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Mayor

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**Barney S. Heath**  
Director

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### MEMORANDUM

**DATE:** October 19, 2018

**TO:** Councilor Susan Albright, Chair  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development  
Rachel Nadkarni, Long Range Planner/Zoning Specialist  
Lily Canan Reynolds, Community Engagement Manager

**RE:** #518-18 - DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the Zoning Redesign Project on a draft policy content outline of the new Zoning Ordinance.

**MEETING DATE:** October 22, 2018

**CC:** City Council  
Planning Board  
John Lojek, Commissioner of ISD  
Ouida Young, Acting City Solicitor  
Marie Lawlor, Assistant City Solicitor  
Jonah Temple, Assistant City Solicitor  
Jonathan Yeo, Chief Operating Officer

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The Planning Department is pleased to present the 1<sup>st</sup> draft Zoning Ordinance for your review. We anticipate a detailed review of this document over the next many months. The following presents an overview of the Zoning Redesign project and the 1<sup>st</sup> Draft Ordinance.

#### **Background**

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Nearly 10 years ago the Newton City Council recognized that the time had come for a substantial update to Newton’s Zoning Ordinance and created the Zoning Reform Group to investigate the potential of writing a new ordinance. The last major review of the Ordinance had occurred in 1987 and fundamentally, much of it still reflected the Ordinance established in

1941 and 1953. Much had changed over this time, most significantly, the emergence of the Boston region as a major global center of innovation, resulting in strong economic growth, job creation, and a corresponding rapid increase in housing costs as demand outpaced supply. At the same time, changing market preferences have led to increasing demand for walkable, mixed-use environments. Finally, the reality of climate change has further reinforced the desirability of locations that offer this kind of setting.

With Newton's valuable location in the Boston region, these trends were readily apparent as market demand to live in Newton increased dramatically, especially in proximity to the village centers, which offered that desirable, environmentally-friendly, and walkable mixed-use environment. The resulting dramatic increase in housing prices has made Newton one of the more exclusive communities in the region and a community with diminishing opportunities for lower and middle-income people. The challenge identified by the Zoning Reform Group became how could the Zoning Ordinance be a tool to advance the City's goals and retain its fundamental character in the face of the considerable development pressure created by this environment. The existing zoning ordinance, originating in the 1940s and 1950s was designed to address very different issues than those Newton faces today.

The Zoning Reform Group recommended a comprehensive revision of Newton's Zoning Ordinance, incorporating many of the latest zoning tools and best practices and addressing a list of 11 themes. The first phase of this process, intended only to reorganize and clarify the existing rules was completed and adopted in November 2015. The second phase, the substantive rewrite of the ordinance, began in September 2016.

In consultation with the Zoning and Planning Committee and through listening to the community and reviewing the Comprehensive Plan and best practices in the field, the Planning Department arrived at the overarching concept of a "Context Based" Zoning Ordinance to guide the work of this second phase. This phrase was understood to mean that the rules and regulations of the new zoning ordinance would derive from the existing Newton context – the existing patterns of development evidenced throughout the City. This guiding concept emerged from three ideas:

1. As is highly apparent and strongly emphasized in Newton's Comprehensive Plan, Newton is a community that greatly appreciates and loves the form and physical character of its existing neighborhoods and villages. As the Comprehensive Plan says, "Newton ... has a powerful commitment to its existing pattern, and our vision and goals for future land use reflect that. Our intention is to guide change so that it reinforces what we have, building on our assets."
2. The existing City, and the patterns of development it represents, are far more environmentally sustainable and accommodating of incremental growth than the City would be if it had been developed under the existing Zoning Ordinance. The built environment of the City is 85% to 95% non-conforming with the Zoning Ordinance and nearly  $\frac{3}{4}$  of the City was built before the 1953 Zoning Ordinance. The pattern of

walkable village centers, with taller buildings and more activity at their centers gradually transitioning to neighborhoods, is widely recognized today as the best way to develop in order to address issues of environmental sustainability and climate change, as well as housing choice and equity. Many of the City's goals identified in the Comprehensive Plan could therefore be addressed simply by going back to allowing the historic patterns of development that produced the City that citizens love today.

3. Finally, staff recognized the inherent constraints of this project. Many Zoning Ordinance rewrite projects begin with a detailed master plan of the community that carefully considers the balances of land use mix, residential densities, economic development, the environment, transportation, and other public infrastructure and then uses the results of such study and policy decisions to craft a new zoning ordinance.

This zoning reform project could not accommodate such an effort. Instead, the Zoning Ordinance would reflect the existing City, for the benefits described above, while also laying the groundwork for future zoning ordinance amendments that build on detailed studies of strategic areas of the City through future master plans, such as the current Washington Street Visioning and Zoning project. The proposed ordinance is set up to be more easily amended in the future based on such study and thoughtful policy considerations.

### **Writing the Ordinance**

The first step to creating a context-based zoning ordinance for Newton was the Pattern Book. In order to create rules based on the existing built environment, we needed a detailed study of all of those existing buildings. This database was used both to define the new zoning districts of the Ordinance as well as the rules for the massing and placement of buildings. Beyond its role in creating the new zoning ordinance, the Pattern Book is the first truly comprehensive analysis of the City's built form and will therefore be a resource for Newton citizens and others interested in the built environment and the historic development of the City.

In September 2017 the Planning Department began a monthly public meeting series with meetings devoted to issues that relate to the zoning ordinance and potential tools that could be incorporated in zoning to address them. Topics ranged from housing and economic development to environmental sustainability and promoting the arts. Feedback from these meetings, and from the Zoning and Planning Committee was invaluable as staff prepared to draft the ordinance.

Writing of the 1<sup>st</sup> draft of the Zoning Ordinance began in the summer of 2018. Staff relied on Newton's existing zoning ordinance and a wide range of sample ordinances to craft a draft zoning ordinance tailored to the City. In addition, the Planning Department hired an experienced zoning consultant, Joel Russell, JD, to assist with drafting and to review the entire document. The Planning Department staff, Inspectional Services Department, and the Law Department have extensively reviewed the draft ordinance. In addition, a two-part architects' event was used to test the ordinance against real world building projects and site conditions.

Sections that are currently under discussion by the Council, namely inclusionary zoning and marijuana uses, are listed as [reserved] in the draft ordinance.

The 1<sup>st</sup> draft ordinance is still very much a draft and we anticipate there will likely be many revisions between now and adoption. Annotations elaborating on the meaning of different sections, explaining alternative options, and relating sections to similar ones from the existing ordinance will be provided in advance of each topical session with the Zoning and Planning Committee over the upcoming months.

**A Guide to the Proposed Zoning Ordinance**

The intent of this section is to walk through a general overview of the entire 1<sup>st</sup> Draft Zoning Ordinance.

1. Articles 1 and 2 offer the introductory provisions of the Ordinance; essentially serving as an overview of the “rules of the game.” Article 1 includes the purposes of the ordinance and establishes the zoning districts and map. Article 2 gets into the details of how basic rules like lot coverage, setbacks, and building types work.
2. Articles 3 through 7 offer the rules specific to zoning districts and the building types within those districts.

<b>Residence Districts (Article 3)</b>
Residence 1
Residence 2
Residence 3
Neighborhood General
<b>Village Districts (Article 4)</b>
Village 1
Village 2
Village 3
<b>Public Use and Recreation Districts (Article 5)</b>
Public Use District
Recreation District
<b>Single Purpose Districts (Article 6)</b>
Office District
Fabrication District
Regional Retail District
Non-Contextual Multi-Unit Residential District
Campus/Institutional District
<b>Overlay and Master Plan Districts (Article 7) – [Reserved]</b>

Each of these articles contains four parts:

- the district standards (lot and setback standards)
- the building type standards (height and massing) and other building design rules
- allowed uses
- parking requirements

3. Article 8 provides the development standards covering requirements for parking, signs, stormwater, sustainable building design, environmental site design, the arts, and inclusionary zoning.
4. Article 9 provides the use standards. These are the specific requirements and special permit criteria as they apply to every land use allowed under this zoning ordinance.
5. Article 10 provides the rules governing non-conformity. Any existing building, structure, or use of land that is inconsistent with this zoning ordinance would be regulated by these rules.
6. Article 11 describes the administrative processes associated with development review under this ordinance including site plan approval, special permits, variances, etc.
7. Article 12 is the definitions section.

A property owner using this ordinance to determine what they could do on their property would do the following:

1. First determine what zoning district their property is in according to the Zoning Map.
2. Then refer to the appropriate Article containing the rules for that district and what building types are allowed in the district and Article 2 for details on how to interpret the requirements. Depending on whether they were modifying an existing building or building new, they would consult the descriptions of the building types to determine which most closely matched their existing or desired building. The Use and Parking tables at the end of the Article would direct them to the uses available to them and how much parking they would need to provide.
3. The property owner would then look to Article 8 to understand the various rules applying to all development in the City. Depending on the use they were considering, they would also consult Article 9 to see what specific requirements might apply to their proposed use.
4. Finally, by this stage they would know what form of development review was necessary and would then consult Article 11 to find out the details of that process. If at some point they determined that their existing building was nonconforming they would look to Article 10 for the rules addressing that issue.

## **1st Draft Features**

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The following section highlights a number of the key features of the new ordinance, which will likely represent important decision points for the City Council. In the course of the 2017 -2018 Zoning Redesign event series and subsequent discussions with City Councilors, we have heard a diversity of perspectives and believe that the topics listed below are worthy of in-depth discussion by the City Council.

### **1. The Relationship Between Lot Size and Building Size**

The existing Zoning Ordinance ties the maximum size of a building to the size of the lot, most directly by using the Floor Area Ratio (FAR) tool. The proposed ordinance separately

regulates lot size and building size, and the standards for both are derived from the existing built characteristics of the City and its neighborhoods. Lots are regulated by the zoning district and governed by minimum and maximum lot frontage requirements, maximum lot coverage requirements, setback requirements, and the range of allowed building types. Together, these standards ensure that lots within a given zoning district are consistent in terms of some of the key factors that define the character of a neighborhood.

The building type rules establish the height and massing allowed. From the list of allowed building types, an applicant would select the one most closely matching the scale of their existing or desired building. Each district has a limited range of building types appropriate to the district, effectively tying the scale of buildings to what is desired in the district rather than to the size of the lot.

It is important to note that building types are not related to any particular architectural style but simply represent combinations of allowed height and massing. Thus, the City is able, through the use of building types, to require that taller single unit residences be narrower while allowing single story residences to be wider, and to establish such rules in a way that is clear, consistent, and predictable. For small lots, setback and lot coverage requirements will still further limit building size.

Separating lot size and building size rules is particularly important in a community like Newton where irregular lots are common. There are many lots within established neighborhoods that are larger than those around them. Such lots become targeted for the tear-down of the existing building and its replacement with a much larger building. Sometimes, the extra lot area that allows for a much bigger and out of scale building is in the form of a long tail of unbuildable land (e.g. with wetlands) on a lot that is otherwise in scale with the neighborhood, exacerbating the degree to which the larger house disrupts the context of the neighborhood.

The lot area per unit tool in the existing ordinance is problematic for similar reasons. The 1<sup>st</sup> draft ordinance proposes instead that the number of units allowed in a multi-unit building be tied to the size of the building. As the ordinance is already designed to ensure that buildings are sized appropriately to their context, this approach simply ties a residential unit density calculation to that appropriately scaled building.

## **2. Courtyard Cluster Developments**

The 1<sup>st</sup> draft ordinance introduces the concept of courtyard clusters as a development option in all residential zoning districts. This type of development allows multiple small footprint homes organized around a shared greenspace on a single lot. Conversely, attached units/townhouses and the creation of rear lots are more restricted in the proposed draft.

## **3. Use Categories**

The 1<sup>st</sup> draft zoning ordinance includes “use categories” rather than simply individual land uses as in the existing ordinance. Functionally, the two approaches are the same, but the use categories approach is more accurate as to how the definition of uses works in a zoning

ordinance. In any ordinance that regulates by listing individual allowed uses there is a provision that allows a zoning administrator to regulate a proposed use that is not specifically listed but is similar to a listed use in the same way as the listed use. The use categories approach simply acknowledges this similarity rule by identifying and defining categories of similar uses and requiring that proposed uses fit within an allowed use category.

#### **4. Parking & Transportation**

The 1<sup>st</sup> Draft Ordinance includes requirements designed to more proactively address the transportation impacts of development. First, the minimum parking requirements are reduced and maximum parking requirements are introduced. This approach derives from the recognition that minimum parking requirements generally have been demonstrated to produce a range of unintended consequences ranging from environmental impacts and increased traffic to diminished tax revenue. These impacts were partly the result of minimum parking requirements creating an environment that favors automobile use over any other mode. The 1<sup>st</sup> draft ordinance counters this trend in a number of ways, but most directly by making bike parking requirements of equal significance to automobile parking requirements.

In order to make more efficient use of the parking resources the city already has, the 1<sup>st</sup> draft ordinance allows uses and properties to share parking in various ways.

Lastly, in order to ensure that, as development occurs, the transportation system actually improves, the 1<sup>st</sup> Draft Ordinance includes a Transportation Demand Management (TDM) section. This section applies to development projects of a certain size and requires that these buildings accomplish reductions in peak hour single-occupant vehicle use over time.

#### **5. Sustainable Buildings & Environmental Site Design**

Environmental sustainability is layered throughout the 1<sup>st</sup> Draft Ordinance. Article 8 in particular includes a number of sections that address the environmental impact of development. Two of these sections are specifically designed to encourage more environmentally sustainable development in Newton. The first of these is a sustainable buildings requirement that is intended to set some minimum standards while also incentivizing green building development. The second section, the environmental site design section similarly is intended to set landscaping and similar requirements that will help to promote environmental sustainability. With the upcoming development of the Climate Action Plan, staff hopes to see these sections expanded upon based on that work.

#### **6. Development Review**

Development review processes are the point where the rules of the zoning ordinance get applied to development projects and the 1<sup>st</sup> Draft Ordinance includes a number of features.

First, there is a section on Site Plan Approval, which directs a very limited number of decisions to a review process administered by the Director of Planning and Development. These generally include only decisions where there is little discretion, but certain standards

must be met. The process essentially allows a limited amount of conditions to be placed on approval of what would otherwise be by-right development.

For non-conforming buildings, the 1<sup>st</sup> Draft Ordinance uses the Section 6 Finding rules of the State Zoning Law, Chapter 40A, which empowers the Zoning Board of Appeals to make decisions about alterations to nonconforming buildings or uses. As the new ordinance significantly reduces the instances of nonconformity, staff expects that there will be fewer of these requests and that the Zoning Board of Appeals is the right venue to address these alterations because they are similar to variances.

Following the recommendation of the Zoning Reform Group, the 1<sup>st</sup> Draft Ordinance places primary Special Permit granting authority with the Planning Board, elevating these permits to the City Council only for projects of citywide significance. The draft ordinance proposes that projects over a certain size or number of residential units, varying depending on the district, receive a Special Permit from the City Council. Certain uses, like marijuana related uses, would also go to the City Council regardless of the project size.

Finally, the 1<sup>st</sup> Draft Zoning Ordinance incorporates specific review criteria for everything that requires a Special Permit so that both review boards and property owners have clear direction as to what the purpose and objectives are for that particular special permit requirement.

## **7. Arts and Cultural Institutions**

The arts have long been an important part of the fabric of the Newton community. Various provisions of this ordinance are intended to reinforce and support the arts in Newton. These include a section that clarifies how arts related uses are regulated under zoning, separating them from commercial, industrial, and other types of uses where they might more typically get lumped.

The second section promoting the arts, still under development, would establish an arts related requirement on developments over a certain size. These developments would be required to include some form of public art contribution in the form of either a physical art piece, an ongoing arts related event, or space devoted to the arts. This section will be completed and submitted to Council before the end of this calendar year.

## **Conclusion and Meeting on October 22<sup>nd</sup>**

Over the coming months the Zoning and Planning Committee will be carefully reviewing the 1<sup>st</sup> Draft Zoning Ordinance in detail. This memo and the presentation on October 22<sup>nd</sup> are only intended to provide an overview of the proposed ordinance and an explanation of its structure. We have attached the current schedule for the 1<sup>st</sup> Draft Ordinance review, recognizing that this schedule will likely change over time.