better one but he hopes there are no other errors.

Councilor Hess-Mahan said the Clerk’s Office, and others went over the ordinance more than once to find problems, which they did, but unfortunately some have remained. There are sure to be more as time goes on and technical amendments have historically been made in zoning ordinances. Ms. Lawlor said they are to be expected. Back in 1987 during the last large recodification of the zoning ordinance, there were many technical amendments including one which did away with all bars in the City.

Councilor Hess-Mahan closed the public hearing.

#### Committee Questions/Comments

A Committee member asked about the 1 to 4 ratio for clients and trainers. John Lojek, Commissioner of Inspectional Services explained that personal training businesses started showing up in the community. They were renting small storefronts and there were not that many of them. However, these services started to proliferate and became larger and needed to be regulated in some way as there were parking issues, etc., and needed to be defined in a different way. The number of four clients seemed like a reasonable number and it seemed a number higher than that was not as “personal”. It is up to the City Council to decide on the exact number however. The intent is to codify the fact that personal services have very specific uses.

A Committee member asked if only one trainer would be allowed with up to four clients, or that any amount of trainers could be in the business with each one having four clients. This is something that needs to be clarified.

A Committee member asked if the fitness club that went in on Commonwealth Ave would fall under this issue. Commissioner Lojek said it would not because that business is in a residential district as a non-conforming use, personal training, in the building. In order to perform that use a special permit is required. This definition has no impact.

Councilor Hess-Mahan noted that there are no Business 3 districts on the zoning map, which is why it was not included in the amendment. The Business 5 district only applies to one building in the City on the line between Wellesley and Newton and so as a practical matter it was not added. The parents item was added because after the first item was docketed, the Planning Department realized they should be added to those districts as well.

He would like to see as many of the technical amendments dealt with as soon as they come up as possible so as to not cause any problems for projects in the pipeline, as was mentioned by Attorney Schlesinger.

Commissioner Lojek said he would like to avoid using the phrases like “other similar uses” as was mentioned by Phillip Herr. He would prefer to have things more defined as it leads to accusations of unfairness and arbitrariness. It would be helpful for people to know what they can and cannot do. It is unfair for those services which have become larger to remain under the requirements of smaller businesses for which the definition was intended. And it is unfair to businesses around them who have to abide by different parking requirements.

A Committee member recommending making the parking requirement the same for the smaller and larger fitness trainer or health club uses instead of dealing with definitions. Ms. Lawlor felt it would be best to have a separate fitness studio use and determine appropriate parking. This would be mid-way between fitness trainer and a health club, and to keep the smaller fitness trainer use in with personal services. Councilor Hess-Mahan wondered if there should be any other businesses added to the personal services category.

The Committee decided to split #54-16 into Part A and Part B.

PART A – To allow Health Club use in BU1, BU2 and BU4;

PART B – To clarify the definition of Personal Services as it relates to health and fitness issues.

Councilor Danberg moved approval of Part A and the Committee voted in favor. Councilor Danberg moved to hold Part B and the Committee voted in favor.

Councilor Danberg moved approval of #54-16(2) and the Committee voted in favor.

**#53-16      Zoning ordinance technical amendments**

ACTING DIRECTOR OF PLANNING requesting technical amendments to the recently adopted reformatted Newton Zoning Ordinance to address edits related to missing or incorrectly transcribed ordinance provisions. [02/09/16 @ 4:24 PM]

**Action:**      **Public Hearing Closed; Approved 6-0**

**Note:** Councilor Hess-Mahan reminded the Committee that the intent of these technical amendments was not to make any changes to the ordinance, but to restore language and requirements that were inadvertently dropped when changing the format of the zoning ordinance and creating the new document.

The amendments were attached to the Planning Memo which show the language which is being restored to the zoning ordinance and are attached to this report. Marie Lawlor, Assistant City Solicitor, reviewed the changes with the Committee.

Committee Comments/Questions

Day Care Centers

There were questions raised relative to the technical amendment for day care centers. Ms. Lawlor explained that Chapter 30-5(c) which pertained to day care centers affiliated with religious and non-profit educational uses; and Chapter 30-5(d) which pertained to day care centers not affiliated with religious and non-profit educational uses, both in the older version of the zoning ordinance, where combined into one paragraph in the newly formatted zoning ordinance. When that happened, certain requirements that were not required of affiliated day care centers were added, and certain requirements for non-affiliated day care centers were omitted.

Affiliated day care centers are required to follow certain parking requirements and their affiliated institutions must follow dimensional requirements for religious and non-profit educational institutions. Non-affiliated day care centers are required to undergo administrative site plan review and the standards listed including landscaping, parking, drop-off, parking management and compliance plan, trash location and screening plan, and compliance with Office for Child Care Services Regulations. When the paragraphs were combined it read as though the affiliated day care centers would also have to comply with all those standards and the non-affiliated day care centers would not require site plan review. This amendment simply restores the language that was present in the older version of the zoning ordinance.

Commissioner Lojek explained that the Dover Amendment in MGL Chapter 40A provides protections to religious and non-profit educational institutions and are exempt from many of the zoning provisions. One thing they do emphasize in the Amendment is parking, however, so that can be enforced. Parking issues usually end up before the City Council, but if it is a matter of one space, for example, that is usually allowed by his discretion. The other provisions under the Dover Amendment must be allowed by law.

Councilor Hess-Mahan invited public comment.

Public Comment

**Alex Shrayber**, 20 Carlson Avenue, said they thought it was fair to drop the language about day care centers and does not want it restored. Standards for day care for 10 children, there are minimum requirements for a 5,000 square foot house. If this house has no drop off and no pick up they have to park in the street and this would create traffic and not be safe for kids. Day care centers should have drop off on the property which is safer for kids. Day cares which are associated with religious and non-profit educational institutions have privileges and why is that? Are they better citizens than us? He has a religious day care because he provides kosher food and a Jewish education, but this is not about me. He feels everyone should have equal rights. He feels this is discrimination. He wrote a letter and had 106 people signed it against this change and if he had more time he could have gotten many more. He would like to keep the ordinance as it is.

Councilor Danberg thanked Mr. Shrayber for his comments. She noted that from what she understood, the Dover Amendment was enacted a few decades ago in order to prevent discrimination against religious and non-profit educational institutions so neighborhoods would not try to keep them out. She appreciates that he has brought up that this could be seen as some sort of reverse discrimination. This is a state law and the City has no ability to make changes to it.

Councilor Hess-Mahan closed the public hearing.

The Committee voted to approve the proposed technical amendments 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: Approved 6-0**

**Note:** Councilor Hess-Mahan explained this item is not a zoning ordinance and therefore does not require a public hearing. However, he felt there was enough interest in the community to warrant an opportunity for public comment. It is a substantive change to the demolition delay ordinance.

Katy Pax Holmes, Historic Preservation Planner, addressed the Committee. She explained that she staffs the Newton Historical Commission (NHC). The NHC supports this item and the non-

transferability option to strengthen the tools the city already has. In 1987, Newton adopted in the demolition delay ordinance and the NHC supports the item tonight because its goal is to give that ordinance a chance to do its job. That job is to delay the destruction of historically significant buildings in order to provide an alternative to demolition. These do not necessarily prevent demolition, they just require a delay. In 1987 there were 20 applications that came in the first year and they get 60 in about 7-8 weeks right now. About 1/3 of those are never exercised.

The NHC takes steps to preserve very, very significant properties that are under threat of demolition and there are other tools but they go beyond this ordinance. Transferring the demolition delay decision from one owner to another over the course of the delay eliminates the opportunity for the NHC and property owners to work together to come up with preservation options. The ordinance was never intended to prevent demolition, but the real estate community has used the transferability loophole as a marketing tool, which makes sense for them, but it is filling the NHC agenda with properties that do not necessarily get demolished. Much staff and volunteer time is spent visiting and researching properties where there is no intention of them being demolished. Instead, this is just a way for owners or developers to “start the clock” on properties to get them through the delay period so whomever purchases the property has options.

Ms. Holmes noted that she contacted the Mass Historical Commission and they know of no other community in the state who has adopted this transferability option. She is excited that Newton would be a leader in this, but she knows that Needham is considering it as well.

Councilor Hess-Mahan invited public comment.

#### Public Comment

**Laura Foote**, 333 Otis Street, stated that she is part of a group that is organizing on West Newton Hill to form a local Historic District there. The initiative has been catalyzed by the four demolition delay approvals that went through last month, two of which were National Historic Landmark homes, on West Newton Hill. Two others have architectural significance. As neighbors they try to preserve their homes in this beautiful neighborhood because they care about the historic character there. It is a situation in which what might be good for one homeowner or developer to maximize their financial interest is not good for the community as a whole. It would be useful for them to know who is actually going to use a demolition permit. As homeowners sell and leave they feel less connected to the neighborhood. She mentioned the Tragedy of the Commons which is a concept in which the individual has to not put their needs above the common good. Anything that can be done to help prevent demolition of the beautiful homes in Newton would be a good step.

**Kate Flather**, 334 Otis Street, stated that she wanted to be heard and supports the request in the item. She also does not like to see tax dollars being wasted on applications that go nowhere. She has lived in Newton since 1971 and she likes change but this is an historic district on West Newton Hill and the new homes do not fit in with the character. The homes are coming down and no one will ever use that sort of craftsmanship in the future and they are a huge loss. She is offended when she is outside doing yardwork and people pull up and ask her if she wants to sell her house.

The developers approach older residents and try to get them to sell and tell them to apply for the demolition permit so they can get a better price for their house. She thinks people will spend the money for the beautiful older home and that should not be an incentive.

**Attorney Laurance Lee**, 246 Walnut Street, stated that he would like to offer a different perspective. He sees the possibility of unintended consequences of hurting elderly residents in Newton. The sellers of those homes often times have a lot of deferred maintenance on their homes. Invariably, when it is time to sell they have the demo delay and it helps them sell the property for the maximum value. These are often land rich but cash poor people and they need to maximize their only asset to pay for their care. If that carrying period is extended they may not be able to maximize the value of their home for their long term care. He is not being paid to speak for anybody, but just his own opinion and in what he sees every day in his practice. He has also spoken to colleagues who deal with eldercare and they share these concerns. Developers will always find a way to make money by reducing their price and making their money. But the folks that do not have that luxury and need a fast close, those are often developers who will offer that. End users who come in need an inspection, appraisal, a mortgage and financing could be a problem. These are the real life factors.

**Isabelle Ahlbeck**, Winsor Road, said she has been going to the NHC meetings for the last 3 years. She has seen many houses being presented and demolished. Sometimes the delay proposed by the NHC makes people consider alternatives to demolition because they don't want to wait. Sometimes that's all they need to think differently. The NHC does not have much power other than to impose delays. Making sure the demo permit does not transfer to a new owner is a good idea and she misses some beautiful old houses that have been demolished. Not every house needs to be or should be preserved but many old beautiful houses should.

**Joseph Bates**, 10 Regent St, said that he supports strengthening the delay ordinance. He purchased a house here after renting for many years and it's his sense that historically Newton homes have appreciated well. He does not think he would need to maximize to the utmost the appreciation in his home. He would like to see this approved.

#### Committee Questions/Comments

Councilor Hess-Mahan noted that several speakers commented in favor of this proposal and Attorney Lee who had issues with elderly affairs and estate planning.

Councilor Danberg stated that the list of National Historic Register properties are in danger and the current demolition delay only provides an additional 6 months of protection from demolition. While she has tremendous respect for Attorney Lee, she did not feel he presented evidence to support his assertions. Proposing that elderly residents might be hurt by this, she feels is not substantiated. She is also approached by people asking to buy her house to build more units on her land. Anecdotally, the several houses that have escaped demolition by developers have had bidding wars with homeowners and developers. The developers stop bidding after the point that it is no longer profitable for them. People who might buy them and live there for a long time have



the money to buy, preserve and maintain them. She believed people would get more money for their property by avoiding the demolition delay process altogether. Those instances in which people need to get quick cash for their homes are few. It's a desirable City and bidding wars bring more money.

In addition, the Planning Department and NHC should not be wasting their time on the one-third of all applicants who comes in to receive permits in this manner.

It was asked if this might hurt those who are transferring their property to their wife or child or into a trust for estate planning purposes. All of those constitute a legal transfer of ownership. If a home is owned by a husband and wife as tenants in entirety then that is not considered a legal transfer of ownership is one dies. It would also not apply if the home was owned as joint tenants. Total ownership would automatically go to the co-owner. It would apply in the transfer to a trust.

Councilor Hess-Mahan explained that putting a house into a trust is usually to protect it from Medicaid and there are look-back provisions. Any transfer that happens within 5 years can be undone. Or, if a house goes through probate and goes to heirs, the time it takes to do all that is quite lengthy. As a matter of policy and procedure, the NHC can deal with hardships as they arise. Ms. Holmes stated that the NHC would like to have a brief memo which distinguishes the types of ownership so policy can be implemented. Putting it in the ordinance would probably raise more issues than it would solve, so making it a matter of policy would be best.

Councilor Hess-Mahan noted that if someone has to go into a nursing home and is in the process of selling or getting a demo permit, many nursing homes will take a mortgage on a home to get paid. It will either be through Medicaid or through a mortgage. He has seen cases exactly like that.

Ms. Lawlor noted the issue of retroactivity. Unlike a zoning ordinance, an application is protected prior to any advertising date of a proposed change. This is not a zoning ordinance so there is not protection so it would be unfair to apply this to demolition reviews that are already in process. Language should be added for an effective date to offer that protection.

Councilor Yates moved approval and the Committee voted to approve the item as amended to add an effective date.

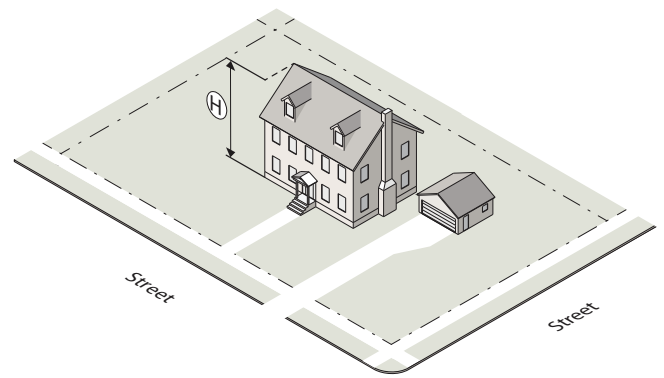
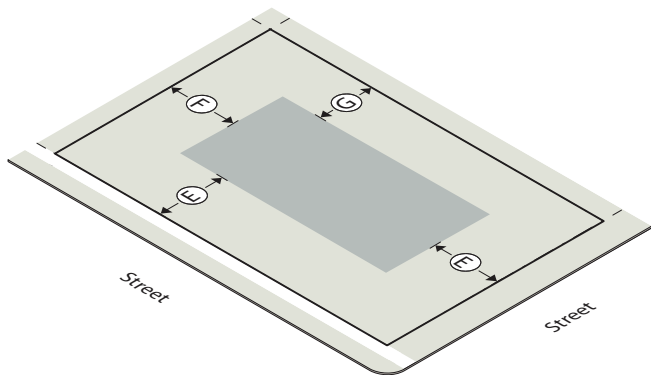
Meeting adjourned.

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Bank	P	P	P	P	--	SP	P	--	--	--	P	<a href="#">Sec. 6.4.4</a>
Bowling alley	--	P	--	--	--	--	--	--	--	--	P	<a href="#">Sec. 6.4.5</a>
Business incubator								P				<a href="#">Sec. 6.4.6</a>
Business services	--	--	--	--	--	SP	P	--	--	--	--	<a href="#">Sec. 6.4.7</a>
Car-sharing service, car rental, bike rental, electric car-charging station	--	--	--	--	--	--	--	P	P	--	--	<a href="#">Sec. 6.4.8</a>
Car wash	--	--	--	--	--	--	--	--	--	SP	--	<a href="#">Sec. 6.4.9</a>
Drive-in business	SP	SP	SP	SP	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.11</a>
Dry cleaning or laundry, retail	P	P	P	P	--	SP	P	P	P	--	--	<a href="#">Sec. 6.4.12</a>
Fast food establishment	--	SP	--	--	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.13</a>
Fuel establishment	--	SP	--	--	--	SP	SP	--	--	SP	SP	<a href="#">Sec. 6.4.14</a>
Funeral home	SP	SP	SP	SP	--	--	SP	--	--	--	--	<a href="#">Sec. 6.4.15</a>
Health club, above or below ground floor	<del>P</del>	<del>P</del>	--	<del>P</del>	--	<del>P</del>	<del>P</del>	P	SP	<del>P</del>	<del>P</del>	<a href="#">Sec. 6.4.16</a>
Health club, ground floor	<del>P</del>	<del>P</del>	--	<del>P</del>	--	<del>SP</del>	<del>SP</del>	SP	SP	<del>P</del>	<del>P</del>	<a href="#">Sec. 6.4.16</a>
Hotel or lodging establishment	SP	SP	SP	SP	SP	--	SP	SP	SP	--	--	<a href="#">Sec. 6.4.17</a>
Job printing, up to 3,000 square feet (area used for work and storage)	P	P	P	P	--	--	P	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Job printing, over 3,000 square feet (area used for work and storage)	SP	SP	SP	SP	--	--	SP	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Kennel	--	--	--	--	--	--	--	--	--	--	P	<a href="#">Sec. 6.4.19</a>
Office	P	P	P	P	P	P	P	L	P	P	P	<a href="#">Sec. 6.4.20</a>
Office of a contractor, builder, electrician or plumber or similar enterprises	--	L	--	--	--	--	--	--	--	--	L	<a href="#">Sec. 6.4.21</a>
Open-air business	SP	SP	SP	SP	--	--	--	--	SP	--	SP	<a href="#">Sec. 6.4.22</a>
Outdoor storage	--	SP	--	--	--	--	--	--	--	--	--	<a href="#">Sec. 6.4.23</a>
Parking facility, accessory, single level	P	P	P	P	--	--	P	--	P	P	P/SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, single level	SP	SP	SP	SP	--	--	SP	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, accessory, multi-level	SP	SP	SP	SP	--	--	--	--	P	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, multi-level	SP	SP	SP	SP	--	--	--	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, public	--	--	--	--	--	--	--	P	P	--	SP	<a href="#">Sec. 6.4.24</a>
Personal service, up to 5,000 square feet	P	P	P	P	--	--	P	P	P	--	P	<a href="#">Sec. 6.4.25</a>
Personal service, over 5,000 square feet	P	P	P	P	--	--	P	SP	SP	--	P	<a href="#">Sec. 6.4.25</a>
Place of amusement, indoor or outdoor	--	SP	--	--	--	--	--	SP	SP	--	SP	<a href="#">Sec. 6.4.26</a>

P = Allowed by Right   L = Allowed Subject to Listed Standards   SP = Special Permit by Board of Aldermen Required   -- Not Allowed



	SR1	SR2	SR3
<b>Principal Building Setbacks (On or After 12/7/1953)</b>			
(E) Front (min)*	40'	30'	30'
(F) Side (min)	20'	15'	10'
(G) Rear (min)	25'	15'	15'
<b>Principal Building Setbacks (Before 12/7/1953)</b>			
(E) Front (min)*	25'	25'	25'
(F) Side (min)	12.5'	7.5'	7.5'
(G) Rear (min)	25'	15'	15'

\* See [Sec. 1.5.3](#) for setback averaging requirement.

	SR1	SR2	SR3
<b>Principal Building Height</b>			
Sloped Roof (max)	36'	36'	36'
Flat Roof (max)	30'	30'	30'
(H) Stories (max)	2.5	2.5	2.5
(H) <a href="#">Stories by special permit (max)</a>	<a href="#">3</a>	<a href="#">3</a>	<a href="#">3</a>
<b>Floor Area Ratio</b>			
All Lot Sizes	see <a href="#">Sec. 3.1.9</a>		

(Ord. No. S-260, 08/03/87; Ord. No. S-288, 12/07/87; Ord. No. T-173, 09/16/91; Ord. No. V-112, 04/23/97; Ord. No. V-113, 04/23/97; Ord. No. V-122, 07/14/97; Ord. No. Z-77, 02/22/11)

## Sec. 4.2. Mixed Use Districts

### 4.2.1. District Intent

- A. **Mixed Use 1 and 2 District.** [Reserved]
- B. **Mixed Use 3/Transit-Oriented Development.** The purpose of the Mixed-Use 3/Transit-Oriented district is to allow the development of a mixed-use center on a parcel of no less than 9 acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's Comprehensive Plan, particularly the mixed-use centers and economic development elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.
- C. **Mixed Use 4 District.** The purposes of the Mixed Use 4 district are to:
1. Allow the development of buildings and uses appropriate to Newton's village commercial centers and aligned with the vision of the City's Comprehensive Plan.
  2. Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.
  3. Allow sufficient density and intensity of uses to promote a lively pedestrian environment, public transit, and variety of businesses that serve the needs of the community.
  4. Expand the diversity of housing options available in the City.
  5. Promote the health and well-being of residents by encouraging physical activity, use of alternative modes of transportation, and creating a sense of place and community.

(Ord. No. Z-108, 04/17/12; Ord. No. A-4, 10/01/12; Ord. No. A-6, 10/01/12)

### 4.2.2. Dimensional Standards

- A. **Applicability.**

1. The density and dimensional controls in [Sec. 4.2.2](#) and [Sec. 4.2.3](#) apply to all buildings, structures and uses in each of the listed districts.
2. Where more than one dwelling unit is provided on a lot in certain Mixed Use districts, the following residential density control shall apply:

Mixed Use District	MU1	MU2	MU3/TOD	MU4
Lot Area Per Unit (min)	10,000 sf	10,000 sf	1,200 sf	1,000 sf

3. Where a density or dimensional control is not set forth in the following tables for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right shall be applicable, unless otherwise required in the special permit by the Board of Aldermen.

#### B. Approval Process.

1. **Special Permit Required.** A special permit is required for any development in a mixed use district of 20,000 square feet or more.
2. **Site Plan Review Required.** A site plan is required for any development in a mixed use district that ranges from 10,000 to 19,999 square feet of new gross floor area. After August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure is not subject to site plan approval. All buildings, structures and additions shall be located on a lot in single and separate ownership, which lot shall not be available for use in common or in connection with a contiguous or adjacent lot.
3. **Stories.** A special permit is required based on stories according to the following table:

Stories	MU1	MU2	MU3/TOD	MU4
2 stories	P	P	P	P
3 stories	P	SP	SP	--
3 stories, mixed use residential	--	--	SP	P
4 stories or more	SP	SP	SP	--
5 stories, mixed use residential	--	--	SP	SP

P = Allowed by Right

SP = Special Permit by Board of Alderman Required

-- Not Allowed

(Ord. No S-260, 08/03/87)

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Bank	P	P	P	P	--	SP	P	--	--	--	P	<a href="#">Sec. 6.4.4</a>
Bowling alley	--	P	--	--	--	--	--	--	--	--	P	<a href="#">Sec. 6.4.5</a>
Business incubator								P				<a href="#">Sec. 6.4.6</a>
Business services	--	--	--	--	--	SP	P	--	--	--	--	<a href="#">Sec. 6.4.7</a>
Car-sharing service, car rental, bike rental, electric car-charging station	--	--	--	--	--	--	--	P	P	--	--	<a href="#">Sec. 6.4.8</a>
Car wash	--	--	--	--	--	--	--	--	--	SP	--	<a href="#">Sec. 6.4.9</a>
Drive-in business	SP	SP	SP	SP	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.11</a>
Dry cleaning or laundry, retail	P	P	P	P	--	SP	P	P	P	--	--	<a href="#">Sec. 6.4.12</a>
Fast food establishment	--	SP	--	--	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.13</a>
Fuel establishment	--	SP	--	--	--	SP	SP	--	--	SP	SP	<a href="#">Sec. 6.4.14</a>
Funeral home	SP	SP	SP	SP	--	--	SP	--	--	--	--	<a href="#">Sec. 6.4.15</a>
Health club, above or below ground floor	--	--	--	--	--	--	--	P	SP	--	--	<a href="#">Sec. 6.4.16</a>
Health club, ground floor	--	--	--	--	--	--	--	SP	SP	--	--	<a href="#">Sec. 6.4.16</a>
Hotel or lodging establishment	SP	SP	SP	SP	SP	--	SP	SP	SP	--	--	<a href="#">Sec. 6.4.17</a>
Job printing, up to 3,000 square feet (area used for work and storage)	P	P	P	P	--	--	P	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Job printing, over 3,000 square feet (area used for work and storage)	SP	SP	SP	SP	--	--	SP	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Kennel	--	--	--	--	--	--	--	--	--	<del>X</del> P	P	<a href="#">Sec. 6.4.19</a>
Office	P	P	P	P	P	P	P	L	P	P	P	<a href="#">Sec. 6.4.20</a>
Office of a contractor, builder, electrician or plumber or similar enterprises	--	L	--	--	--	--	--	--	--	--	L	<a href="#">Sec. 6.4.21</a>
Open-air business	SP	SP	SP	SP	--	--	--	--	SP	--	SP	<a href="#">Sec. 6.4.22</a>
Outdoor storage	--	SP	--	--	--	--	--	--	--	--	--	<a href="#">Sec. 6.4.23</a>
Parking facility, accessory, single level	P	P	P	P	--	--	P	--	P	P	P/SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, single level	SP	SP	SP	SP	--	--	SP	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, accessory, multi-level	SP	SP	SP	SP	--	--	--	--	P	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, multi-level	SP	SP	SP	SP	--	--	--	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, public	--	--	--	--	--	--	--	P	P	--	SP	<a href="#">Sec. 6.4.24</a>
Personal service, up to 5,000 square feet	P	P	P	P	--	--	P	P	P	--	P	<a href="#">Sec. 6.4.25</a>
Personal service, over 5,000 square feet	P	P	P	P	--	--	P	SP	SP	--	P	<a href="#">Sec. 6.4.25</a>
Place of amusement, indoor or outdoor	--	SP	--	--	--	--	--	SP	SP	--	SP	<a href="#">Sec. 6.4.26</a>

P = Allowed by Right   L = Allowed Subject to Listed Standards   SP = Special Permit by Board of Aldermen Required   -- Not Allowed

### 5.2.8. Signs in Commercial Districts

No sign shall be erected or maintained in a business, limited manufacturing, manufacturing, and mixed use district, except as provided in [Sec. 5.2.6](#) and this [Sec. 5.2.8](#):

Type	Number <a href="#">per business establishment</a>	Area per Sign (max)	Notes
Principal sign	1 total	3 sf per linear foot of building wall frontage OR 100 sf, whichever is less	In particular instances, due to the nature of the use of the premises, the architecture of the building, or its location with reference to the street, the total allowable sign area may be divided between two wall signs which together constitute the principal wall sign.
Principal sign: Business on a corner lot	2 total	3 sf per linear foot of building wall OR 100 sf, whichever is less	Frontage on the second street must be at least 75 percent of frontage on first street
Secondary sign	1 per building, entrance or frontage on a street or parking area; 2 max	1 sf per linear foot of building wall OR 50 sf, whichever is less	May not be erected on the same wall as a principal sign.
Directory sign	1 total	1 sf per occupant or tenant	Indicating the occupants or tenants of the building to which the sign is affixed
Directory sign: building with 2nd entrance	1 per entrance	1 sf per occupant or tenant	The second entrance must have frontage on a street or parking lot. Such signs shall not be deemed nonaccessory directory signs.
Marquee sign	1 per theater		
Awning sign	--	Up to 20% of awning area	
Window sign	--	Up to 25% of window area through which they are visible	
Gas station sign	1 consolidated display	20 sf (aggregate)	Product identification signs (tires, oil...)
Directional sign		3 sf	For the direction of persons or vehicles, indicating "entrance," "exit," "parking," or the like

-- Not Applicable

temporary custody and care not more than 6 children at a time.

2. **Large Family Child Care Home.** As defined and licensed under M.G.L. Chapter 15D, Section 1A, a private residence which on a regular basis receives for temporary custody and care up to and including 10 children at a time.
3. **Day Care Center.** As defined and licensed under M.G.L. Chapter 15D, Section 1A, a facility which on a regular basis receives for temporary custody and care more than 10 children at a time.

**B. Standards.**

1. **Purpose.** The purpose of this Sec. 6.3.4 is to accommodate child care needs of the general public in all areas of the city, to distinguish between family child care homes and day care centers which are more intensely used, to encourage larger facilities to co-locate within other existing large institutions, to encourage safe access and egress, and to minimize potential congestion at drop-off and pick-up times.
2. **Family Child Care Homes, Large Family Child Care Homes.** Minimum lot size shall be 5,000 square feet.
3. **Day Care Center.** Day care centers which are accessory to religious and non-profit educational institutions, shall follow the parking requirements of Sec 5.1, and the instituion in which they are located shall follow the dimensional requirements for religious and non-profit educational institutions. procedures and criteria for review for the institution, and meet the provisions and standards set forth below: Day care centers which are not accessory to religious or non-profit educational institutions are subject to the Administrative Site Plan review procedure in Sec. 7.2, must meet the dimensional requirements for lots created after December 7, 1953 in the applicable zoning district, and must meet the provisions and standards set forth below:
  - a. **Landscaping:** A dense year-round vegetative buffer at least 4 feet wide and 6 feet high shall be provided along the perimeter of any outdoor play area. Any fence required by the Office for Child Care Services shall be located inside the required vegetative buffer. All landscaping that is required under this provision shall be maintained in good condition and, if diseased or dying, shall be replaced by the operator of the facility with new plant material of a similar size.
  - b. **Parking.** Day care centers shall comply with the parking requirements of Sec. 5.1, except that in residence district, there shall be provided

a dense year-round vegetative buffer with dimensions as described in Landscaping above. Day care centers shall comply with the provisions of Sec. 5.1.9 relating to the screening of parking areas, excepting the dimensions for the vegetative buffer.

- c. **Drop-off.** In addition to complying with the parking requirements of Sec. 5.1, there shall be provided for drop-off and pick-up at least 1 on-site parking space for each 5 children or fraction thereof. Such parking spaces shall comply with the applicable parking setback requirements and parking dimensional and design standards of Sec. 5.1.7 or Sec. 5.1.8.
- d. **Parking Management and Compliance Plan.** The operator of a day care center shall submit to the Director of Planning and Development a parking and drop-off management plan which shall outline where and when staff shall park as well as the alleviation of potential congestion during peak drop-off and pick-up times as required herein. Said plan shall be reviewed by the City Traffic Engineer, and the Engineer's recommendations shall be sent to the Director of Planning and Development. Upon completion of said review process, the Director of Planning and Development shall indicate, in writing, to the Commissioner of Inspectional Services whether there has been compliance by the operator with the procedural requirements stated herein, and whether, in his opinion, the owner has complied with this Chapter. This statement shall be made within 60 days after receipt of the parking management and compliance plan.
- e. **Trash Location and Screening Plan:** The operator of a day care center shall also submit to the Director of Planning and Development a trash location and screening plan which shall provide the precise means and location of trash collection and removal as well as screening therefor to alleviate health and aesthetic concerns.
- f. **Compliance with Office for Child Care Services Regulations.** Until the operator of a day care center provides to the Director of Planning and Development evidence of current valid

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 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 shall not apply to a hotel or motel restaurant.
  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. 6.** In all districts, outdoor sidewalk 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.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. X-20, 05/06/02; Ord. No. A-13, 03/18/13)

#### 6.4.30. Retail Sales

A. **Defined.** Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise.

#### B. Standards.

1. In a Mixed Use 1 district, a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area.

(Ord. No. Z-108, 04/17/12)

#### 6.4.31. Service Establishment

A. **Defined.** Business service establishments, including but not limited to copying and printing establishments and shipping services.

(Ord. No. Z-108, 04/17/12)

#### 6.4.32. Stable

##### A. Defined.

1. **Private.** A building or part of a building in which 1 or more horses are kept and used in connection with the business of the owner or tenant for other purposes than sale, rent or hire.
2. **Public.** A building or part of a building in which horses are kept for compensation.

(Rev. Ords. 1973 §24-1)

#### 6.4.33. Taxidermist

A. **Defined.** [reserved]

#### 6.4.34. Vehicle Repair Shop

A. **Defined.** A building or part of a building in which repairs are made to motor vehicles, or a repair shop in a garage or other building in which heavy machinery is used. An automobile school shall be regarded as a vehicle repair shop.

1. **Minor.** A part of a garage where minor structural repairs are made to motor vehicles for profit, by means of lathes, vises and other appliances, but not by means of heavy machinery.
2. **Major.** [reserved]



model shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater. The model shall be provided to the City in a file format acceptable to the Director of Planning and Development, in consultation with the Clerk of the Board of Aldermen, the City Solicitor, and the Chief Information Officer.

~~C. The applicant shall also submit 1 massing model, prepared as appropriate by an architect, professional engineer or land surveyor, for any commercial or multi-family development with a gross floor area of 20,000 square feet or more as follows:~~

- ~~1. For a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the massing model shall show the proposed development, all abutting properties and abutters to such abutting properties;~~
- ~~2. For a proposed development containing a gross floor area 50,001 to 100,000 square feet, the massing model shall show the proposed development and all properties within 500 feet from the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater;~~
- ~~3. For a proposed development containing a gross floor area in excess of 100,000 square feet, the massing model shall show the proposed development and all properties within 1,000 feet of the lot line of the proposed development or all abutting properties and abutters to such abutting properties, whichever is greater.~~

~~C. D.~~ As part of an application for special permit, an applicant must comply with the Rules and Orders of the Board of Aldermen pertaining to special permit and site plan approval.

(Ord. No. S-260, 08/03/87; Ord. No. A-6, 10/01/12)

### 7.3.2. Review

- A. The Board of Aldermen or a committee of the Board of Aldermen shall hold a public hearing within 65 days of the filing of an application for special permit.

- B. Notice of such public hearing shall be provided as required by M.G.L. Chapter 40A, Section 11.
- C. The Board of Aldermen shall act upon any application for special permit not later than 90 days following the the public hearing.
- D. The application for special permit shall be deemed approved if the Board of Aldermen fails to act upon the application not later than 90 days following the public hearing.
- E. Any approval of an application for special permit shall lapse not later than 1 year from the grant of such approval unless a substantial use of such special permit or construction required by such special permit has begun. The Board of Aldermen may extend the period of time granted under this Paragraph for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon, unless the Board of Aldermen or its Committee on Land Use shall vote to require a public hearing. Notwithstanding the above, no extensions shall be granted which shall extend the time for substantial exercise of the special permit for more than 2 years from the date of the grant of the special permit.
- F. The Newton Biosafety Committee shall serve as an advisory body to the Board of Aldermen with regard to any application for a special permit. The Newton Biosafety Committee shall be consulted by the Board of Aldermen for its recommendations on the siting of any institution intending to conduct recombinant DNA research or technology, which recommendations shall be in writing and shall be submitted within such time as the Board of Aldermen shall specify to assure said board's ability to act within the time periods set forth in this Sec. 7.3.

(Ord. No. S-260, 08/03/87; Ord. No. V-9, 02/21/95; Ord. No. A-6, 10/01/12)

### 7.3.3. Grant of Permit

- A. A special permit from the Board of Aldermen for any purpose for which a permit is required under this Chapter shall be granted only by  $\frac{2}{3}$  vote of all the Board of Aldermen.
- B. The Board of Aldermen may grant a special permit when, in its judgment, the public convenience and welfare will be served, and subject to such conditions, safeguards and limitations as it may impose.

## DIVISION 2. DEMOLITION DELAY

**Sec. 22-50. Demolition of historically significant buildings or structures.**

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

*Commission:* The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

*Commission staff:* The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

*Commissioner:* The commissioner of inspectional services.

*Application:* An application to the commissioner for a demolition permit as defined by this ordinance.

*Demolition permit:* Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

*Total demolition:* The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

*Partial demolition:* The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

(1) *Items requiring review by the commission at a hearing.* Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.

- a) Additions or ellis determined to be architecturally significant by commission or commission staff.
- b) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.
- c) Porches determined to be architecturally significant by commission or commission staff, except open decks, staircases, and entryways, which are excluded from review.
- d) Removal or envelopment by subsequent additions of 50% or more of any single exterior wall surface. Each wall is calculated by square footage individually.

e) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff.

i) Brackets

ii) Crown molding

iii) Porch columns and railings

iv) Bay windows

v) Dormers

vi) Chimneys

(2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*

a) Removal or alteration of the roof structure.

b) Repair or replacement of existing and original historic porches with similar materials to match existing..

c) Demolition or construction of additions or alterations not visible from a public way.

d) Removal or envelopment by subsequent additions of 50% to 100% of any single exterior wall surface. Each wall is calculated by square footage.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

a) Open porches and entryways consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.

b) Demolition or construction of new additions which remove, alter, or envelop 50% or less of a single exterior wall.

c) Removal or alteration of less than 50% of the roof structure

d) Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

*Historically significant building or structure:* Any building or structure which is in whole or in part fifty or more years old and which

(1) is in any federal or state historic district, or if in any local historic district, is not open to view from a

public street, public park or public body of water; or

- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
  - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
  - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or
  - c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

*Preferably preserved:* An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

*(c) Procedure.*

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.
- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:
  - a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
  - b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
  - c) a description of the proposed plans for demolition and the reason(s) therefore.
- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making

this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
  - a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
  - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:
  - a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and
  - b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically

significant building or structure whose loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

- (6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

- a) For a building or structure listed in the National Register of Historic Places or determined eligible for listing in the National Register of Historic Places by the Massachusetts Historical Commission no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure until eighteen (18) months after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such eighteen (18) month period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:
- i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,
  - ii) has agreed to accept a demolition permit on specified conditions approved by the commission.
  - iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff.
- iv) The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.
- iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds
- (a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,
  - (b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.
- vi) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

b) For all other buildings and structures not covered under section (6)a) above, no demolition permit shall be issued for a total demolition or a partial demolition of a building or structure found preferably preserved until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

i) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,

ii) agreed to accept a demolition permit on specified conditions approved by the commission.

iii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff.

iv) The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.

iv) In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds

(a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application; or,

(b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.

v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

(7) In the event a transfer of legal or beneficial ownership of a preferably preserved property occurs during the applicable demolition delay period, the full applicable demolition delay period will restart from the date of the transfer of ownership.

(8) In the event a transfer of legal or beneficial ownership of a preferably preserved property occurs after the applicable demolition delay period expires but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures set forth in section 22-50(c)(5).

(79) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.

(810) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.

(911) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

(e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such noncompliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."



The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstitution of the fine for non-compliance with this ordinance.

(f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.

(h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.

(i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.

(j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.

(k) *Applicability.*

(1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

(2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances.

(Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V-98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08; Ord. No. Z-76, 02-07-11; Ord. No. Z-85, 04-20-11)