

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO. A-18

April 1, 2013

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

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

I. Delete in its entirety **Sec. 26-30. Licenses for cafe furniture on sidewalks.**

II. Add a new **ARTICLE VIII** to Chapter 12 as follows:

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

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

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

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

(3) The number, type and placement of such tables, chairs, benches, shade umbrellas, barriers and other appurtenances shall be subject to the

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

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

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

(c) The term of each permit shall be one year and shall expire on December 31st unless renewed. The fee for each such annual permit shall be one hundred dollars (\$100.00) for the initial issuance of the permit, and fifty dollars (\$50.00) for renewals thereafter. Permits under this section are transferrable to a successor in interest upon the submission and approval of an application for transfer to the commissioner.

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

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

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

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

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

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

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

(i) *Penalties:* The commissioner shall have discretion to impose any penalty described herein, and as permitted by the General Laws or the ordinances of the city. The commissioner may impose a fine upon the permit holder, or revoke or suspend any permit granted pursuant to this section for any violation of the terms of such permit or the provisions of this section. Violations hereunder shall be subject to a fine of one hundred dollars (\$100.00) for each violation. Each day that a violation occurs shall constitute a separate offense. Where the non-criminal disposition of specified sections of this ordinance has been provided for in sections 20-20 and 20-21 of these ordinances, as amended, pursuant to the authority granted by M.G.L. c. 40 § 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in sections 20-21(b-d).

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

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

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

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

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

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

And

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

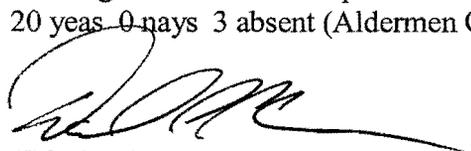
Amend paragraph (b), HEALTH AND HUMAN SERVICES DEPARTMENT, by adding after CITY ORDINANCES, Any offense, the following:

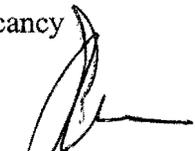
.....	<u>PENALTY</u>
Sec. 12-70. Café furniture on sidewalks	
() Any offense	\$100.00

Approved as to legal form and character:


DONNALYN B. LYNCH KAHN
 City Solicitor

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


 (SGD) DAVID A. OLSON
 City Clerk


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