Chapter 30

ZONING*

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ARTICLE I.
IN GENERAL

Sec. 30-1. Definitions.

Accessory apartment: A separate dwelling unit located in a building originally constructed as a single family or two family dwelling or in a detached building located on the same lot as the single family or two family dwelling, as an accessory and subordinate use to the residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of section 30-8(d) and 30-9(h) of this ordinance.

Accessory purpose: As applied to buildings or structures, a use in conjunction with an existing building on the same or an adjoining lot.

Accessory sign: See Sign, accessory.

Affordable rental housing unit: A dwelling unit whose monthly rent is not greater than 30% of 80% of the median family income for Metropolitan Boston divided by 12, or as otherwise defined by the Newton Housing Authority.

Apartment house: The same as "Multi-family dwelling."

Association of persons: A group of five (5) or more persons eighteen (18) years of age or older, who are unrelated by blood, marriage or adoption; provided that an association of persons as herein defined shall not be deemed to constitute a "family" within the meaning of this ordinance.

Attached dwelling: See Dwelling, attached.

Attic: The space in a building between the ceiling joists of the top full story and the roof rafters.

Basement: Any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building. However, in the case of one- and two-family residential uses, any story in a building in which one-half (1/2) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

Berm: A mound of earth used for decorative, screening, or buffering purposes.

Boarder: The same as "Lodger".

Boarding house: The same as "Lodging house".

Build factor: A mathematical formula which limits the irregularity of the lot shape.

Building: A structure, including alterations, enlargements, and extensions thereto, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property.

Building, non-conforming: A building the use or construction of which does not conform in whole or in part to the use or construction regulations of the district in which the building is located.

Building size: In determining the building size with regard to accessory apartments, the building size shall be determined as follows:

(a) gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the assessing department unless otherwise indicated on floor plans prepared by a registered professional architect;

(b) existing unfinished space in basements and attics which would be finished for use as an accessory apartment shall be considered in the building size;

(c) existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to used for the accessory apartment on the porch;

(d) existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment in the detached structure;

(e) floor space in an attic, if used to meet minimum building size or apartment size, must meet State Building Code requirements for floor to ceiling height as specified in section 2101.6.

Business establishment: Each separate place of business whether or not consisting of one or more buildings or a part of a building or vacant land.

Business stable: A building or part of a building in which one (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.

Carport: A one-story roofed structure permanently open on at least three sides and designed for or used for occupancy by a motor vehicle. For the purposes of this ordinance, a one-story port-cochere meets the definition of a carport.

Car wash: An establishment for washing automobiles where three (3) or more vehicles may be washed simultaneously.

Child care home, family: As defined and licensed under G.L. c. 28A, a private residence which on a regular basis receives for temporary custody and care not more than six (6) children at a time.

Child care home, large family: As defined and licensed under G.L. c. 28A, a private residence which on a regular basis receives for temporary custody and care up to and including ten (10) children at a time.

Club: Any organization of persons having a common purpose, provided that said purpose is not a profit venture.

Clubhouse: Any building or structure used, in whole or in part, by a club, provided that in residence district zones such building or structure shall maintain the appearance of a residential building or structure of type and character

similarly located within such zone and further provided that the lot area covered by such building, structure, driveways and required parking shall not exceed fifty percent (50%).

Commercial vehicle: Any vehicle, conveyance or piece of mechanized equipment which is used to further any business, trade, profession or employment, and which meets any one (1) or more of the following criteria:

(a) There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment;

(b) It is used to store in a manner or place that is visible from outside of the vehicles any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment;

(c) It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge;

(d) Its length is more than eighteen (18) feet;

(e) Its width is more than seven (7) feet;

(f) It has a mechanized dumping capability;

(g) It has a plow blade or plow blade frame or other device attached thereto, or a plow blade or other device is stored on the premises.

Common roof connector: An exterior roof surface on a two-family dwelling that meets all of the following requirements:

(a) It extends over the common wall a minimum of twelve (12) feet over the interior space(s) in one dwelling unit and a minimum of twelve (12) feet over the interior space(s) in the other dwelling unit;

(b) The roofing material over each dwelling unit has identical materials and color;

(c) The roof surfaces do not have any vertical separation, subject to the following exceptions:

(1) A dormer shall not be deemed a vertical separation;

(2) A vertical separation between the roof surface of one dwelling unit and the roof surface of the other dwelling unit may be allowed if all of the following conditions are met:

a) The difference between the mean grade slope of one dwelling unit and the mean grade slope of the other dwelling unit is more than three (3) feet;

b) The vertical separation between the roof surface of one dwelling unit and the roof surface of the other dwelling unit does not exceed the difference between the mean grade slope of each of the two dwelling units;

c) The roof surfaces may have varied roof slopes, but if so, they shall conform to the requirements stated in subsections (c)(2)a) and b) above.

(d) It is designed to give the appearance that it connects the two dwelling units to each other.

Common wall connector: An interior wall that is shared by and separates the two dwelling units of a two-family dwelling and meets all of the following requirements:

(a) It is no less than twelve (12) feet in length;

(b) It exists at the ground story level and is at least one (1) story in height;

(c) It separates enclosed interior space(s) in each of the dwelling units;

(d) It is designed to give the appearance that it connects the two dwelling units to each other.

Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasia, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.

Congregate living facility: An association of persons living together in a shared living environment which integrates shelter and service needs of elderly, functionally impaired and/or functionally isolated persons who are otherwise in good health and can maintain a semi-independent lifestyle and who do not require constant supervision or intensive health care as provided by an institution. Each resident may have a separate bedroom, living room, kitchen, dining area or bathroom, or may share living, dining, and bathroom facilities with other persons. Such facility shall be deemed an association of persons living together in a single dwelling and not a lodging house.

Corner lot: See Lot, corner.

Day care center: As defined and licensed under G.L. c. 28A, a facility which on a regular basis receives for temporary custody and care more than ten (10) children at a time.

Development Parcel: The real property on which a Planned Multi-Use Business Development or a Mixed-Use Development (including any appurtenant easement areas benefiting a Mixed-Use Development) is located in connection with a special permit under Section 30-15(s) or 30-13(g).

Dormer: A projection built out from a sloping roof, usually containing a window or vent.

Dormitory: A building owned or controlled directly or indirectly by a religious or educational non-profit institution (excepting a nonprofit hospital) providing sleeping quarters for five (5) or more unrelated persons.

Drive-in business: A retail or consumer use of land or a building in which all or part of the business transacted is conducted by a customer from within a motor vehicle.

Drive-in food service establishment: A fast food establishment which provides convenient vehicular access and may provide service to customers while in their vehicles.

Driveway: An area on a lot which is designed or used to provide for the passage of motor vehicles to and from a street or way.

Dwelling: A building or structure used for human habitation.

Dwelling, attached: A building or structure that either:

(a) contains three (3) or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or

(b) contains two (2) dwelling units and is not a "dwelling, two family," as defined in section 30-1.

Dwelling, multi-family: A building or structure containing three (3) or more dwelling units.

Dwelling, two-family: A building or structure that meets all of the following requirements:

(a) It contains two (2) dwelling units;

(b) It contains either:

(1) a common floor-ceiling assembly between the upper and lower level dwelling units; or

(2) a common wall connector and a common roof connector, as defined in section 30-1.

Dwelling unit: One (1) or more rooms forming a habitable unit for one family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.

Family child care home: See *Child care home, family.*

Fast food establishment: An establishment whose primary business is the sale of food for consumption on or off the premises which is:

(a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals;

(b) available upon a short waiting time; and

(c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

Floor area ratio:

(a) For residential structures in residential districts, gross floor area of all buildings on the lot divided by total lot area.

(b) For all others: Gross floor area of all buildings on the lot divided by total lot area. Any portion of a basement not used for storage, parking or building mechanicals shall be included in determining the floor area ratio.

Floor area, gross:

(a) For residential structures and buildings accessory to residential structures in residential districts, the sum of the floor area of all principal and accessory buildings whether or not habitable, except as excluded below. Floor area measurements shall be taken from the exterior face of the exterior walls of each building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this section.

a) Gross floor area shall include:

i. First and second stories;

ii. Any floor area above the second story, whether finished or unfinished, that meets all of the following criteria:

1. It lies below the area of a horizontal plane that is five (5) feet above it and which touches the side walls and/or the underside of the roof rafters;

2. Is at least seven (7) feet in any horizontal dimension, as measured within the area having a wall height of five feet or more;

3. Has a minimum ceiling height of seven (7) feet on at least 50 percent of its required floor area; and

4. Has a floor area of not less than 70 square feet as measured within the area having a wall height of five feet or more.

iii. Atria, open wells, and other vertical open spaces, where floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10);

iv. Enclosed porches;

v. Attached garages;

vi. Detached garages and any space above the first story of a detached garage that has a ceiling height of 7' or greater;

vii. Other detached accessory buildings, such as sheds or cabanas, except as exempted in (b)(iii) below.

viii. A portion of mass below the first story, to be calculated as follows:

The lesser of 50% of the floor area of mass below first story OR the following: X/Y * floor area of mass below first story

Where:

X = Sum of the width of those sections of exposed walls below the first story having an exterior height equal to or greater than four (4) feet as measured from existing or proposed grade, whichever is lower, to the top of the subfloor of the first story

Y = Perimeter of exterior walls below first story

a. Gross floor area shall not include:

i. Unenclosed porches;

ii. Carports; and

iii. One detached accessory building equal to or less than 120 square feet in size."

b) For all others: The floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

Floor area, ground: The gross floor area enclosed by the perimeter of the lower-most story of a building above the average grade plane.

Fuel establishment: Any business, including a gasoline service station, which for wholesale or retail sales or any combination thereof, expands an existing capacity or introduces on-site fuel, petroleum products, gas, LNG, or propane for residential, commercial, industrial or motor vehicle use or sales, in an amount in excess of five thousand (5,000) gallons. Excluded are residential properties storing five thousand (5,000) gallons of fuel oil or less.

Fuel oil distributor: Any business which stores fuel oil above or underground for the purposes of direct resale to retail customers of the fuel oil distributor or to other fuel oil distributors.

Garage repair shop: 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.

Garden apartment: A building or group of buildings arranged, intended and designed to be occupied by three (3) or more families per building. Such buildings shall occupy one lot in single ownership throughout.

Gasoline service station: A building or structure or part of a building or structure used in connection with tanks, pumps and other appliances for supplying motor vehicles with gasoline, compressed air, oil, water and similar supplies, and accessories and/or used in connection with making minor repairs and adjustments on motor vehicles, other than structural repairs.

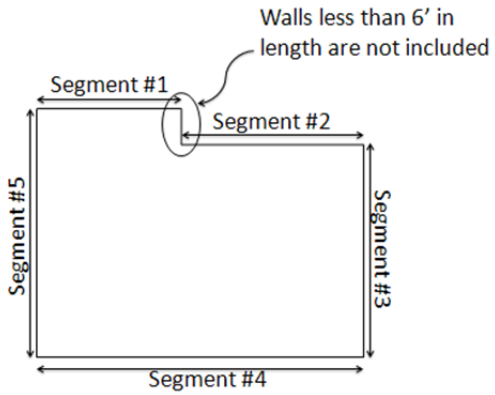
Grade: In cases where the walls of the building are more than five (5) feet from the nearest street line, the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

Grade Plane, Average: A horizontal reference plane for a building as a whole representing the average of finished grade elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length greater than six feet shall be included in segments of consistent grade or slope.

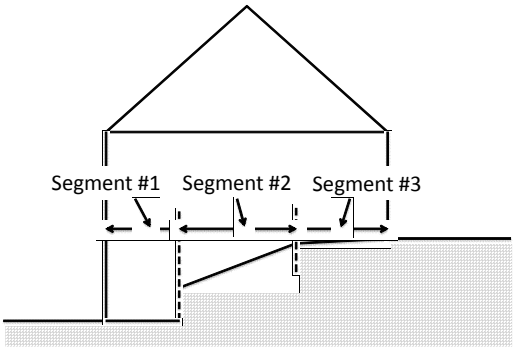
$$\frac{\Sigma[(e1 + e2)/2 \times L]}{P}$$

Where:

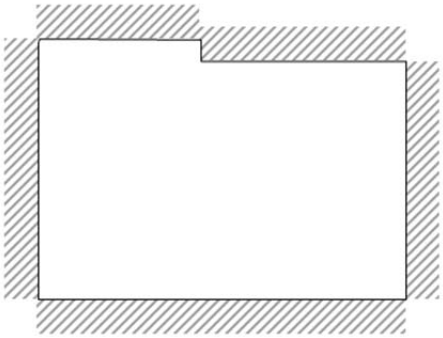
- Σ sums the weighted average grades of all segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within six feet of the foundation or the lot line, which ever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments.



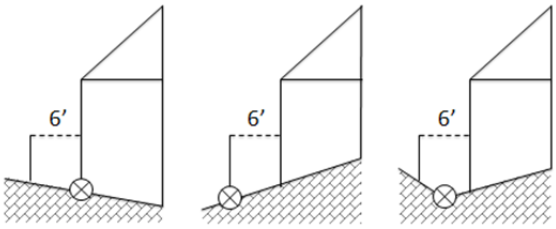
Determining Segments
Plan View



Segments of constant grade or slope
Section View



Segment ends use lowest elevation within 6′
Plan View



Segment ends use lowest elevation within 6′
View along segment

Gross floor area: See Floor area, gross.

Ground floor area: See Floor area, ground.

Habitable space: See Space, habitable.

Health club: A commercial establishment which as its primary purpose provides facilities for individual physical health activities, such as aerobic exercise, running and jogging, use of exercise equipment, saunas, showers, massage rooms and lockers. Such establishments are operated as a business even if open only to members and their guests on a membership basis and not to the public at large paying a daily admission fee.

Height: The vertical distance between the elevations of the following: (a) the average grade plane and (b) the highest point of the roof. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

Height, Contextual: The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering division of the department of public works and (b) the highest point of the roof. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.

Heliport: An area used by helicopters or other steep-gradient aircraft for the purpose of picking up or discharging passengers or cargo, but not including facilities for helicopter fuel, service, maintenance or overhaul, or sale of products.

Home business: Any commercial activity conducted within a dwelling unit by the residents thereof as an accessory use to the residential use of the dwelling unit, provided that no sale of merchandise, whether retail or wholesale, takes place on the premises, except as expressly permitted by the provisions of section 30-8(c)(5).

The term "home business" shall include, but is not limited to, the studio of an artist, musician, photographer or writer; small group or individual instruction or tutoring; tailoring; millinery; crafts; word processing; computer software development; telephone solicitation; a manicurist; an office of a sales or manufacturer representative; and an office of a physician, dentist, lawyer, architect, registered engineer, accountant, psychologist, social worker or other professional.

The term "home business" shall not include the following: a clothing rental business; a barber shop; a hairdresser; a restaurant; a repair shop, whether for small appliances or otherwise; a real estate broker; an orchestra or instrumental music group; an antique shop; an animal hospital; or businesses similar to those enumerated.

Hotel or Motel: A building or several buildings containing six (6) or more sleeping rooms for guests, other than a dormitory, lodging house or apartment house.

Interior lot: See Lot, interior.

Large family child care home: See *Child care home, large family*.

Loading facility: A truck loading or unloading area accessory to the principal use of the site.

Lodger: A person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals; and who is not a member of the housekeeping unit.

Lodging house: Any dwelling designed, occupied or intended for occupancy by four (4) or more lodgers.

Lot, corner: A lot fronting on two (2) intersecting streets which form an interior angle of one hundred and twenty (120) degrees or less; or a lot located on a bend in a street where the street bends so as to form an interior angle of one hundred and twenty (120) degrees or less; or a lot on a curve in a street or on a curve at the intersection of two (2) streets where two (2) lines tangent to the street line at the intersection of each side of the lot with the street line form, if prolonged towards the curve, an interior angle of one hundred and twenty (120) degrees or less. Only that

part of a lot contiguous to a corner, bend or curve, and having an area not in excess of ten thousand (10,000) square feet, and a maximum length on either street, except in case of a bend or curve, of not more than one hundred and fifty (150) feet, shall be deemed a corner lot. The provisions of this paragraph shall apply to a lot fronting on an open space dedicated to the public use in the same manner as to a lot fronting on a street.

Lot coverage: The percentage of the lot area which is covered by buildings, including accessory buildings. The area covered by roof overhangs of up to two (2) feet shall not be included in the calculation of lot coverage.

Lot, interior: Any lot or part of a lot other than a corner lot.

Lot line: A division line between adjoining properties, including the division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as a aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.

Maneuvering aisle: A maneuvering space which serves a row or rows of parking stalls.

Mass below first story: For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

Mixed-use residential building: A building occupied by both residential and nonresidential uses.

Motel: See Hotel or Motel.

Motor vehicle repair shop: 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 motor vehicle repair shop.

Motor vehicle sales and service facility: The inside display, sales, storage and service of motor vehicles and the repair of motor vehicles performed in connection with said sales.

Multi-family dwellings: See Dwelling, multi-family.

Multi-use institution: A religious or nonprofit educational use having one (1) or more buildings and at least 50,000 sq. ft. of lot area.

Non-conforming building: See Building, non-conforming.

Non-conforming use: See Use, non-conforming.

Occupy/Occupancy: When used in connection with accessory apartments, this term shall mean physical presence and residency on the subject premises except for short periods of temporary absence.

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation, (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

Parking facility: A building, structure, lot or part of a lot where off-street parking is provided or permitted.

Parking lot: A parking facility where off-street parking of vehicles is permitted other than as an accessory use.

Parking stall: An area, exclusive of inventory storage space, display space, maneuvering aisles or other maneuvering space, adequate for parking a motor vehicle.

Place of Assembly: An establishment used principally for the meeting together of a number of persons at the same time for the purpose of deliberation, worship, education or entertainment such as, but not limited to, churches, synagogues, theaters, halls, auditoriums and clubs.

Porch: A roofed structure with sides not more than sixty percent (60%) enclosed by impermeable walls, attached to and accessible from the primary structure, and not heated or air conditioned. A porch may share no more than two exterior walls with the residential structure. Railings or solid walls on the projecting facades of the porch may be no higher than 36" as measured from the finished porch floor; the remainder of these facades may be open to the elements or enclosed by mesh, glass, or similar material.

Porch, enclosed: A porch enclosed for any portion of the year by any non-permeable material such as glass or a similar material.

Porch, unenclosed: A porch that at all times is either enclosed by permeable materials such as mesh or similar material or is unenclosed by any material.

Public stable: A building or part of a building in which horses are kept for compensation.

Recreational Trailer or Vehicle: A vehicular, portable unit which exceeds eighteen (18) feet in length, seven (7) in height or seven (7) in width and which is designed and principally used for travel, camping or recreational use, including, but not limited to, a travel trailer, pick-up camper, motorized camper, tent trailer, boat or boat trailer.

Residential care facility: A residential care facility shall consist in part of independent dwelling units, and shall contain a combination of central cooking and dining facilities, recreation facilities and shall provide to all its residents, specified medical services, which medical services shall include, but are not limited to, nursing and dietary assistance, together with the availability on the premises of full-time nursing care in a licensed care facility, provided that at least one (1) occupant of each dwelling unit shall be at least sixty-five (65) years of age or older.

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

Retaining wall: A wall or terraced combination of walls to hold a mass of earth material at a higher position. When a combination of walls is placed within a setback, height is to be measured from the foot of the lowest wall to the top of the highest wall. For the purposes of this ordinance, a berm with a slope of 1:1 or greater is to be considered a retaining wall.

Roomer: The same as "Lodger".

Rooming house: The same as "Lodging house".

School: Any building or part of a building used as a public or private educational institution containing one (1) or more rooms, with provisions for two (2) or more pupils.

Setback line: A line equidistant from the lot line which establishes the nearest point to the lot line at which the nearest point of a structure may be erected.

Sign: A permanent or temporary structure, device, letter, word, two (2) or three (3) dimensional model, insignia, banner, streamer, display, emblem, or representation which is an advertisement, announcement or direction, or which is designed to attract attention.

Sign, accessory: A sign that, with respect to the premises on which it is erected, advertises or indicates one or more of the following: the address and/or occupant of the premises, the business transacted on the premises, the year the business was established, a slogan, directional or parking instructions, or the sale or letting of the premises or any part thereof.

Sign, area of: The entire area within a single continuous perimeter, and a single plane, which encloses the extreme limits of the advertising message or announcement or wording together with any frame, background, trim, or other integral part of the display excluding the necessary supports or uprights on which the sign is placed. Sign area of a standing sign or a perpendicular wall sign is the entire area of one side of such sign such that two (2) faces which are back to back are counted only once.

Sign, awning: A sign on or attached to a temporary retractable shelter which is supported entirely from the exterior wall of a building.

Sign, election: A sign specifically supporting or opposing the election of a candidate for office in an election to be held in Newton within a year, or supporting or opposing a ballot question which shall appear on a ballot in Newton within a year.

Sign, free-standing: A sign erected on or affixed to the land by post, pole, pylon or any framing or supporting device or stand which is not affixed to a building.

Sign, frontage: The length in feet of the building parallel or substantially parallel to a street that is occupied by an individual business establishment.

Sign, marquee: A sign on or attached to a permanent overhanging shelter which projects from the face of a building, is entirely supported by said building, and may have a changeable letter panel.

Sign, non-accessory: A billboard, sign or other advertising device which does not come within the foregoing definitions of an accessory sign or of a non-accessory directory sign.

Sign, non-accessory directory: A sign that, with respect to the premises on which it is erected and/or an adjacent premises for which the sign is a single common identifier, or with respect to a single integrated development consisting of two (2) or more lots, advertises or indicates one or more of the following: the address and/or occupant of the premises, the business transacted on the premises, the year the business was established, a slogan, directional or parking instructions, or the sale or letting of the premises or any part thereof.

Sign, wall: A sign affixed either parallel or perpendicular to the wall of a building and not extending above the roof plate or parapet line.

Sign, window: A sign affixed to the interior surface of a window or displayed behind a window so as to attract attention from the outside. A sign shall be deemed a window sign if it is within six (6) inches of the inside surface of a window through which it is intended to be viewed and is not merchandise on display.

Single-use institution: A religious or nonprofit educational use having no more than one (1) principal building and less than 50,000 sq. ft. of lot area.

Space, habitable: Gross floor area in a building structure used for living, sleeping, eating or cooking purposes, including closets and hallways.

Space, useable open: All the lot area not covered by buildings and/or structures, roadways, drives, surface parking area or paved surfaces other than walks. The area devoted to lawns, landscaping, exterior tennis courts, patios, in-ground swimming pools and non-structural recreational amenities shall be included as usable open space. The area covered by roof overhangs of up to two (2) feet shall be included in the calculation of open space.

Sports stadium: A building or structure containing tiered seating facilities for more than two hundred (200) spectators at sporting events.

Story: That portion of a building, any part of which is above the ground elevation, excluding basements, contained between any floor and the floor or roof next above it.

Story, half: A story directly under a sloping roof where the area with a ceiling height of 7' or greater is less than 2/3rds the area of the story next below.

Street: A public way or a way opened and dedicated to the public use which has not become a public way, or a toll road open to public travel, including its approaches and toll houses or booths.

Street level: The level of a building the floor of which is nearest to the grade of the adjacent sidewalk.

Structure: Any construction, erection, assemblage or other combination of materials at a fixed location upon the land, such as, but not limited to, a building, bridge, trestle, tower, framework, tank, tunnel, tent, stadium, platform, retaining wall or systems of walls whose above-grade height exceeds four (4.0) feet, tennis court or swimming pool.

Telecommunications and data storage facility: A facility for the operation, monitoring and maintenance of telecommunications switching equipment, data storage computers, internet connectivity routers, and ancillary equipment.

Two-family dwelling: See Dwelling, two-family.

Use: Any purpose for which land, buildings or structures are arranged or designed, or for which said land, building or structure is occupied or maintained.

Use, non-conforming: A use which does not conform to the use regulations of the district in which such use exists or might be introduced.

Useable open space: See Space, useable open.
(Ord. No. T-57, 11-20-89; Ord. No. T-114, 11-19-90; Ord. No. T-174, 9-16-91; Ord. No. T-264, 3-1-93; Ord. No. T-273, 6-7-93; Ord. No. V-7, 3-20-95; Ord. No. V-91, 9-17-96; Ord. No. V-92, 10-21-96; Ord. No. V-111, 4-23-97; Ord. No. V-112, 4-23-97; Ord. No. V-113, 4-23-97; Ord. No. V-122, 7-14-97; Ord. No. V-173, 5-18-98, Ord. No. V-232, 4-5-99; Ord. No. V-233, 4-5-99; Ord. No. V-247, 6-7-99; Ord. No. V-253, 7-12-99; Ord. No. V-288, 3-20-00; Ord. No. W-20, 11-6-00; Ord. No. W-34, 3-5-01; Ord. No. X-10, 3-18-02; Ord. No. X-38, 12-2-02; Ord. No. Z-16; 12-17-07; Ord. No. Z-20, 04-07-08; Ord. No. Z-35, 11-03-08; Ord. No. Z-45, 03-16-09; Ord. No. Z-90, 06-06-11; Ord. No. Z-77, 02-22-11; Ord. No. Z-95, 10-03-11; Z-108, 04-17-12; Ord. No. A-4, 10-01-12)

Sec. 30-2. Purpose of chapter; short title.

The provisions of this chapter are ordained by the city for the purpose of promoting the health, safety, convenience and welfare of its inhabitants by:

(a) Encouraging the most appropriate use of land, including the consideration of the comprehensive plan adopted by the planning board and the board of aldermen;

(b) Preventing overcrowding of land and undue concentration of population;

(c) Conserving the value of land and buildings, including the conserving of natural resources and the preventing of blight and pollution of the environment;

(d) Efficient use and conservation of natural resources and energy;

(e) Lessening the congestion of traffic;

(f) Assisting in the adequate provision of transportation, water, sewerage, schools, parks, open spaces and other public facilities;

(g) Preserving and increasing the amenities and aesthetic qualities of the city;

(h) Encouraging housing for persons of all income levels;

(i) Reducing hazards from fire and other dangers; and

(j) Providing for adequate light and air.

It may be cited as the "City of Newton Zoning Ordinance." (Rev. Ords. 1973, §24-2; Ord. No. 284, Pt. II, 6-19-78; Ord. No. Y-17, 5-21-07)

Sec. 30-3. Determination of district boundary lines.

(a) The boundaries of the districts are the sidelines of streets, property or lot lines, or other lines shown on the zoning plans adopted by section 30-4. Where boundaries are indicated as property or lot lines and the exact position of such lines are not defined by measurements, the true locations thereof shall be taken as the boundary lines. Where boundary lines are fixed by distances from street, property or lot lines, such measurements shall control.

(b) Whenever any uncertainty exists as to the exact location of a boundary line, the location thereof shall be determined by the commissioner of inspectional services; provided, that any person affected by his decision may appeal to the zoning board of appeals in the manner provided in section 30-27. (Rev. Ords. 1973, §24-3; Ord. No. 190, 12-20-76)

Sec. 30-4. Division of city into districts; adoption of zoning plans, areas not included in districts.

(a) The City of Newton is hereby divided into districts, to be known respectively as follows:

Public Use Districts
Open Space/Recreation Districts
Single Residence 1 Districts
Single Residence 2 Districts
Single Residence 3 Districts
Multi-Residence 1 Districts
Multi-Residence 2 Districts
Multi-Residence 3 Districts
Multi-Residence 4 Districts
Business 1 Districts
Business 2 Districts
Business 3 Districts

Business 4 Districts
Business 5 Districts
Manufacturing Districts
Limited Manufacturing Districts
Mixed Use 1 Districts
Mixed Use 2 Districts

(b) The districts are indicated on the plans entitled "City of Newton, Massachusetts, Amendments to Zoning Plans," adopted July 21, 1951, as amended from time to time, signed by the city engineer of the city, and these plans and all explanatory matter thereon are hereby made a part of this chapter. All amendments of zoning plans adopted since July 21, 1951, however styled, shall be deemed to be amendments of such 1951 plans.

Sec. 30-5. Allowed uses in all districts; special permits in all districts; prohibitions in all districts:

(a) In all districts, land, buildings and structures may be used for one (1) or more of the following purposes:

(1) Agriculture, horticulture, floriculture or viticulture on a parcel of five (5) acres or more;

(2) Construction, alteration, enlargement, reconstruction, use or change of use of a building or land for a church, synagogue, house of worship, or other uses for religious purposes or a school or any other use for educational purposes and such accessory uses as are proper and usual therewith on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation, provided, that a school or other use for educational purposes shall not include a correctional facility. For purposes of section 30-5(a)(2), "alteration" shall mean those modifications which produce an increased parking demand pursuant to the requirements in section 30-19. Such uses shall be permitted, subject to the dimensional regulations of section 30-15, the parking regulations of section 30-19 and the following procedure:

a) At least sixty (60) days prior to the application for a building permit, an applicant shall file a site plan application for the proposed development with the director of planning and development. Such application shall consist of five (5) sets of plan(s) prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Such site plan(s) shall be drawn at a suitable scale, on sheets no larger than twenty-four (24) by thirty-six (36) inches. When more than one (1) sheet is required, a key sheet shall be provided. Except when waived by the director of planning and development, the site plan shall include the following information:

i) Evidence of the applicant's religious or nonprofit educational status;

ii) Boundaries, dimensions and area of the subject lot(s);

iii) Use of the existing building or structures on the subject lot(s);

iv) Existing and proposed topography of the subject lot(s) at two (2) foot intervals;

v) Existing and proposed easements, if any;

vi) Existing and proposed wetlands and watercourses, if any;

vii) All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot(s) with the dimensions thereof;

viii) All facilities for sewage, refuse and other waste disposal, for surface water, drainage, utilities, proposed screening, surface treatment, exterior storage, lighting, and landscaping, including fencing, walls, planting areas, and signs;

ix) Facade elevations and floor plans for any proposed new construction and/or alteration to the existing building or structure.

b) At the time the applicant files an application, he shall give written notice of said filing and send a copy of the application and one set of site plans to each of the three aldermen representing the ward in which the proposed project is to be located; give written notice of said filing to the clerk of the board of aldermen; and give written notice of the application to all immediate abutters of the property upon which the project is to be located. The applicant also shall give all reasonable assistance to the director of planning and development in his review of the site plan, including, but not limited to attendance at at least one meeting called by the director of planning and development.

c) The director of planning and development, upon receipt of the site plan, shall forthwith transmit a copy to the commissioner of inspectional services, the city engineer, the commissioner of public works, and the fire chief. These departments may respond with their comments and recommendations to the director of planning and development within twenty-five (25) days of receipt thereof. Upon the receipt of any responses by the above-mentioned departments, and/or, upon the expiration of said twenty-five (25) day period, the director of planning and development shall review said plan for compliance with the dimensional tables contained in section 30-15 and for compliance with the parking regulations contained in section 30-19 of these ordinances. Further, the director may consider the application in light of the criteria set forth below:

(i) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible;

(ii) Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage;

(iii) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site;

(iv) Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between any existing or proposed structures and the street shall be discouraged;

(v) Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas;

(vi) Location of utility service lines underground wherever possible. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines;

(vii) Avoidance of the removal or disruption of historic resources on or off-site. Historical resources as used herein includes designated historical structures or sites, historical architectural elements or archaeological sites.

After said review the director may make nonbinding recommendations to the applicant for changes in the site plan, which changes shall be consistent with accepted and responsible planning principles. Upon completion of the review process, the director of planning and development shall indicate, in writing, to the commissioner of inspectional services that there has been compliance by the applicant with the procedural requirements as stated above and whether in his opinion, applicant has complied with the dimensional regulations of section 30-15 and the parking regulations of section 30-19. This statement shall be made within sixty (60) days after receipt of the site plan application. If no such statement is received by the commissioner of inspectional services within the above-stated time period, he shall accept an application for a building permit without receipt of such statement. If the applicant does not apply for a building permit within one (1) year from the date of the original site plan application to the director of planning and development, he must refile for review under the procedures set forth above.

d) Where a special permit is required in accordance with the procedures in section 30-24, the uses delineated in subsection 30-5(a)(2) shall not be subject to the administrative site plan review procedure of that subsection.

(3) Family child care home, large family child care home, and day care centers, subject to the provisions and standards set forth below:

a) Purpose: The purpose of this subsection 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 to and egress from the site, and to minimize potential congestion at drop-off and pick-up times.

b) Family child care homes and large family child care homes shall comply with the parking requirements of section 30-19 and the dimensional requirements of section 30-15, Table l or Table 3 as applicable, except that the minimum lot size shall be 5,000 square feet.

c) Day care centers as defined by section 30-1, accessory to religious and non-profit educational institutions, shall comply with the parking provisions of section 30-19 and the institutions in whose premises they are located shall comply with the dimensional requirements of section 30-15, Table 2.

d) Day care centers as defined by section 30-1, which are not accessory to religious and non-profit educational institutions, shall follow the procedures and criteria for review under section 30-5(a)(2), meet the dimensional requirements including minimum lot area in section 30-15, Table l for lots created after December 7, 1953, or Table 3 as applicable, and meet the provisions and standards set forth below:

i) *Landscaping:* A dense year-round vegetative buffer at least four (4) feet wide and six (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.

ii) *Parking:* Day care centers shall comply with the parking requirements of section 30-19 as applicable, except that in a residential district, there shall be provided a dense year-round vegetative buffer with dimensions as described in section 30-5(a)(3)d)i) above. Day care centers shall comply with the provisions of section 30-19(i) relating to the screening of parking areas, excepting the dimensions stated therein for the vegetative buffer.

iii) *Drop-off:* In addition to complying with the parking requirements of section 30-19, there shall be

provided for drop-off and pick-up at least one (1) on-site parking space for each five (5) children or fraction thereof. Such parking spaces shall comply with the applicable parking setback requirements and parking dimensional and design standards of section 30-19(g) or (h).

iv) *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 licensure by the Office for Child Care Services, the day care center shall not be eligible for issuance of a certificate of occupancy, but shall be eligible for issuance of a temporary certificate of occupancy if the commissioner of inspectional services upon review certifies that the day care center is in compliance with all other applicable requirements.

v) *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 his 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 the dimensional regulations of section 30-15 and the parking regulations of section 30-19. This statement shall be made within sixty (60) days after receipt of the parking management and compliance plan.

vi) *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 for the site as well as screening therefor to alleviate health and aesthetic concerns.

(4) Public uses described in Section 30-6(a) through (k); provided that such uses shall be subject only to site plan review as required under Section 30-6 and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement.

(b) In all districts, unless the use is otherwise permitted as of right, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for one or more of the following purposes:

(1) Agriculture, horticulture, floriculture or viticulture on a parcel of less than five (5) acres;

(2) For-profit educational purposes and such accessory uses as are not permitted in 30-5(a)(2);

(3) The removal of sod, loam, subsoil, sand and/or gravel from the premises for the purpose of sale;

(4) The placement of a retaining wall of four feet or more, as measured from the foot of the wall to its highest point, within a setback;

(5) Activities which are necessary in connection with scientific research or scientific development or related production, accessory to activities permitted as a matter of right, so long as it is found that the proposed accessory use does not substantially derogate from the public good. Notwithstanding anything in this subsection, no recombinant DNA research shall be permitted as an accessory use;

(6) Cemeteries;

(7) Chapel or crematorium situated on the grounds of and operated in connection with a cemetery;

(8) Service buildings and greenhouses in cemeteries, provided these are used entirely for the private purposes of the cemetery and not for business purposes.

(c) In all districts, no land, buildings or structures shall be used except in conformance with the following:

(1) Whenever the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties, and shall be substantially landscaped. Projects increasing impervious surface area by more than the lesser of a) four (4.0) percent of lot size or b) four hundred (400) square feet, or that involve altering the landscape in such a way that may result in alteration of the runoff of surface water to abutting properties or erosion of soil, shall be reviewed by the commissioner of inspectional services and the city engineer to ensure compliance with this section. The commissioner of inspectional services and the city engineer may reject a project if they believe it will cause runoff of surface water to abutting properties or the erosion of soil;

(2) There shall be no self-service gasoline service stations or gasoline service stations with self-service pumping facilities except where such self-service station or pumping facility has been authorized pursuant to the procedures of section 30-24. (Ord. No. S-287, 12-7-87; Ord. No. V-173, 5-18-98; Ord. No. Z-45, 03-16-09; Z-108, 04-17-12)

ARTICLE II.
USE REGULATIONS

DIVISION 1. PUBLIC USE DISTRICTS AND OPEN SPACE/RECREATION DISTRICTS

Sec. 30-6. Allowed Uses for Public Use Districts.

In public use districts, land, structures and buildings may be used, or may be designed, arranged or constructed for one or more of the following purposes, provided site plan approval is obtained in accordance with the provisions of section 30-23 or in accordance with the provisions of section 5-58 if the City of Newton is the owner of the building to be constructed:

(a) Public streets and highways;

(b) Commons;

(c) Public gardens;

(d) Parks and conservation areas;

(e) Playgrounds;

(f) Public parking lots;

(g) Railroads;

(h) Waterworks reservations;

(i) Public purposes;

(j) Publicly-owned cemeteries;

(k) Other uses similar or accessory to those authorized in 30-6, provided, however, that the board of aldermen may vote to approve requests for temporary licenses to use such land, structures or buildings for the purposes of farmers' markets, farm stands, fairs, festivals and other like uses, either profit or nonprofit in nature, upon request by citizens' groups or individuals without complying with section 30-23, except as to a community farm, conservation areas, land, structures or buildings subject to control of the school committee, and land, structures or buildings subject to control of the parks and recreation department, wherein such approval shall be by the farm commission, the conservation commission, school committee, or parks and recreation department, respectively.

No other use or design and arrangement of any such land, structure or building thereon or thereover except as provided above shall be permitted until the land concerned shall have been rezoned in accordance with this chapter. No such rezoning shall affect the use of such land, structure or building for any of the purposes specifically set forth in section 30-6, whether or not carried on simultaneously with such other zoned use. Nothing in this section shall prohibit the use or design and arrangement of land, structure or building in this district by religious or nonprofit educational uses pursuant to the provisions of section 30-5(a)(2). (Ord. No. T-148, 5-20-91; Ord. No. V-156, 1-5-98; Ord. No. X-208, 04-18-06)

Sec. 30-7. Open Space/Recreation Districts.

(a) Intent and Purpose. It is the intent of these provisions:

(1) To protect and preserve open space;

(2) To preserve the natural resources of land suitable for agriculture, horticulture and floriculture;

(3) To preserve land for outdoor recreational use, scenic/aesthetic enjoyment, and urban amenity;

(4) To preserve and protect the aquifers and existing and potential ground and surface water supplies;

(5) To provide buffers to reduce storm runoff, noise, odors, and air pollution, as well as to separate and screen incompatible uses; and

(6) To protect and promote the general health, safety and welfare.

(b) *Allowed Uses.* In all open space/recreation districts, subject to the dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used for any of the purposes and functions set forth below:

(1) Agriculture, forestry, horticulture, floriculture, and viticulture;

(2) Conservation of flora, fauna or natural conditions;

(3) Control of erosion, sedimentation and storm runoff affecting the site;

(4) Privately owned cemeteries;

(5) Active and passive outdoor recreational activities, including, but not limited to:

a) golf courses;

b) boating;

c) play areas;

d) nature studies and walks, provided, however, that such recreational uses shall not permit the operation of motorized recreational vehicles (other than golf carts) such as automobiles used for races of any sort, dirt bikes, motorcycles, snowmobiles, dune buggies or motor boats, nor shall sports stadiums be permitted as either a principal or accessory use;

(6) Such accessory purposes as are proper and usual with the uses allowed in section 30-7(b), provided that buildings or structures do not exceed 700 square feet in gross floor area or provided seating facilities, whether permanent or temporary, are not in excess of 20 seats.

(c) *Site Plan Approval.* The construction or use of a roadway, parking lot or accessory building or structure used in connection with the purposes and functions allowed in section 30-7(b) which are not authorized under the provisions of section 30-7(b)(6) shall be permitted subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, provided that site plan approval is obtained in accordance with the provisions of section 30-23. Accessory buildings or structures which may be permitted subject to site plan approval shall include:

(1) Erosion, sedimentation or flood control structures;

(2) Golf and/or tennis pro shops or golf cart storage facilities;

(3) Outdoor swimming pools, outdoor tennis courts or similar outdoor recreational facilities;

(4) Garages, greenhouses or maintenance or storage facilities;

(5) Refreshment stands, boathouses, bathhouses or recreational shelters;

(6) Above-ground telephone, telegraph, power or gas transmission lines serving the recreational facilities, where no technically or economically feasible alternative exists to such above-ground installation.

(d) *Special Permits.* In all open space/recreation districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the dimensional controls set forth in section 30-15, and the parking requirements set forth in section 30-19, to erect or use buildings and structures for the following purposes:

(1) Dining rooms, conference and meeting facilities and clubhouses used in conjunction with golf courses or country clubs;

(2) Buildings or structures which are used in conjunction with the uses allowed in section 30-7(b);

(3) Indoor swimming pools, indoor tennis courts or similar indoor recreational facilities;

(4) Buildings or structures providing seating facilities for not more than 200 individuals;

(5) Such accessory purposes as are proper and usual with the uses allowed by special permit in section 30-7(d).

(e) *Temporary licenses.* The board of aldermen, acting through its land use committee, may vote to approve requests for temporary licenses to use the land and to erect temporary structures in conjunction with such use of the land for the purposes of farmers' markets, fairs, festivals, weddings, sports tournaments and competitions, and other

like uses, whether profit or non-profit in nature, upon the request of the owner of such land, without complying with the provisions of section 30-24.

DIVISION 2. RESIDENTIAL DISTRICTS

Sec. 30-8. Use Regulations for Single Residence Districts.

(a) *Allowed Uses.* In all single residence districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) A dwelling for one (1) family;

(2) Nonconforming uses permitted under section 30-21;

(3) Such accessory purposes as are proper and usual with dwellings for single families, including but not limited to:

a) housing of resident domestic employees;

b) renting of rooms for not more than three (3) lodgers;

c) parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed seven (7) days;

d) parking or storing of not more than one (1) commercial vehicle no larger than eighteen (18) feet in length or seven (7) feet in width and containing no more than four (4) square feet of advertising on any one side, provided that such vehicle shall not be stored between any front line of the principal building and the street line, or in the side or rear setback unless stored within a garage or other enclosed structure;

(4) Home businesses subject to section 30-8(c);

(5) Accessory apartments subject to provisions of section 30-8(d)(1).

(b) *Special Permits in Single Residence Districts.* In all single residence districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) An association of persons living together in a common dwelling;

(2) A congregate living facility;

(3) Hospital, sanitarium, convalescent or rest home or other like institution;

(4) Library, museum or other cultural institution;

(5) Club or clubhouse, provided that a chief activity is not a service customarily carried on as a business;
(6) Riding school or stock farm;

(7) A private garage with provision for more than three (3) automobiles, or a private garage of more than 700 square feet in area, or for more than one such private garage per single family dwelling;

(8) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 3-18A;

(9) Structures supporting radio, television or telephone transmission or receiving stations, including dish antennas, provided that wireless communication equipment shall be subject to section 30-18A;

(10) The conversion of a structure in existence on December 2, 1974, to occupancy by more than one (1) family, provided that there shall be no exterior alterations of the structure, other than those necessary to comply with applicable health, building and fire codes, subject to the following conditions:

a) There shall be provided for each family the minimum lot area required for a single dwelling unit as follows:

	Lot Area (Sq. Feet)	Lot Width (Feet)
Single Residence l	25,000	140
Single Residence 2	15,000	100
Single Residence 3	10,000	80

b) There shall be provided for each family two (2) off-street parking spaces.

(11) Accessory apartments subject to provisions of section 30-8(d)(2);

(12) Home businesses subject to the provisions of section 30-8(c)(11);

(13) Single family attached dwellings, in one or more groups, and further provided that no building is located within twenty-five (25) feet of any property boundary line;

(14) Clustered single family dwellings subject to the provisions of section 30-15(k);

(15) Such accessory purposes as are proper and usual with the preceding uses and are not injurious to a neighborhood as a place for single family residences; further provided, that in all of the preceding uses, such off-street parking facilities shall be provided as the board of aldermen may require.

(c) *Home Businesses.* In single residence districts, a single home business per dwelling unit shall be permitted as an accessory use so long as such home business does not violate any of the following conditions:

(1) The home business shall be clearly incidental and secondary to the use of the dwelling as a residence, shall be located within the dwelling unit, and shall not change the residential character thereof;

(2) Irrespective of the location of the home business within the dwelling unit, the total area of the dwelling unit utilized for the home business shall not exceed thirty percent (30%) of the ground floor area of the dwelling unit or thirty percent (30%) of the gross floor area of an individual apartment if the dwelling unit is located in a multifamily dwelling;

(3) Not more than one (1) nonresident shall be employed in a secretarial or like position in a home business, except that a physician or dentist may employ one (1) technician in a capacity supportive of the practice of the resident professional in addition to one (1) secretary;

(4) Not more than three (3) customers, pupils or patients for business or instruction shall be present at any one time;

(5) There shall be no on-premises storage of merchandise for sale in any instance where the home business is primarily a direct mail-order or telephone-order business, except in instances where the merchandise for sale is produced entirely on the premises;

(6) There shall be no exterior display or exterior storage of merchandise, and no exterior indication of the home business other than one (1) non-illuminated identification sign not to exceed one (1) square foot in area;

(7) There shall be no retail or wholesale sale of merchandise on the premises;

(8) The home business shall not produce noise, vibration, glare, fumes, odors, electrical interference or traffic congestion beyond that which normally occurs in the immediate residential area, nor shall the home business result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood;

(9) In addition to the parking required by section 30-19(d) for residential use of the dwelling unit, off-street parking designed in compliance with the requirements of section 30-19(d) shall be provided as follows: one (1) parking stall for each two hundred (200) square feet, or fraction thereof, of floor area used for the home business. If more than one (1) parking stall is required for the home business, the total number of parking stalls required shall be reduced by one (1) stall;

(10) In any single family dwelling which has an accessory apartment authorized under the provisions of section 30-8(b)(11), there shall be no more than one (1) home business which shall be located in the principal dwelling unit;

(11) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for a home business involving any or all of the following:

a) A number of nonresident employees greater than that permitted under section 30-8(c)(3);

b) The utilization for the purpose of the home business of more than thirty percent (30%) of the ground floor area of the dwelling unit;

c) The presence of more than three (3) customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the activity associated therewith;

d) The use of a detached accessory building, exterior structure(s), or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of section 30-8(d)(2) or 30-8(d)(4);

e) The waiver of the off-street parking requirement.

(d) In single residence districts, an accessory apartment shall be a permitted use according to Table 30-8 and the following provisions:

(1) An accessory apartment is allowed as a use accessory to an owner occupied single family dwelling in accordance with the procedures of section 30-22, as applicable, and subject to section 30-15, provided that:

a) The accessory apartment is located within a single family dwelling and the owner of the single family dwelling occupies either the main dwelling unit or the accessory apartment. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;

b) The single family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a certificate of occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application;

c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of one thousand (1000) square feet or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is less;*

d) Exterior alterations required to meet applicable building, fire or health codes are permitted as listed here: doors; windows; no more than two exterior landings which may be covered, which do not exceed fifty (50) square feet in area, and are not within the setback area; stairs which are not within the setback; roof and wall venting;*

e) Additions and exterior alterations to the structure made within four (4) years prior to application may not be applied towards meeting the requirements of Table 30-8;*

f) No more than one accessory apartment shall be allowed per lot;

g) There shall be no lodgers in either the original dwelling unit or the accessory apartment;

h) Parking as required by sections 30-19(d)(19) and 30-19(g), and screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof;

i) The apartment shall comply with all applicable building, fire and health codes.

* Requirements marked with an asterisk may be altered by a Special Permit. See Section 30-8(d)(2).

(2) The board of aldermen may grant a special permit in accordance with the procedure in section 30-24 for an accessory apartment as a use accessory to an owner-occupied single family dwelling or a legal nonconforming two family dwelling or a detached structure provided that the provisions of section 30-8(d)(1) and Table 30-8 are met, except as amended below. Any special permit issued by the board for such use shall be automatically subject to the condition that the two dwellings may not be held in separate ownership.

a) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet, or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is more;

b) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single family

dwelling or a legal nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this sub-section, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of receipt of a special permit hereunder from the board of aldermen.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the board order granting the accessory apartment and certified copies shall be filed with the department of inspectional services, where a master list of accessory apartments shall be kept, and with the assessing department.

When ownership of the property changes, the new owner shall notify the commissioner of inspectional services at which time the commissioner of inspectional services shall conduct a determination of compliance with the board order, the Newton Zoning Ordinance and the State Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(3) An accessory apartment is allowed in an Overlay District according to the provisions of Section 30-8(d) and Table 30-8. The following land is placed in an Overlay District as specified:

a) Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.

b) Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.

c) Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.

d) Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

(4) Pre-existing Units. Notwithstanding the terms of section 30-8(d)(1)-(3) above, an accessory apartment (second dwelling unit) in a single-family dwelling or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional criteria of Table 30-8 provided the following criteria are fulfilled:

a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:

i) A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or

ii) Assessing department records for the premises indicating the existence of the aforesaid second dwelling unit; or

iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for

improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or

iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid second dwelling unit; or

v) Sworn affidavits by former or present tenants of the aforesaid second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or

vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said dwelling unit as of December 31, 1979 and forward.

b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1979 and forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

c) Requirements. The requirements of section 30-8(d)(1)a), b), c), d), f), g), h) and i) must be satisfied.

d) Procedure. Application for the validation of the second dwelling unit under this section 30-8(d)(4) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-8(d)(4)c) above.

Within sixty (60) days of receipt of the completed section 30-8(d)(4) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-8(d)(4)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-8(d)(4) application for the lawful use of the second dwelling unit. Upon expiration of said one (1) year, if the applicant has not secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the second dwelling unit under the provisions of section 30-8(d)(4). Upon request by the applicant prior to expiration of the aforesaid one year, the commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the certificate of occupancy for the accessory apartment which states that before ownership of the property changes, the current owner must apply to the commissioner of inspectional services for a new occupancy permit. Before issuing such occupancy permit, the commissioner of

inspectional services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are satisfied.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(5) If it shall be determined by a court of competent jurisdiction that any provision or requirement of section 30-8(d) is invalid as applied for any reason, then section 30-8(d) shall be declared null and void in its entirety. (Ord. No. T-41, 8-14-89; Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; V-120, 7-14-97; V-156, 1-5-98; V-173, 5-18-98; V-246, 6-7-99; Ord. No. X-37, 12-02-02; Ord. No. Y-10, 04-17-07; Ord. No. Z-95, 10-03-11)

TABLE 30-8 DIMENSIONAL REQUIREMENTS FOR ACCESSORY APARTMENTS

	LOT SIZE (s.f.)	BUILDING SIZE (s.f.)
SR1		
RAAP	25,000	4,000
SPECIAL PERMIT	15,000*	3,200
SR2		
RAAP	15,000	3,100
SPECIAL PERMIT	10,000*	2,600
SR3		
RAAP	10,000	2,500
SPECIAL PERMIT	7,000*	1,800
OVERLAY A		
RAAP	43,500	4,400
SPECIAL PERMIT	15,000*	3,200
OVERLAY B		
RAAP	16,000	3,600
SPECIAL PERMIT	10,000*	2,600
OVERLAY C		
RAAP	10,000	3,100
SPECIAL PERMIT	7,000*	1,800
OVERLAY D		
RAAP	30,000	4,000
SPECIAL PERMIT	15,000*	3,200
LEGAL NON-CONFORMING TWO-FAMILY IN SR1, SR2, SR3		
SPECIAL PERMIT	25,000*	2,600

MR1, MR2		
SPECIAL PERMIT	8,000	2,600

*If building constructed on lot created prior to December 7, 1953.

Sec. 30-9. Use Regulations for Multi-Residence Districts.

(a) *Allowed Uses.* In all multi-residence districts, subject to the density and dimensional controls set forth in section 30-15, and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Any use permitted as of right in single residence districts except for accessory apartments which are permitted according to section 30-9(h);

(2) Dwelling for two (2) families;

(3) Such accessory purposes as are proper and usual with dwellings for two (2) families.

(b) *Special Permits in all Multi-Residence Districts.* In all multi-residence districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) Any purpose, except accessory apartments under the provisions of section 30-8(b)(11), for which permission may be granted in single residence districts, subject to the same limitations and conditions applicable therein;

(2) Boarding house, rooming house and lodging house for four (4) or more people;

(3) Nonprofit institutions or organizations organized and operated for welfare and philanthropic purposes and serving the general welfare of the city;

(4) Such accessory purposes as are proper and usual with the preceding uses and are not injurious to the particular neighborhood as a place of residence; provided that in all of the preceding uses, such off-street parking facilities shall be provided as the board of aldermen may require;

(5) Single family attached dwellings, in one or more groups, provided that:

a) No parking space shall be located within twenty (20) feet of a boundary line and no driveway shall be located within ten (10) feet of a side or rear lot line;

b) Exceptions: In particular instances the board of aldermen may, in accordance with section 30-24, grant exceptions to section 30-9(b)(5)a) and to the dimensional controls in section 30-15 if it is determined that literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features.

(6) Home businesses subject to the provisions of section 30-8(c)(11).

(c) *Special Permits in Multi-Residence 1 Districts.* In all multi-residence 1 districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for one or more of the following purposes:

(1) The conversion of a structure in existence on May 7, 1979, to occupancy by more than two (2) families, provided that there shall be no exterior alterations of the structure, other than those necessary to comply with applicable health, building and fire codes, subject to the following conditions:

a) There shall be provided for each family the minimum lot area of five thousand (5,000) square feet per dwelling unit;

b) There shall be provided for each family two (2) off-street parking spaces.

(d) *Special Permits in Multi-Residence 2 and 3 Districts.* In all multi-residence 2 and multi-residence 3 districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for one or more of the following purposes:

(1) A multifamily dwelling;

(2) A funeral home, subject to the following conditions:

a) No portion of the lot or tract of land upon which said funeral home is located shall be further than five hundred (500) feet from a business district;

b) The proprietor, manager or a person in responsible charge shall maintain a permanent residence therein;

c) Hearses used by the funeral home and stored on the premises shall be garaged under cover.

(e) *Special Permits in Multi-Residence 2 Districts.* In all multi-residence 2 districts, on lots of not less than 24,000 square feet, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24 and the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for garden apartment construction on a single lot; provided, however, the board of aldermen may permit the construction of apartments built under local, state or federal housing programs for elderly persons with a lesser lot area requirement for each dwelling unit, which shall in no case be less than fifteen hundred (1,500) square feet per dwelling unit.

(f) *Special Permits in Multi-Residence 3 Districts.* In all multi-residence 3 districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24 and the requirements in section 30-15 and the parking requirements set forth in section 30-19 to use land, buildings and structures for one or more of the following purposes:

(1) Residential care facilities, subject to the following conditions:

a) The ratio of gross floor area devoted to residential purposes to lot or site area shall not exceed zero and sixty-seven hundredths (0.67). Such gross residential floor area shall include hallways, stairwells, utility rooms and other similar areas which are directly accessory to independent dwelling units. Such gross residential floor area shall not include garage, library, activity, office, medical care, eating, assembly or other special supportive areas;

b) The board of aldermen may establish a limitation upon the maximum number of persons to be permitted per dwelling unit; and the board of aldermen may establish a minimum staff requirement for the residential care facility, provided, however, that the board of aldermen may, if circumstances warrant, grant a special permit, in accordance with the procedure established in section 30-24, for construction of a residential care facility with a lesser lot or site area per dwelling unit, a lesser number of parking spaces per dwelling unit, a greater gross floor area and/or a greater gross residential floor area ratio, but in no case:

(i) with less than eight hundred fifty (850 square feet) of lot or site area per dwelling unit;

(ii) with a gross floor area ratio of more than two and zero tenths (2.0);

(iii) a gross residential floor area ratio of more than one and thirty-four hundredths (l.34);

(iv) with less than zero and twenty-five hundredths (0.25) parking spaces per dwelling unit.

(g) *Special Permits in Multi-Residence 4 Districts.* In all multi-residence 4 districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land and buildings for one or more of the following purposes:

(1) A multi-family dwelling on a single lot, together with dining rooms and related facilities, and such accessory purposes as may be approved by the board of aldermen, provided that:

a) Business services. Where deemed necessary by the board of aldermen because of the number of residents to be accommodated on the lot or tract, business facilities for the individual convenience of the residents, such as barbershops, beauty parlors, tailors, shoe repair shops and similar personal services, newsstands, drugstores, food shops, dining rooms and similar retail uses, medical and related professional services, gasoline selling and service stations and parking lots and similar services may be conducted within a multi-family dwelling except that dining rooms with related facilities may be conducted within a building attached to and made an integral part of a multi-family dwelling but shall not exceed two (2) per cent of the gross floor area of all buildings containing dwelling units; provided, that there shall be no entrance to such a place of business except from the inside of the building, except for gasoline selling and service stations and parking lots; there shall be no signs or advertising matter pertaining to such business services outside of any building and no illuminated signs in the windows of the business facilities, and the gross floor area of the business services including dining rooms and related facilities shall not exceed five (5) percent of the gross floor area of all buildings containing dwelling units;

b) No building shall be closer to any other building on the lot or tract than a distance equal to the sum of their heights nor in any case closer than fifty (50) feet. The board of aldermen may permit buildings to be erected closer to each other in cases where by reason of the location or size of the buildings on such lot or tract and the relationship of one building to another, there is assurance of adequate light, air and privacy, and the approval of the site plans by the board of aldermen shall constitute the granting of such permission.

(2) Residential care facilities, subject to the conditions set forth in section 30-9(f)(1).

(h) *Additional Provisions Applicable in Multi-Residence 1 and 2 Districts.* In all multi-residence 1 and 2 districts, land and buildings may be used for the following purpose subject to the dimensional controls set forth in Table 30-8:

(1) The Board of Aldermen may grant a special permit for an accessory apartment as a use accessory to a two family structure or in a detached structure associated with either a single family or two family structure in accordance with the procedure in section 30-24 provided that the following conditions are met. Any special permit issued by the board for such use shall be automatically subject to the condition that the principal use and the accessory dwelling may not be held in separate ownership.

a) The accessory apartment is located in a single family or two family dwelling or detached structure, and the owner of the dwelling occupies either one of the main dwelling units or the accessory apartment. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;

b) The two family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a certificate of occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application;

c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet;

d) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in the owner-occupied two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this sub-section, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of the receipt of a special permit hereunder from the board of aldermen;

e) Additions and exterior alterations to the structure made within two (2) years prior to application may not be applied towards meeting the requirements of Table 30-8;

f) No more than one accessory apartment shall be allowed per lot. This shall include instances where the two dwelling units in a two family structure are separately owned and instances where more than one habitable structure occupy a single lot;

g) There shall be no lodgers in either the original dwelling units or the accessory apartment;

h) Parking as required by sections 30-19(d)(19) and 30-19(g), and landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof;

i) The apartment shall comply with all applicable building, fire and health codes.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the board order granting the accessory apartment and certified copies shall be filed

with the department of inspectional services, where a master list of accessory apartments shall be kept, and with the assessing department.

When ownership of the property changes, the new owner shall notify the commissioner of inspectional services at which time the commissioner of inspectional services shall conduct a determination of compliance with the board order, the Newton Zoning Ordinance and State Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(2) Pre-existing Units. Notwithstanding the terms of section 30-9(h)(1) above, an accessory apartment in a two family dwelling or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional criteria of Table 30-8 nor obtain a special permit subject to section 30-24 provided the following criteria are fulfilled:

a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said accessory apartment as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:

i) A valid building alteration permit for the premises indicating the construction of the aforesaid accessory apartment; or

ii) Assessing department records for the premises indicating the existence of the aforesaid accessory apartment; or

iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid accessory apartment; or

iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid accessory apartment, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid accessory apartment; or

v) Sworn affidavits by former or present tenants of the aforesaid accessory apartment, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or

vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said accessory apartment as of December 31, 1979 and forward.

b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the accessory apartment as of December 31, 1979 and ongoing forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

c) Requirements. The requirements of section 30-9(h)(1)a), b), c), f), g), h) and i) and section 30-8(d)(1)d) must be satisfied.

d) Procedure. Application for the lawful use of the accessory apartment under this section 30-9(h)(2) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-9(h)(2)c) above.

Within sixty (60) days of receipt of the completed section 30-9(h)(2) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-9(h)(2)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-9(h)(2) application for the lawful use of the accessory apartment. Upon expiration of said one (1) year, if the applicant has not secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the accessory apartment under the provisions of section 30-9(h)(2). Upon request by the applicant prior to expiration of the aforesaid one (1) year, the commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the certificate of occupancy for the accessory apartment which states that before ownership of the property changes, the current owner must apply to the commissioner of inspectional services for a new occupancy permit. Before issuing such occupancy permit, the commissioner of inspectional services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are met.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(3) If it shall be determined by a court of competent jurisdiction that any provision or requirement of section 30-9(h) is invalid as applied for any reason, then section 30-9(h) shall be declared null and void in its entirety. (Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; Ord. No. V-173, 5-18-98; Ord. No. V-246, 6-7-99; Ord. No. X-37, 12-2-02; Ord. No. Y-10, 4-17-07; Ord. No. Z-95, 10-03-11)

Sec. 30-10. Reserved.

DIVISION 3. BUSINESS, MIXED USE AND MANUFACTURING DISTRICTS

Sec. 30-11. Business Districts.

(a) *Allowed Uses.* In Business Districts 1, 2, 3 and 4, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Office;

(2) Retail store, salesroom or showroom for the conduct of retail business, but not for the sale of motor vehicles;

(3) Library or museum;

(4) Bank, excluding drive-in facilities;

(5) Theatre, hall or club;

(6) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;

(7) Retail dry cleaning or laundry;

(8) Job printing establishment, provided, that no more than three (3,000) square feet are used for work and storage;

(9) Restaurants having not more than 50 seats which are not opened between the hours of 11:30 p.m. and 6:00 a.m., and further provided that such restaurants are not fast food establishments;

(10) Bakery, the products of which are sold at retail and only on the premises;

(11) Dwelling units above the first floor, provided that the first floor is used for a use allowed in section 30-11(a)(1)-(11);

(12) Accessory parking facilities, provided that such facilities are limited to a single level;

(13) A dwelling for one (1) or two (2) families in existence as of January 1, 2000, but only on a lot abutted on two or more sides by lots in residentially zoned districts and subject to the density and dimensional controls set out in section 30-15, Table 1 for the aforesaid abutting residentially zoned lots;

(14) Other uses similar or accessory to those authorized by section 30-11(a).

(b) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (a) which are permitted are:

(1) Office;

(2) Bank, excluding drive-in facilities;

(3) Barbershop, beauty parlor, tailor, shoe repair shop or similar service establishment;

(4) Dwelling units above the first floor;

(5) Accessory parking facilities;

(6) Other uses similar or accessory to those authorized by section 30-11(b).

(c) In all business districts, no building, structure or alteration, enlargement or extension thereof located within three hundred (300) feet of a great pond as defined under the Massachusetts General Laws, chapter 131, section 1 shall be permitted other than under the procedure set forth in section 30-23 herein concerning site plan approval, with particular concern to the preservation of public view, enjoyment and access to said great pond. (Rev. Ords. 1973, §24-9).

(d) *Special Permits.* In Business Districts 1, 2, 3 and 4, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) Hospital, sanitarium, convalescent or rest home;

(2) Broadcasting studio;

(3) Laboratory;

(4) Hotel/motel;

(5) Funeral home;

(6) Job printing establishment using more than three thousand (3,000) square feet for work and storage;

(7) Non-accessory parking facilities or multi-level accessory parking facilities;

(8) Multi-family dwelling;

(9) Restaurant having over fifty (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;

(10) Drive-in or open-air business and appurtenant buildings or structures, or a drive-in business as part of any building or land used for the purposes authorized by section 30-11(a);

(11) Elderly housing with services, including residential care facilities and congregate care facilities. The board of aldermen may grant a special permit according to the procedures of section 30-24 for elderly housing with services with a lot area of no less than four hundred (400) square feet per dwelling unit;

(12) In Business District 4, a Planned Multi-Use Business Development, in accordance with the provisions of section 30-15(s)***;***

(13) Other uses similar or accessory to those authorized by section 30-11(d).

(e) *Allowed Uses in Business 2 Districts.* In all Business 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Wholesale business or storage warehouse, provided that no outside storage is permitted;

(2) Bowling alley;

(3) Office of a contractor, builder, electrician or plumber or similar enterprises, together with such storage buildings as are necessarily appurtenant thereto, provided that no outside storage is permitted and further provided that no more than forty (40%) percent of the total gross floor area is used for storage;

(4) Other uses similar or accessory to those authorized by section 30-11(e).

(f) For substandard commercial lots as described in section 30-15(o), the only uses listed under subsection (e) in business 2 districts that are permitted are:

(1) Wholesale business or storage warehouse, provided that no outside storage is permitted;

(2) Other uses similar or accessory to those authorized in section 30-11(f).

(g) *Special Permits in Business 2 Districts.* In Business 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;

(2) Garage repair shop;

(3) Indoor motor vehicles sales and service facility and areas for the outdoor sales, service, display or storage of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of the vehicles as the board of aldermen shall approve;

(4) Areas for outside storage, display and sale of goods and materials; provided, that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting as the board of aldermen shall approve;

(5) Fast food establishment, drive-in food establishment;

(6) Place of amusement or place of assembly, whether indoor or outdoor;

(7) Veterinary hospital;

(8) Other uses similar or accessory to those authorized by section 30-11(g).

(h) *Allowed Uses in Business 5 Districts.* In all Business 5 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Offices for professional purposes or for business purposes, excluding the retail sale of tangible personal property from a stock of goods on the premises;

(2) Bank, trust company or other banking institution;

(3) Other uses similar or accessory to those authorized by section 30-11(h).

(i) *Special Permits in Business 5 Districts.* In all Business 5 Districts, the board of aldermen may grant a special permit in accordance with the procedures provided in section 30-24 for the construction, alteration, enlargement, extension or reconstruction of buildings or structures and for the use of buildings, structures or land for one or more of the following purposes:

(1) Hospital, sanitarium, convalescent or rest home or other like institution;

(2) Library, museum or other cultural institution;

(3) Radio or television transmission station or broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;

(4) Laboratory or research facility; provided, that the facility is exclusively for research purposes with no manufacturing on the premises, and further provided that no recombinant DNA research or technology is involved;

(5) Hotel or motel; provided, that in addition to the density and dimensional controls set forth in section 30-15, the lot or tract of land shall have a minimum area of two (2) acres and twenty-five (25%) per cent of the lot or tract of land shall be in landscaped area;

(6) Heliport in accordance with the provisions of section 30-18. The density and dimensional controls set forth in section 30-15 shall not apply to heliports;

(7) Other uses similar or accessory to those authorized by section 30-11(i) which are not injurious to the neighborhood.

(j) *Site Plan Approval, Building Size.* In all Business Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto 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.

(k) *Special Permit, Building Size.* In all Business Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. All building(s), structure(s) and addition(s) thereto 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. (Ord. No. T-75, 3-5-90; Ord. No. T-183, 11-4-91: Ord. No. V-44, 11-20-95; Ord. No. V-87, 7-8-96; Ord. No. V-156, 1-5-98; Ord. No. V-173, 5-18-98; Ord. No. W-2, 7-10-00; Ord. No. X-20, 5-6-02; Ord. No. Z-16, 12-17-07)

Sec. 30-12. Manufacturing Districts.

(a) *Allowed Uses.* In all Manufacturing Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes; provided that such use shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause:

(1) Assembly or fabrication of materials manufactured off premises;

(2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;

(3) Office;

(4) Job printing;

(5) Storage warehouse;

(6) Wholesale business, excluding the on-site collection or storage for wholesale sale of trash or yard waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials;

(7) Yard of a contractor or builder for office and storage of vehicles and materials;

(8) Radio or television broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;

(9) Accessory parking facilities; provided that they are limited to a single level;

(10) Bottling works (except for alcoholic beverages);

(11) Canvas products, fabrication and sales;

(12) Carpentry or woodworking shop;

(13) Casting lightweight and nonferrous metals;

(14) Food processing, wholesale (except for meat, fish, vinegar, yeast, fat);

(15) Glass fabrication and installation;

(16) Ice manufacturing and storage;

(17) Laundry, cleaning and dyeing establishment;

(18) Machine shop (excluding presses over ten tons), plumbing, and blacksmith shop;

(19) Metal fabrication, light (such as sheet metal, ducts, gutters and leaders);

(20) Molding, shaping or assembly from prepared materials (including repairs);

(21) Optical and scientific instruments, jewelry manufacturing;

(22) Sign painting shop;

(23) Printing, publishing and reproduction establishments;

(24) Shipbuilding, small boat building, yards for storage and repair; provided that no ships or boats are located within one hundred (100) feet of a residential district;

(25) Veterinary hospital, kennel or taxidermist;

(26) Wearing apparel, fabrication and processing;

(27) Other uses similar or accessory to those authorized by section 30-12(a), provided that the following or similar uses shall not be permitted in connection with nor shall they be considered valid accessory uses to the uses allowed by section 30-12(a): collection, storage, transfer-haul or composting of trash or yard waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials.

(b) For substandard commercial lots as described in section 30-15(o), the only uses listed under sub-section (a) in Manufacturing Districts which are permitted are:

(1) Research and development facility, laboratory or research facility;

(2) Office;

(3) Storage warehouse;

(4) Wholesale business, excluding the on-site collection or storage for wholesale sale of trash or yard waste of any sort, including but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials;

(5) Accessory parking facilities; provided that they are limited to a single level;

(6) Other uses similar or accessory to those authorized by section 30-12(b), provided that the following or similar uses shall not be permitted in connection with nor shall they be considered valid accessory uses to the uses authorized by section 30-12(b): collection, storage, transfer-haul or composting of trash or yard

waste of any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings and any other similar materials.

(c) *Special Permits.* In Manufacturing Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes; provided that such uses shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire or any other cause:

(1) Other manufacturing uses;

(2) Auto body or machine repair shop;

(3) Motor vehicle storage, including outside storage of an automobile dealer's inventory of motor vehicles, provided that no vehicles are located within 100 feet of a residential district and no automotive sales or repairs are conducted. No lighting shall be allowed except such as is necessary for the safety and protection of the public;

(4) Non-accessory parking facilities or multi-level accessory parking facilities;

(5) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;

(6) Garage repair shop;

(7) Car wash;

(8) Heliport, in accordance with the provision of section 30-18. The density and dimensional controls set forth in section 30-15 shall not apply to heliports;

(9) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 30-18A;

(10) Bakery, commercial or wholesale;

(11) Feed and seed store;

(12) Paint store;

(13) Bird store;

(14) Building materials sales yard and storage building;

(15) Recombinant DNA research or technology, as defined in sections 12-20 et. seq.;

(16) Uses similar or accessory to those authorized by section 30-12(c), provided that the following or similar uses shall not be permitted in connection with nor shall they be considered valid accessory uses to the uses authorized by section 30-12(c): collection, storage, transfer-haul or composting of trash or yard waste of

any sort, including, but not limited to recyclable materials, brush, leaves, grass clippings or any other similar materials.

(d) *Allowed Uses in the Limited Manufacturing Districts.* In the Limited Manufacturing Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for the following purposes:

(1) Any uses and accessory purposes permitted in the business 2 districts as listed in sections 30-11(a) and 30-11(e), except residential structures or uses of any type, other than accommodations for a watchman or caretaker in connection with a business or manufacturing use;

(2) Bakery, commercial or wholesale;

(3) Bottling works (except for alcoholic beverages);

(4) Building materials sales yard and storage building;

(5) Canvas products, fabrication and sales;

(6) Carpentry or woodworking shop;

(7) Casting lightweight and nonferrous metal (no noxious fumes);

(8) Feed and seed store;

(9) Food processing, wholesale (except for meat, fish, vinegar, yeast, fat);

(10) Glass fabrication and installation;

(11) Ice manufacture and storage;

(12) Laboratory research, provided that no recombinant DNA research or technology is involved;

(13) Laundry, cleaning and dyeing establishment;

(14) Machine shop (excluding presses over ten (10) tons), plumbing and blacksmith shop;

(15) Metal fabrication, light (such as sheet metal, ducts, gutters and leaders);

(16) Molding, shaping or assembly from prepared materials, (including repairs) of boxes, ladders, staging, toys, stationery, novelties, paper boxes, toilet preparations, drugs, perfumes, flavoring extracts, medical and hygienic appliances, clothing, textiles, hats, leather and sporting goods, mattresses, store and office equipment; house, office, theater, playground equipment; signs, musical instruments, art goods, industrial models, tools, appliances or electrical goods;

(17) Optical and scientific instruments, jewelry manufacturing;

(18) Paint store and sign painting shop;

(19) Printing, publishing and reproduction establishments;

(20) Shipbuilding, small boatbuilding, yards for storage and repair;

(21) Veterinary, dog or cat hospital, kennel, bird store or taxidermist;

(22) Wearing apparel, fabrication and processing;

(23) Wholesale distribution plants.

(e) *Special Permits in the Limited Manufacturing Districts.* In the Limited Manufacturing Districts, the board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for the construction, alteration, enlargement, extension or reconstruction of buildings or structures and for the use of buildings, structures or lands for one or more of the following purposes:

(1) Parking lot, public garage or public stable, fuel establishment and fuel oil distributor, garage repair shop, but not for a motor vehicle repair shop;

(2) The removal of sod, loam, subsoil, sand or gravel for the purpose of sale thereof;

(3) Heliport, in accordance with the provisions of section 30-18. The provisions of section 30-15 shall not be applicable to heliports;

(4) Fast food establishment, drive-in food service establishment;

(5) 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 clause any such business operated as part of a hotel or motel;

(6) Drive-in or open-air business and appurtenant building or structures;

(7) Commercial outdoor amusement or recreation place or places of assembly, including an outdoor motion picture theater;

(8) Place of amusement or assembly other than a bowling alley;

(9) Facility engaged in recombinant DNA research or technology;

(10) Telecommunications and data storage facility;

(11) Other uses similar or accessory to those authorized by this section which are not injurious to the neighborhood as a Limited Manufacturing District.

(f) *Site Plan Approval, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto 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.

(g) *Special Permit, Building Size.* In the Manufacturing and Limited Manufacturing Districts, land, buildings and structures may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. All building(s), structure(s) and addition(s) thereto 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.
(Ord. No. T-65, 12-18-89; Ord. No. T-75, 3-5-90; Ord. No. T-319, 12-20-93; Ord. No. V-156, 1-5-98; Ord. No. W-33, 3-5-01; Ord. No. W-34, 3-5-01)

Sec. 30-13. Mixed Use Districts.

(a) *Allowed Uses in Mixed Use 1 Districts.* In Mixed Use 1 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Office;

(2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;

(3) Manufacturing, provided that such use shall not be injurious, noxious or offensive to the neighborhood by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous to the neighborhood on account of fire, or any other cause;

(4) Assembly or fabrication of materials manufactured off-premises;

(5) Uses similar or accessory to those authorized by section 30-13(a).

(b) *Special Permits in Mixed Use 1 Districts.* In Mixed Use 1 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) Retail store, provided that a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area;

(2) Wholesale business;

(3) Storage or distribution facility;

(4) Service establishment;

(5) 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;

(6) Inside sales, service, display or storage of motor vehicles;

(7) Outside storage, display and sale of motor vehicles, provided that no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of vehicles as the board of aldermen shall approve;

(8) Fuel establishment including a gasoline service station, fuel oil distributor. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;

(9) Radio or television transmission station, provided that wireless communication equipment shall be subject to section 30-18A;

(10) Multi-family dwelling;

(11) Garage repair shop;

(12) Bank, excluding drive-in facilities;

(13) Recombinant DNA research or technology, as defined in sections 12-20 et. seq. of the Revised Ordinances as amended;

(14) Veterinary hospital;

(15) Telecommunications and data storage facility;

(16) Uses similar to or accessory to those authorized by section 30-13(b) which are not injurious to the neighborhood.

(c) *Allowed Uses in Mixed Use 2 Districts.* In Mixed Use 2 Districts, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, land, buildings and structures may be used, or may be designed, arranged or constructed for one or more of the following purposes:

(1) Office;

(2) Research and development facility, laboratory or research facility; provided that no recombinant DNA research or technology is involved;

(3) Retail store;

(4) Library or museum;

(5) Bank, excluding drive-in facilities;

(6) Theatre, hall or club;

(7) Personal services;

(8) Retail dry cleaning or laundry;

(9) Service establishments;

(10) Job printing under 3,000 square feet;

(11) Restaurants having not more than 50 seats;

(12) Bakery, the products of which are sold at retail and only on the premises;

(13) Dwelling units above the first floor, provided that the first floor is used for an allowed use described above;

(14) Accessory parking facilities, provided they are limited to a single level;

(15) Uses similar or accessory to those authorized by section 30-13(c).

(d) For substandard commercial lots as described in section 30-15(o), the only uses listed under sub-section (c) herein which are permitted are:

(1) Office;

(2) Research and development facility;

(3) Bank, excluding drive-in facilities;

(4) Barbershop, beauty parlor, tailor, shoe repair shop, or similar service establishment;

(5) Dwelling units above the first floor;

(6) Accessory parking facilities;

(7) Uses similar or accessory to those authorized by section 30-13(d).

(e) *Special Permits in Mixed Use 2.* In all Mixed Use 2 Districts, the board of aldermen may grant a special permit in accordance with the procedures in section 30-24, subject to the density and dimensional controls set forth in section 30-15 and the parking requirements set forth in section 30-19, to use land, buildings and structures for one or more of the following purposes:

(1) Assembly or fabrication of materials manufactured off-premises in a building not exceeding 10,000 square feet of gross floor area;

(2) Sanitarium, convalescent or rest home;

(3) Broadcasting studio, provided that wireless communication equipment shall be subject to section 30-18A;

(4) Laboratory;

(5) Hotel or motel;

(6) Funeral home;

(7) Job printing over 3,000 square feet;

(8) Parking lots, provided that they are limited to a single level;

(9) Multi-family dwelling;

(10) Inside sales, service, display or storage of motor vehicles;

(11) Garage repair shop;

(12) Restaurants over fifty (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;

(13) Gasoline service station. The following or similar uses shall not occur in conjunction with a gasoline service station or be considered an accessory use to a gasoline service station unless such use has been authorized pursuant to a special permit: carwash; trailer and/or motor vehicle leasing; retail outlets or service establishments; self-service gasoline pumping facilities;

(14) Recombinant DNA research or technology, as defined in sections 12-20 et. seq. of the Revised Ordinances, as amended;

(15) Veterinary hospital;

(16) Other uses similar or accessory to those authorized by section 30-13(e) which are not injurious to the neighborhood.

(f) Establishment and purpose of the Mixed-Use 3/Transit-Oriented District.

(1) *Purpose.* 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 nine (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.

(2) *Allowed uses.* In the Mixed-Use 3/Transit-Oriented District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Section 30-13 Table A, subject to the development controls of Section 30-13(g) for developments of 20,000 square feet of gross floor area or more, the density and dimensional controls of Section 30-15, and the parking requirements of Section 30-19.

TABLE A: PRINCIPAL USES [1]	
Uses similar to or accessory to the following, as determined by the Commissioner of Inspectional Services[2]	
Accessory Parking	BR
Mixed-Use Development	
• Mixed-Use Development if gross floor area exceeds 20,000 square feet, per section 30-13(g)	SP
Category A	
• General office, including but not limited to research and development, professional offices, , business incubator, and similar uses	**BR**
• On the ground floor	**SP**
• Medical offices	**SP**
Category B	
• Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise	**BR**
• Up to 5,000 square feet of gross floor area	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Personal services, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop off	**BR**
• Up to 5,000 square feet of gross floor area	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Eating and drinking establishments	**BR**
• up to 5,000 square feet of gross floor area	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Retail banking and financial services	**SP**
• Automated Teller Machines	**BR**
• Car-sharing services, car rental, bike rental, electric car-charging stations that reduce reliance on single-occupancy vehicles	**BR**
• Health club	**BR**
• On the ground floor	**SP**
• Place of entertainment and assembly, theater	**SP**
• Lodging, hotel, motel	**SP**
Category C	
• Multifamily dwelling (a building containing three or more dwelling units)	**BR**
• Live/work space or home business	**BR**
• Single-room occupancy dwelling or single-person occupancy dwelling	**SP**
• Assisted living or nursing home	**SP**
Public and Community	
• Community use space	**BR**
• Day care (adult or child)	**BR**
• Place of religious assembly	**BR**
• Government offices or services	**BR**
• Park or garden	**BR**
• Nonprofit or public school	**BR**
• Rail or bus terminal	**BR**
• Public parking	**BR**
• Library or museum	**BR**
Prohibited	
• Drive-in business, manufacturing, sales of motor vehicles, care wash, gas station or motor vehicle service station, fast food establishments as defined in section 30-1	

[1] A use listed in Table A is permitted as of right in the Mixed-Use 3/Transit-Oriented District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Aldermen in accordance with the procedures in section 30-24.

[2] Any use determined to be similar to a use listed in Table A shall be subject to the same level of review as the use to which it is similar. An accessory use is only allowed if the use to which it is accessory is allowed, as shown in Table A.

(g) *Development by special permit in the Mixed-Use 3/Transit-Oriented District.*

Land and buildings in the Mixed-Use 3/Transit-Oriented District may be used for any of the purposes authorized in 30-13(f)(2). Notwithstanding section 30-13(i), any development that proposes an aggregate gross floor area of 20,000 or more square feet among all buildings within the Development Parcel shall require a special permit for a Mixed-Use Development, which is defined to include a Development Parcel combining a residential use with at least two other principal uses listed in Table A as allowed by right or by special permit, in accordance with the procedures provided in section 30-24. Any proposed Mixed-Use Development shall comply with the following provisions and the provisions of sections 30-15(v) and Table 3, 30-24(c)(7), 30-24(c)(8), 30-24(c)(9),30-24(i), 30-24(j), and 30-24(f).

(1) *Establishment of a Development Parcel.* The area developed under a special permit by this section must be organized into a Development Parcel as defined in Section 30-1. The Development Parcel may contain more than one lot and/or a portion of a lot together with any easement areas located on adjacent parcels of land**.** The provisions of this Zoning Ordinance shall apply to the Development Parcel as it exists on the date that the special permit is granted as if the Development Parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships. After the grant of a special permit per Section 30-13(g), the ownership may be further divided (subject to the establishment of an organization of owners defined in (3) below) and any interior lot lines shall be disregarded for zoning purposes. The Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the resulting Development Parcel is not less than nine (9) acres in size and does not create or expand any nonconformities.

(2) *Intensity of development.* The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A, and a community use space. The square footage in each category shall not exceed the maximums listed below, except, where approved by special permit in accordance with the procedures provided in section 30-24, the maximums may be adjusted by up to 10% in each category, so long as the total gross floor area of all uses, excluding accessory parking, does not exceed 580,000 square feet:

a) Category A shall not exceed 225,000 square feet (excluding offices incidental to residential, retail and/or community uses), the majority of which must be contained within one structure;

b) Category B shall not exceed 20,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the commissioner of inspectional services**;**

c) Category C shall not exceed 335,000 square feet not to exceed 290 dwelling units.

(3) *Organization of Owners*. Prior to exercise of a special permit granted under this section, an organization of all owners of land within the Development Parcel, except for owners of land subject to easements benefiting the Mixed-Use Development, shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the city or its representatives regarding compliance with the zoning ordinance. The organization shall serve as the liaison between the city and any owner, lessee, or licensee within the Development Parcel governed by a special permit granted under section 30-13(g). Such organization shall be the primary contact for the city in connection with any dispute regarding violations of the zoning ordinance and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the Development Parcel with the terms of the special permit for a Mixed-Use Development, site plan approval, and other applicable provisions of the zoning ordinance. In addition, any special permit granted under this section shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and the organization of owners to assure continued compatibility of the uses and activities within the Development Parcel and its neighbors during and after construction. Membership of this

advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

(h) Establishment and purposes of the Mixed Use 4 District

(1) *Purposes.* The purposes of the Mixed Use 4 District are to:

a) 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*.

b) Encourage development that fosters compact, pedestrian-oriented villages with a diverse mix of residences, shops, offices, institutions, and opportunities for entertainment.

c) 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.

d) Expand the diversity of housing options available in Newton.

e) 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.

(2) *Allowed uses.* In the Mixed Use 4 District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Table B, below. In granting a special permit in accordance with the procedures of section 30-24 for a use enumerated below, the board of aldermen shall make a finding that the proposed use will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed use fills a demonstrated need for the use within the vicinity, and that the proposed use is not inconsistent with the purposes of this section 30-13(h)(1) or the Newton *Comprehensive Plan.*

TABLE B: PRINCIPAL USES FOR THE MIXED USE 4 DISTRICT [1]	
Uses similar to or accessory to the following may be allowed as determined by the Commissioner of Inspectional Services[2]	
Commercial	
• General office, including but not limited to research and development, professional offices, and medical office, above or below street level	**BR**
• At street level[3]	**SP**
• Animal Services, including but not limited to sales and grooming and veterinary services; excluding overnight boarding	**SP**
• Retail sales establishments that are 5,000 square feet or less in area, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, art gallery, and general merchandize store	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Personal service establishments that are 5,000 square feet or less in area, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, laundry, and dry cleaning drop-off	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Business service establishments that are 5,000 square feet or less in area, including but not limited to copying and printing establishments and shipping services	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Eating and drinking establishments with 50 seats or less	**BR**
• More than 50 seats	**SP**
• Open between the hours of 11:30 p.m. and 6:00 a.m.	**SP**
• Retail banking and financial services that are 5,000 square feet or less in area	**BR**
• More than 5,000 square feet of gross floor area	**SP**
• Health club	**SP**

• Place of entertainment and assembly, theater, club	SP
• Lodging, including but not limited to bed and breakfast, hotel, motel	SP
• Open-Air Business	SP
Residential	
• Multifamily dwellings (a building containing three or more dwelling units) above street level	BR
• At street level	SP
• Live/work space or home business	BR
• Assisted living or nursing home	SP
Civic, Public, and Community	
• Community use space	BR
• Day care services for adults or children	BR
• Place of religious assembly	BR
• Government offices or services	BR
• Park or garden	BR
• Nonprofit or public school	BR
• Library or museum	BR
• Other uses allowed in Section 30-6	BR
Transportation and Infrastructure	
• Parking, public or accessory to an allowed use	BR
• Parking, non-accessory commercial	SP
• Car-sharing services, bike rental, electric car-charging stations	BR
• Public rail or bus station	BR
Prohibited	
Drive-in business, hospital, manufacturing, funeral home, sales of motor vehicles, car wash, gas station or motor vehicle service station, fast food establishments as defined in Section 30-1, personal storage warehouse	

[1] Uses listed in Table B are permitted as of right in the Mixed Use 4 District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the board of aldermen in accordance with the procedures in section 30-24. Where more than one enumerated classification could apply to a proposed use, the most specific classification shall be employed; where the uses are equally specific, the most restrictive classification shall be employed.
[2] Any use determined to be similar to a use listed in Table B shall be subject to the same level of review as the use to which it is similar. An accessory use is only allowed if the use to which it is accessory is allowed, as shown in Table B.
[3] Street level as defined in section 30-1; street-level entry lobbies permitted per section 30-15(w)(5)

(i) *Site Plan Approval, Building Size.* In all Mixed Use Districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate between 10,000 and 19,999 square feet in gross floor area which increases the total gross floor area to less than 20,000 square feet; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to between 10,000 and 19,999 square feet in gross floor area

shall require site plan approval in accordance with section 30-23, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall not be subject to site plan approval. All building(s), structure(s) and addition(s) thereto 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. However, nothing herein prohibits phased development of a property, shared open space, pedestrian or vehicular connections between parcels, shared parking between the parcel(s) and other parcels in the vicinity, and/or similar design features that are in keeping with the vision for the

subject parcel in the Comprehensive Plan and supporting documents.

(j) *Special Permit, Building Size.* In all mixed-use districts, land and buildings may be used for the purposes authorized in their respective districts, provided that:

(1) any proposed building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(2) any addition(s) to an existing building(s) or structure(s) containing individually or in the aggregate 20,000 or more square feet in gross floor area; or

(3) any addition(s) to an existing building(s) or structure(s) which increases the gross floor area individually or in the aggregate to 20,000 or more square feet in gross floor area

shall require a special permit in accordance with section 30-24, except that after August 3, 1987, the first addition of less than 2,000 square feet to an existing building or structure identified in subsection (2) or (3) of this section shall only require site plan approval pursuant to section 30-23. In granting a special permit, the board of aldermen shall make a finding that the proposed site plan and building form is compatible with the neighborhood context, that the proposed project improves the pedestrian environment through design, additional building setback from the public way, creation of beneficial open space, and/or improvements to the public way, including plans for their maintenance and use, and that the proposed uses enhance the commercial and civic vitality of the vicinity. All building(s), structure(s) and addition(s) thereto 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. However, nothing herein prohibits phased development of a property, shared open space, pedestrian or vehicular connections between parcels, shared parking between the parcel(s) and other parcels in the vicinity, and/or similar design features that are in keeping with the vision for the subject parcel in the Comprehensive Plan and supporting documents.
(Ord. No. T-12, 3-20-89; Ord. No. T-75, 3-5-90; Ord. No. T-154, 6-3-91; Ord. No. T-185, 11-18-91; Ord. No. T-319, 12-20-93; Ord. No. V-87, 7-8-96; Ord. No. V-156, 1-5-98; Ord. No. V-173, 5-18-98; Ord. No. W-34, 3-5-01; Z-108, 04-17-12; Ord. No. A-4, 10-01-12)

Sec. 30-14. Reserved.

DIVISION 4. DENSITY AND DIMENSIONAL CONTROLS

Sec. 30-15. Density/dimensional requirements.

Except as provided in section 30-21 (non-conforming uses), the density and dimensional controls set forth in the Tables below shall apply to all buildings, structures and uses in each of the said districts.

(a) In any instance where a density or dimensional control(s) is not set forth in the Tables below for a use which may be granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where such use is allowed as of right shall be applicable to such use when granted by special permit, unless otherwise required in the special permit by the board of aldermen.

(b) Lot frontage.

(1) In the case of a lot on a street, the line of which has a curve with a radius of less than two hundred (200) feet, the required lot frontage shall be measured along the setback line;

(2) In the case of a lot on a street and a public footway, the required lot frontage may be measured along the public footway with the permission of the board of aldermen in accordance with the procedure provided in section 30-24;

(3) In the case of corner lots, the frontage when measured on the street line shall run to the point of intersection of the two (2) street lines;

(4) In all other cases the required lot frontage shall be measured on the street line.

(c) *Exceptions Applicable in Residential Districts*. Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall apply to any lot in a residential zoning district except to the extent that either the provisions of Massachusetts General Laws, Chapter 40A, Section 6, as in effect on January 1, 2001, or the following provisions, provide otherwise.

Any increase in area, frontage, or setback requirements prescribed in Table 1 of this section shall not apply to any lot in a residential district if all of the following requirements are met:

(1) At the time of recording or endorsement, whichever occurred sooner, or on October 11, 1940 if the recording or endorsement occurred before October 11, 1940, the lot

a) conformed to the requirements in effect at the time of recording or endorsement, whichever occurred sooner, but did not conform to the increased requirements, and

b) had at least five thousand (5,000) square feet of area, and

c) had at least fifty (50) feet of frontage.

(2) The size or shape of the lot has not changed since the lot was created unless such change complied with the provisions of section 30-26.

(3) Either

a) The lot was not held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question,

or

b) If the lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the lot in question, such lot had on it a single-family or two-family dwelling.

(d) *Front Set Back.* No building need be set back more than the average of the setbacks of the buildings on the lots nearest thereto on either side, a vacant lot or a lot occupied by a building set back more than the required distance for its district to be counted as though occupied by a building set back such required distance. In no case shall any part of a building in a residence district extend nearer the street line than ten (10) feet.

(e) *Setback Line.* Distances shall be measured from the lot lines to the nearest portion of the structure, including outside vestibule or porch. Steps and bulkheads may project into the setback. Gutters, cornices, projecting eaves and

ornamental features may project up to two (2) feet into the setback. In the case of rear lots, the setback requirements shall be measured from the rear line of the lot in front; provided, however, that on a rear lot, no building shall be erected nearer than twenty-five (25) feet from the rear line of the lot in front.

(f) *Rear Lot Set Back.* In the case of a corner lot, the rear lot line shall be the lot line opposite the street on which the main entrance is located.

(g) In no district shall any obstruction to the view which constitutes a traffic hazard be allowed within the required setback lines. Upon complaint by the chief of police, the board of aldermen, after public hearing may order the removal at the owner's expense of any such obstruction. (Rev. Ords. 1973, § 24-14; Ord. No. 272, Pts. II, III, 5-15-78; Ord. No. 312, Pt. II, 2-5-79; Ord. No. T-174, 9-16-91)

(h) In Multi-Residence 3 and 4 Districts and all Business Districts, the board of aldermen may grant a special permit in accordance with the procedures set forth in section 30-24 for the construction of residential buildings, separately or in combination with other permitted uses in excess of the number of stories and height permitted as of right, if circumstances warrant such modification, but in no case to a height or number of stories in excess of that permitted by special permit, as shown on Table 1 of this section, in any such district.

(i) The lot coverage requirements contained in Table 1 of section 30-15 shall not apply to the erection or construction of a private garage in connection with or accessory to a building which was in existence on December 27, 1922, and designed or used as a residence for one or two families.

(j) Whenever the operation of this section would reduce the area available for building a dwelling house upon any lot in a residence district to less than twenty (20) feet in its shortest dimension, or less than eight hundred (800) square feet in total area, the requirements of this section shall be modified so far as necessary to provide such minimum dimension and total area by reducing the minimum distance of such dwelling house from rear lot and street lines, first from rear lot lines, but to not less than seven and one-half (7-1/2) feet, and second, if necessary, from street lines, but to not less than fifteen (15) feet.

(k) *Open Space Preservation Development.* In all residence districts, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23 and grant a special permit in accordance with the procedures provided in section 30-24 for the reduction of the minimum lot area, the minimum lot frontage, minimum setback lines, the minimum side lot line and/or the minimum rear lot line required for each single or two-family dwelling erected below that required by, or subject to the following:

(1) The area being developed contains a minimum of five (5) acres and a maximum of thirty-five (35) acres, provided, however, that not more than thirty-five (35) acres in any one lot or in contiguous lots in common ownership as of April 19, 1977, shall be developed under the provisions of this subsection (k);

(2) a) The minimum lot area per dwelling unit may not be reduced below the following:

Single Residence 1	15,000 square feet
Single Residence 2	10,000 square feet
Single Residence 3	7,000 square feet
Multi-Residence 1	7,000 square feet
Multi-Residence 2 & 3	7,000 square feet

b) The minimum lot frontage for each lot may not be reduced below fifty (50) feet.

c) The minimum setback line for each lot may not be reduced below fifteen (15) feet.

d) The minimum side yard line for each lot may not be reduced below seven and one-half (7.5) feet.

e) The minimum rear yard line for each lot may not be reduced below fifteen (15) feet.

(3) For each dwelling unit, an area equal to the differential between the minimum lot area requirement established by Table 1 Density and Dimensional Controls. In Residential Districts and the reduced minimum lot area permitted in accordance with subsection (2)(a) of this section shall be set aside within the development as permanent open space, provided, however, that no more than twenty-five (25) percent of the area set aside in fulfillment of this requirement shall be within an area delineated by section 22-22 of the Revised Ordinances, as amended. The board of aldermen, in designating such open space, shall exercise special concern with regard to the preservation of natural features, including, but not limited to, hills, ponds, watercourses, wetlands, trees, tree groves, wooded areas, rock outcrops, native plant and wildlife habitats and areas of aesthetic or ecological interest. Such land shall be of such size, shape, dimension, character and location as to assure its utility for park, conservation or recreation purposes.

(4) The use of the land set aside as permanent open space shall be limited to recreation and open space uses, and no building, structures, driveways or parking areas other than buildings or structures or recreational and maintenance equipment used in connection with such land shall be erected or placed thereon. Said buildings or structures shall have an aggregate floor area of less than one-half per cent (0.5%) of the area of such designated open space.

(5) The land set aside as permanent open space shall be held and maintained by the developer until it is conveyed to, accepted by, and owned by one or more of the following:

a) The City of Newton;

b) The Newton Conservation Commission;

c) An association, trust or corporation of all owners of lots within the development; or

d) A nonprofit trust or corporation having as its primary purpose the maintenance of open space.

No building permit shall be issued in accordance with this subsection (k) until said designated open space shall have been conveyed to and accepted by one or more of the above and in the event that said open space shall not have been conveyed to the city and/or the Newton Conservation Commission, a restriction, enforceable by the city, ensuring the permanent maintenance of said land as open space, shall have been recorded.

(6) In granting a special permit in accordance with this subsection (k), the board of aldermen may designate one of the options specified in subparagraph (5) above, which shall be utilized and may designate that the public shall have a right of access to the land so set aside or any part thereof.

(7) Notwithstanding the above, the board of aldermen may give permission for further reductions in or the waiver of minimum lot frontage, setbacks and side and rear yards if it finds that such reductions are consistent with the purposes of this ordinance and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants, walls, fencing and areas of aesthetic or ecological interest; provided, however, that such further reductions shall not be exercised so as to permit the construction of attached dwellings within single residence districts. (Rev. Ords. 1973, §24-13; Ord. No.

206, 4-19-77; Ord. No. 272, 5-15-78; Ord. No. 284, Pt. XIV, 6-19-78; Ord. No. T-173, 9-16-91; Ord. No. U-28, 9-7-94)

(l) – Reserved

(m) Except as provided in this subsection or where section 30-18A or section 30-21 provide otherwise, unless a variance is granted in accordance with the requirements and procedures set forth in this ordinance, in every residence district, accessory buildings shall conform to the following requirements:

(1) An accessory building shall be no nearer to any side or rear lot line than five (5) feet, and no nearer to any front lot line than the distance prescribed in Table 1 of Section 30-15 for a single-family or two-family dwelling on the lot in question;

(2) An accessory building with a sloping roof shall have a maximum height of twenty-two (22) feet. A building with a flat roof shall have a maximum height of eighteen (18) feet.

(3) An accessory building shall have no more than one and one-half (1½) stories;

(4) The ground floor area, as defined in section 30-1, of an accessory building shall not exceed seven hundred (700) square feet;

(5) If the accessory building is a garage, unless a special permit is granted in accordance with the requirements and procedures set forth in sections 30-8(b)(7), 30-15, 30-19, and 30-24, for each dwelling unit:

a) There shall be no more than one (1) garage, whether or not it is located in an accessory building;

b) A garage shall provide for not more than three (3) automobiles;

c) The ground floor area of a garage shall not exceed seven hundred (700) square feet.

Accessory structures, other than accessory buildings as referenced above, must conform to the applicable setback requirements for the principal building under section 30-15, Table 1. Measurements under this section shall be made from the lot line to that portion of the accessory building or accessory structure nearest the lines, including an outside vestibule or porch. Such measurements are also made from the lot lines to steps or bulkheads in the case of front and side lot lines, but not in the case of rear lot lines. (Ord. No. Z-91, 06-06-11)

(n) Underground structures including, but not limited to, basements or parking facilities, may be located within the applicable setback distance, provided that any portion of the underground structure which is visible above ground must conform to the applicable setback distance.

(o) For lots which on August 3, 1987 were undeveloped and which prior to said date were in single and separate ownership and were not available for use in common or in connection with a contiguous or adjacent lot and which have a lot area less than 10,000 square feet, the as-of-right building height shall be one story or twelve (12) feet. By special permit, the building height may be two stories or twenty-four (24) feet. As of right floor area ratio shall be .50 and by special permit the maximum floor area ratio may be .75. Allowed uses shall be restricted to those uses not limited by the provisions of sections 30-11(b), 30-11(f), 30-12(b), and 30-13(d). For the purpose of this provision, lots must have been shown as separate parcels on plans filed in the assessor's office and assessed as such prior to August 3, 1987 or they must have been shown or described in the most recent plans or deeds duly recorded with the Middlesex South District Registry of Deeds prior to August 3, 1987.

(p) In order to limit the degree to which a lot may have an irregular shape, the following build factor formula shall be used:

$$\frac{\text{Lot perimeter squared}}{\text{Actual lot area}} \div \frac{\text{Actual Lot area}}{\text{Minimum required lot area}} = \text{Build Factor}$$

Lots on plans recorded in the Middlesex (South) Registry of Deeds or endorsed by the planning board acting as a board of survey after September 16, 1996 shall be subject to a maximum build factor of 20 in Single Residence 3 and all Multi Residence Zoning Districts; a maximum build factor of 25 in Single Residence 2 and a maximum build factor of 30 in Single Residence 1 Zoning Districts. This formula shall apply whether lots are created as a subdivision or as an Approval Not Required (ANR) plan under M.G.L. c.41 § 81P. The board of aldermen may grant a special permit for the creation of a lot with a build factor in excess of the maximum set out herein.

(q) Any residential structure that is replacing a previously existing three-story residential structure shall be allowed three stories, but only insofar as the absolute height does not exceed that of the previously existing structure.

(r) Requirements For Creation of Rear Lots in Residential Districts.

Purpose: The purpose of this subsection is to eliminate or mitigate against potential undesirable development impacts on adjacent residential uses and neighborhoods by the application of the density and dimensional controls set out in Table 4 of this subsection as well as through the requirement of a special permit that shall include, but not be limited to, a review of proposed building placement and buffering.

(1) *Definition of rear lot.*

A rear lot is defined as a parcel of land not fronting or abutting a street, as defined in section 30-1, which does not have the required minimum frontage directly on a street**,** and which has limited access to a street by either (1) a "flag pole" or "pan-handle" shaped portion of the lot, (2) an easement over an adjoining lot possessing frontage directly on the street, or (3) a private right-of-way as shown or described in plans or deeds duly recorded with the Middlesex (South) Registry of Deeds. A rear lot may, with the permission of the board of aldermen in accordance with the procedure provided in section 30-24, satisfy the minimum frontage requirement for the zoning district in which it is located by measuring lot frontage along the rear line of the lot or lots in front of it.

(2) *Administration.*

a) Creation of rear lots in residential zoning districts shall require a special permit from the board of aldermen in accordance with the procedure provided in section 30-24. The rear lot development density and dimensional controls in section 30-15(r), Table 4, shall apply to the proposed rear lot(s) and the remainder of the original lot shall be subject to the density and dimensional controls of section 30-15, Table 1, for lots created after December 7, 1953, unless waivers from either of such controls are granted by the board of aldermen in accordance with the section 30-15(r) (3) below.

b) The provisions of section 30-26 shall not apply to the creation of rear lots under this subsection.

c) In addition to the provisions of section 30-23 and 30-24, general application requirements and criteria for grant of a special permit for a rear lot development are as follows:

i) Applicants must submit a sufficient number of copies of architectural plans for all proposed residential buildings and structures, a landscape plan, site plan, and an area plan showing

distances from proposed building(s) or structure(s) to existing residential buildings and structures used for accessory purposes on the original lot and all abutting lots, along with information on the heights and number of stories of these existing building(s) or structure(s). All plans must be prepared, stamped and signed, as appropriate, by an architect, landscape architect, professional engineer or registered land surveyor.

ii) The board of aldermen shall consider the special permit application for a rear lot development in light of the following criteria:

(a) Whether the proposed building(s) or structure(s) exceed the respective average height of abutting residential buildings and structures used for accessory purposes;

(b) The scale of a proposed building(s) or structure(s) in relation to adjacent residential buildings and structures used for accessory purposes and the character of the neighborhood;

(c) Topographic differentials, if any, between proposed building(s) or structure(s) and adjacent residential buildings and structures used for accessory purposes;

(d) Proposed landscape screening;

(e) Adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways;

(f) Whether any historic or conservation public benefit is provided or advanced by the proposed development;

(g) Whether the location of structures used for accessory purposes or mechanical equipment, including but not limited to free-standing air conditioning units or compressors, on the new rear lot(s) or on abutting lots will negatively impact either the proposed rear lot development or abutters' property;

(h) Proposed siting of the proposed building(s) or structure(s)with reference to abutting residential buildings or structures used for accessory purposes; and

(i) Impact of proposed lighting on the abutting properties.

(3) *Exceptions.*

The rear lot development density and dimensional controls in section 30-15(r), Table 4, shall apply to the proposed rear lot(s) and the remainder of the original lot shall be subject to the density and dimensional controls of section 30-15, Table 1, for lots created after December 7, 1953**,** unless the existence of one or more of the conditions enumerated below justifies a waiver by the board of aldermen of one or more such controls:

a) An increased Floor Area Ratio (FAR) may be allowed by special permit per the procedure of Section 30-24 if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood, and eliminates or mitigates against development impacts on adjacent residential uses and neighborhoods.

b) If the proposed rear lot development will create, in either an existing building or in a building to be constructed, at least one (1) new dwelling unit that satisfies the requirements for the provision of an affordable housing "inclusionary unit" as set out in section 30-24(f), the board of aldermen may grant a waiver permitting the new rear lot(s) to utilize dimensional controls set out in section 30-15(e) and section 30-15, Table 1, for lots created after December 7, 1953;

c) Where an existing building or structure listed on the State or National Register of Historic Places, or designated as a Newton Landmark Preservation Site, does not meet the applicable dimensional controls for a rear lot development established in this subsection, but is a valid nonconforming building or structure solely due to a substandard front or side setback(s) or both**,** the board of aldermen may waive the applicable front or side setback requirements, or both, provided that the required setback shall not be reduced to less than the actual existing setback distance.

(Ord. No. T-75, 3-5-90; Ord No. T-173, 9-16-91; Ord. No. T-174, 9-16-91; Ord. No. U-28, 9-7-94; Ord. No. V-21, 6-5-95; Ord. No. V-91, 9-17-96; Ord. No. V-102, 1-6-97; Ord. No. V-111, 4-23-97; Ord. No. V-112, 4-23-97; Ord. No. V-113, 4-23-97; Ord. No. V-122, 7-14-97; Ord. No. V-165, 4-6-98; Ord. No. V-234, 4-5-99; Ord. No. V-273, 12-6-99; Ord. No. V-241, 5-17-99; Ord. No. V-307, 6-19-00; Ord. No. W-49, 7-9-01; Ord. No. X-39, 12-2-02; Ord. No. X-75, 03-01-04; Ord. No. X-123, 12-06-04; Ord. No. Z-101, 12-05-11)

(s) ***Planned Multi-Use Business Development ("PMBD")***

In any Business 4 District, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23, and may grant a special permit in accordance with the procedures provided in section 30-24, for the applicable density and dimensional controls set out in Table A of this section subject to the criteria for a Planned Multi-Use Business Development and further subject to the criteria and conditions set out below.

(1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.

(2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this section, a PMBD must meet the following threshold criteria:

(a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial, as classified by the City of Newton;

(b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this section, rather than to those of section 30-15 Table 3;

(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in subsection 30-24(f);

(d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and

(e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings.

(3) Additional Special Permit Criteria for a Planned Multi-Use Business Development. In order to make the findings set forth in subsection 30-24(d), and in addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:

(a) *Adequacy of public facilities*. Transportation, utilities, public safety, schools including capacity, and

other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by subsection (10)(f) of this section.

(b) *Mitigation of neighborhood impacts*. Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes;

(c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements*. The PMBD offers long-term public benefits to the city and nearby areas such as:

1) Improved access and enhancements to public transportation;

2) Enhancements to parking, traffic, and roadways;

3) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;

4) Public safety improvements;

5) On-site affordable housing opportunities except where allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and

6) Water and sewer infrastructure enhancements.

(d) *Compatibility and integration with its surroundings*. The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering and/or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;

(e) Not inconsistent with applicable local plans or general laws. The PMBD is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;

(f) Improved access nearby. Pedestrian and vehicular access routes and driveway widths, which shall be determined by the board of aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;

(g) Enhanced open space. Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement in Table A;

(h) Excellence in place-making. The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;

(i) *Comprehensive signage program*. All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of aldermen, which shall control for all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape;

(j) Pedestrian scale. The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel;

(k) Public Space. The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;

(l) Sustainable Design. The PMBD will at least meet the energy and sustainability provisions of zoning subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h);

(m) Pedestrian and Neighborhood Considerations. If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact:

1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;

2) Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;

3) Traffic signal additions or alterations; and

4) Relocation or alterations to public transport access points;

(4) Lots. In the application of the requirements of this section to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this section by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection (5) below.

(5) Organization of Owners. Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's ordinance and shall be the primary contact for the city in connection with any dispute regarding violations of this section and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval

granted hereunder and with this section. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.

(6) Phasing. Any development within a Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.

(7) Post-Construction Traffic Study. A PMBD special permit granted shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development, in an amount approved by the board of aldermen in acting on the special permit, to secure performance as specified below:

(a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.

(b)The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the city and paid for the applicant or successor in interest.

(c) If the actually experienced total number of vehicle trips to and from the PMBD measured per subsection (7)(b) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per subsection (10)(f)iii by more than ten percent (10%), mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to achieve the required reduction within one year after notification, the bond or other security cited above may be forfeited and proceeds used by the city for traffic mitigation.

(8) Modifications. Any material modification to a PMBD shall require an amendment to the site plan or special permit as approved by the board of aldermen in accordance with sections 30-23 or 30-24. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:

(a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;

(b) A change of use that results in a net increase in required parking for the PMBD (pursuant to section 30-19);

(c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;

(d) Except as provided above, any reduction in beneficial open space; and

(e) Modification governed by any condition identified by the board of aldermen in the special permit as not subject to modification without additional approval.

(9) Applicability. Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section. Where provisions of this section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern.

(10) Additional Filing Requirements for PMBDs. In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of special permit for a PMBD shall submit:

(a) A three-dimensional (3D) computer-generated model consistent with section 30-24(b);

(b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;

(c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;

(d) Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this section;

(e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus;

(f) A Roadway and Transportation Plan reflecting the "EOEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:

i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;

ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;

iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:

a) the projected Base Volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;

b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the PMBD guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;

c) the means of making mitigations if it is found pursuant to the monitoring under subsection (7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;

d) the projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.

iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;

v. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

vi. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;

(g) Proposed phasing schedule, including infrastructure improvements; and

(h) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.

(11) *Electronic Submission and Posting of Application Materials*. Applicants must submit in electronic form all documents required under subsection (10) of this section and sections 30-23 and 30-24 and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt. (Ord. No. Z-16, 12-17-07; Ord. No. A-6, 10-01-12)

Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in section 30-15 shall apply to development under a PMBD special permit.

As noted at subsection 30-15(4) *Lots,* these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

Area, frontage, and bulk	**All development**
Minimum lot area	10 acres
Minimum lot frontage	100 ft.
Max. total floor area ratio	3.0
Min. lot area per dwelling unit	1,200 sq. ft.
Maximum lot coverage	n/a
Min. beneficial open space	20%

Height and setbacks (8)	**Streetside facade**	**Interior development**	**High rise development**
Height (feet)	36 ft.	96 ft.	96 ft. (2), (3)
Height (stories)	4	8	8 (1)
Front setback (7)	Lesser of 15 ft. or 1/2 building height (4)	Greater of 50 ft. or 1/2 building height	100 ft.
Side setback (7)	Greater of 15 ft. or 1/2 building height (5)		50 ft. (6)
Rear setback (7)			100 ft. (6)

NOTES

(1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the board of aldermen and subject to such height and setback limits as established in footnotes 2 and 3.

(2) The board of aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.

(3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 ft. of the Development Parcel as of December 17, 2007.

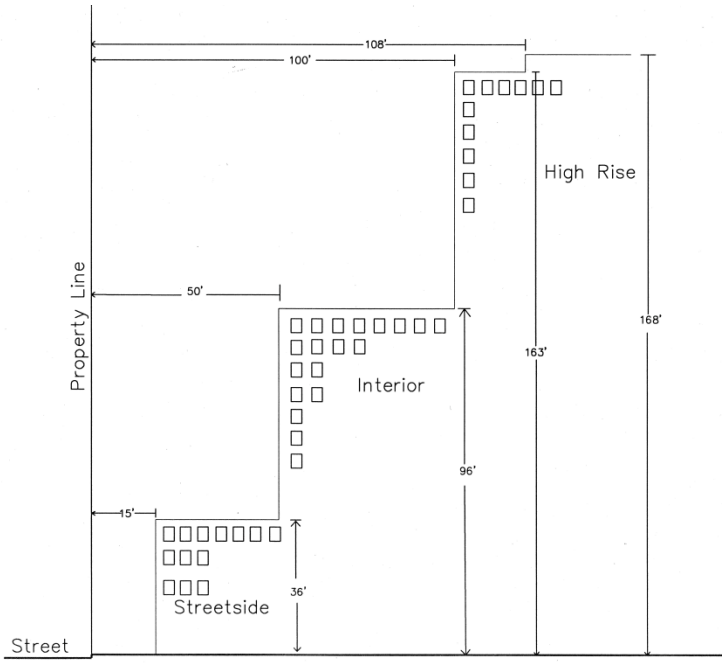
(4) The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.

(5) Side and/or rear setbacks shall be a minimum of 20 feet or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.

(6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.

(7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residence District or Multi-Residence or Public Use District.

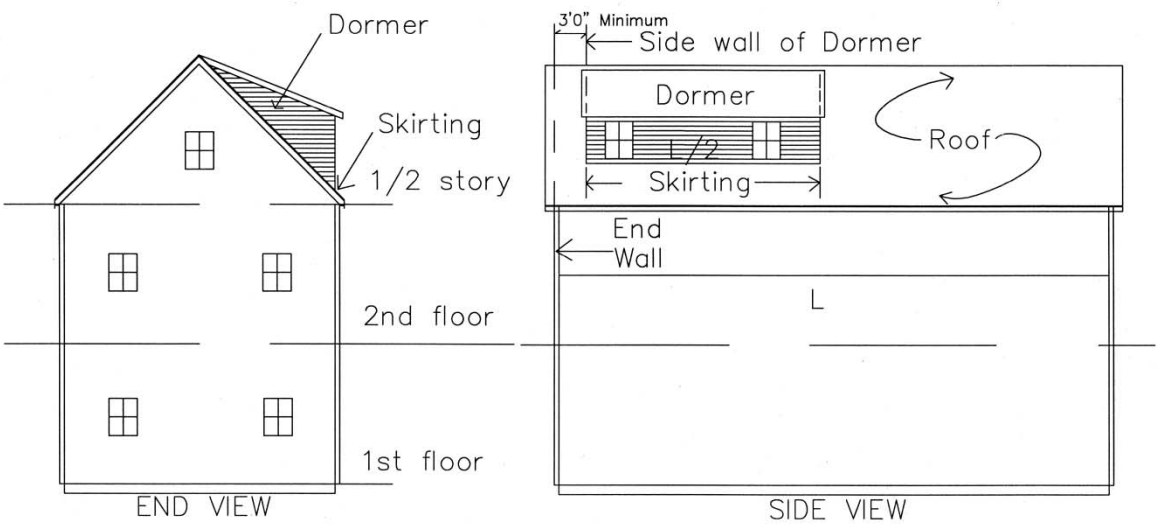
(8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and (c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the board of aldermen.



(t) Dormers. Except as may be allowed by special permit in accordance with Section 30-24, the following restrictions shall apply to dormers above the second story in single and two family dwellings and to dormers in accessory structures.

(1) A dormer may be no wider than fifty percent (50%) of the length of the exterior wall of the story next below. Where more than one dormer is located on the same side of the roof, the width of all dormers combined may not exceed fifty percent (50%) of the length of the exterior wall next below. See illustrations below.

(2) A roof line overhang shall be continued between the dormer and the story next below so as to avoid the appearance of an uninterrupted wall plane extending beyond two stories. See illustrations below.



1/2 story dormer illustration

L/2 = total dormer wall
L = side wall length

(3) The vertical plane of the side wall of any dormer shall not be closer than three feet (3') from the vertical plane of the intersection of the roof and the main building end wall nearest the dormer. See illustrations below.

(4) No dormer may project above the main ridgeline of the single or two family dwelling or the accessory structure. See illustration below. (Ord. Z-20, 04-07-08; Ord. Z-34, 11-03-08)

(u) The floor area ratio (FAR) shall apply to all one and two family structures, except on rear lots created under the provisions of section 30-15(r), whether new or existing, according to the FAR limits contained in Table A below. The following exceptions shall apply:

(1) For construction on lots created before 12/7/1953, an additional increase in FAR of .02 above the amount shown in Table A shall be allowed, provided that new construction proposed using additional FAR granted under this paragraph shall comply with setback requirements for post-1953 lots. Any increase in FAR granted through this section may not create or increase nonconformities with respect to lot coverage or open space and may not be used in conjunction with section 30-21(c).

(2) An increased FAR may be allowed by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (Ord. No. Z-51, 08-10-09; Ord. Z-69, 07-12-10; Ord. No. Z-72, 11-15-10; Ord. No. Z-75, 02-07-11; Ord. No. Z-77, 02-22-11)

TABLE A: FLOOR AREA RATIO (FAR) FOR SINGLE AND TWO FAMILY STRUCTURES IN RESIDENTIAL DISTRICTS

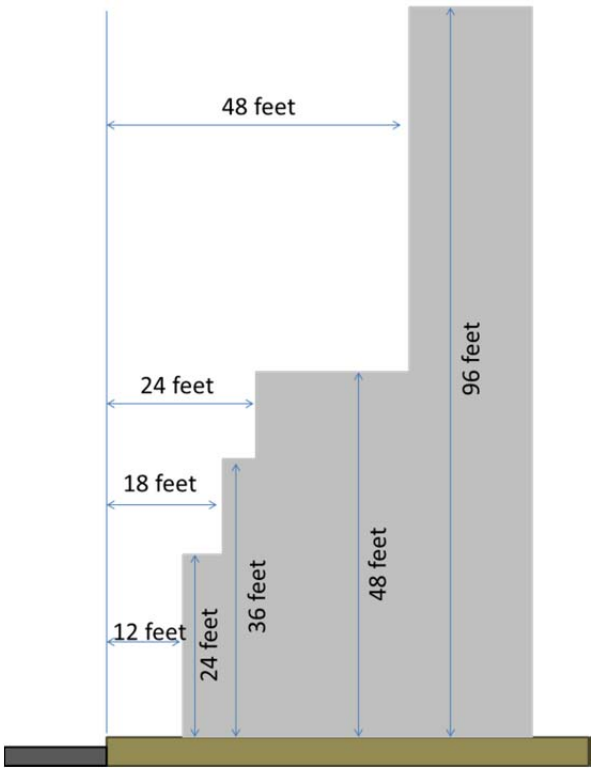
Lot Size Category	Less than or equal to 4,999 square feet	5,000 to 6,999 square feet	7,000 to 9,999 square feet	10,000 to 14,999 square feet	15,000 to 19,999 square feet	20,000 to 24,999 square feet	25,000 square feet or more
SR1	Maximum FAR=.46	*Maximum FAR ranges from .46 to .43 depending on lot size.* Maximum FAR= .46 – [.000015* (lot size-5000)]	*Maximum FAR ranges from .43 to .33 depending on lot size.* Maximum FAR = .43 – [.000033* (lot size-7000)]	*Maximum FAR ranges from .33 to .31 depending on lot size.* Maximum FAR = .33 – [.000004* (lot size-10000)]	*Maximum FAR ranges from .31 to .28 depending on lot size.* Maximum FAR = .31 – [.000006* (lot size-15000)]	*Maximum FAR ranges from .28 to .26 depending on lot size.* Maximum FAR = .28 – [.000004* (lot size-20000)]	Maximum FAR = .26
SR2	Maximum FAR=.46	*Maximum FAR ranges from .46 to .43 depending on lot size.* Maximum FAR= .46 – [.000015* (lot size-5000)]	*Maximum FAR ranges from .43 to .38 depending on lot size.* Maximum FAR = .43 – [.000017* (lot size-7000)]	*Maximum FAR ranges from .38 to .33 depending on lot size.* Maximum FAR = .38 – [.000010* (lot size-10000)]	Maximum FAR = .33	Maximum FAR = .33	Maximum FAR = .33
SR3	Maximum FAR=.48	Maximum FAR=.48	*Maximum FAR ranges from .48 to .41 depending on lot size.* Maximum FAR = .48 – [.000023* (lot size-7000)	*Maximum FAR ranges from .41 to .38 depending on lot size.* Maximum FAR = .41 – [.000006* (lot size-10000)]	Maximum FAR = .38	*Maximum FAR ranges from .38 to .36 depending on lot size.* Maximum FAR = .38 – [.000004* (lot size-20000)]	Maximum FAR = .36
MR1	Maximum FAR = .58	*Maximum FAR ranges from .58 to .53 depending on lot size.* Maximum FAR= .58 – [.000025* (lot size-5000)]	*Maximum FAR ranges from .53 to .48 depending on lot size.* Maximum FAR = .53 – [.000017* (lot size-7000)]	Maximum FAR = .48	*Maximum FAR ranges from .48 to .43 depending on lot size.* Maximum FAR = .48 – [.000010* (lot size-15000)]	*Maximum FAR ranges from .43 to .38 depending on lot size.* Maximum FAR = .43 – [.000010* (lot size-20000)]	Maximum FAR = .38
MR2/MR3	Maximum FAR = .58	*Maximum FAR ranges from .58 to .53 depending on lot size.* Maximum FAR= .58 – [.000025* (lot size-5000)]	Maximum FAR = .53	*Maximum FAR ranges from .53 to .43 depending on lot size.* Maximum FAR = .53 – [.000020* (lot size-10000)]	*Maximum FAR ranges from .43 to .38 depending on lot size.* Maximum FAR = .43 – [.000010* (lot size-15000)]	Maximum FAR = .38	Maximum FAR = .38

(v) *Mixed-Use Developments in the Mixed-Use 3/Transit-Oriented District.* Any development permitted by special permit per section 30-13(g) must meet the following requirements and the requirements of Table 3. The Board of Aldermen may grant a special permit per section 30-24, including section 30-24(i), to allow exceptions to the by-right dimensional standards of the Mixed-Use 3/Transit-Oriented District, provided that the requirements of this section are met and no dimension exceeds those allowed in Table 3 for the Mixed-Use Development Special Permit.

(1) *Setbacks.* Any structure or building must be set back a distance equal to at least half the height of that structure or building from any lot line, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a state instrumentality, the setback may be zero feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks (as illustrated in Figure A). In accordance with the procedures provided in Section 30-24, the board of aldermen may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

(2) *Beneficial Open Space.* At least 50% of the beneficial open space required by section 30-15, Table 3 for a Mixed-Use Development must be freely open to the public.

Figure A



(3) *Exclusion of Public Structures from Zoning Requirements.* Any portion of the Development Parcel for the proposed development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, including, but not limited to a rail yard, maintenance facility, or railroad right of way and any portion of a building or structure dedicated for public use by a state instrumentality, such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority, shall not be included in the calculation of:

i. The quantity of beneficial open space required;

ii. Minimum lot area; or

iii Floor Area Ratio.

(4) *Impacts of Takings by or Conveyances to a Public Entity:* The provisions of section 30-26(a) shall apply to any taking by or conveyance of land within the Development Parcel to a public entity or to any land otherwise dedicated and accepted as a public way.

(w) *Design Standards for the Mixed Use 4 District*. Notwithstanding any provisions of Section 30-15 to the contrary, buildings and structures in the Mixed Use 4 Zone shall conform to the following standards:

(1) *Height.* Buildings in the Mixed Use 4 Zone shall be a minimum of two (2) stories and shall conform to the limits for building height and stories established in section 30-15, Table 3. The board of aldermen may grant a special permit in accordance with the procedures in section 30-24 to allow up to four (4) stories and forty-eight (48) feet of building height by finding that the proposed structure(s) is compatible in

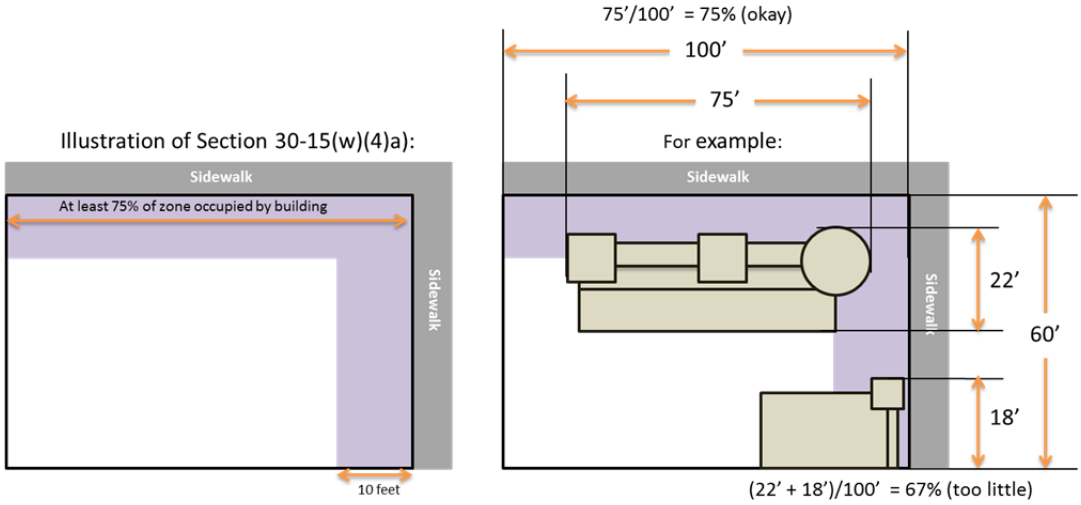
visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of section 30-13(h)(1).

(2) *Mixed-Use Residential Incentive.* Buildings that meet the definition of Mixed-Use Residential Buildings per section 30-1 shall conform to the specific limits for building height and stories established in section 30-15, Table 3. The board of aldermen may grant a special permit in accordance with the procedures in section 30-24 to allow up to five (5) stories and sixty (60) feet of building height by finding that the proposed structure(s) is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of section 30-13(h)(1).

(3) *Residential Density.* The board of aldermen may grant a special permit in accordance with the procedures in section 30-24 to waive the lot area per dwelling unit requirement of Table 3 by finding that the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in the vicinity, and better achieves the purposes of section 30-13(h)(1) than strict compliance with these standards.

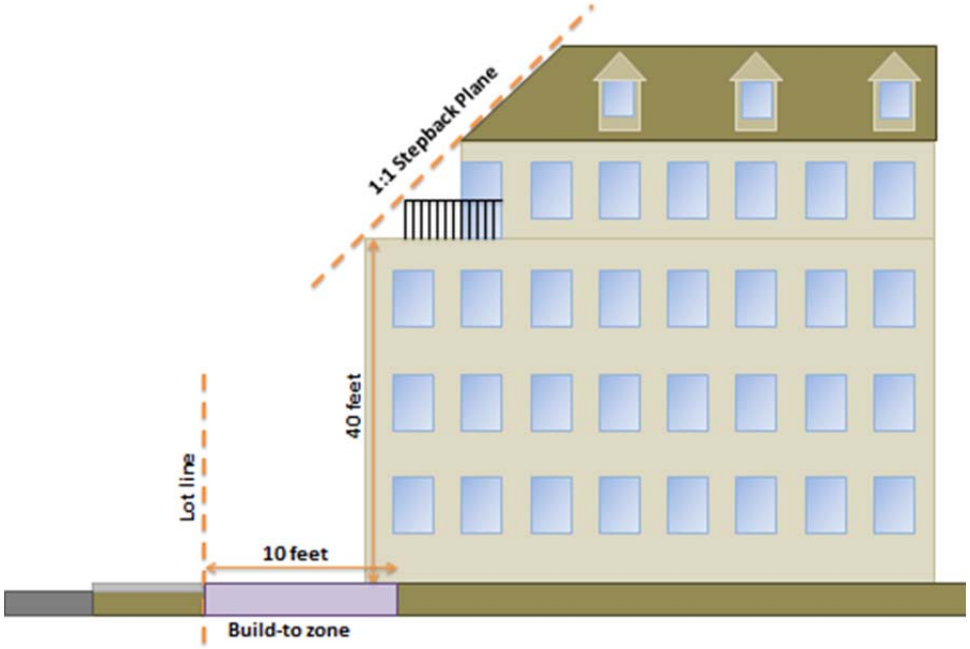
(4) *Setbacks.* The board of aldermen may grant a special permit in accordance with the procedures in section 30-24 to waive the following setback requirements by finding the proposed plan can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of section 30-13(h)(1) than strict compliance with the following standards.

a) A minimum of 75% of the frontage of the lot facing a public way shall contain a building(s), the first floor façade of which is setback between zero and ten feet from lot line.



b) No side or rear setbacks are required, except, where abutting a residential district, the required side and rear setbacks shall be no less than twenty (20) feet.

c) Any portion of a building greater than 40 feet in height must be setback one foot from the adjacent lot line for each additional foot of height.



(5)Accessibility. The design of the building(s) and the site plan shall comply with the Americans with Disabilities Act and the rules and regulations of the Massachusetts Architectural Access Board.

(6) Transparency and Entrances. Commercial uses in a Mixed Use 4 Zone must meet the following requirement. The board of aldermen may grant a special permit in accordance with the procedures in section 30-24 to waive these requirements by finding the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of section 30-13(h)(1) than strict compliance with the following standards.

a) There shall be at least one entrance every fifty feet of building frontage facing a public way.

b) A minimum of 60% of the street-facing building façade between two feet and eight feet in height above the street-level floor must consist of clear windows that allow views of indoor space or display areas.

c) Display windows used to satisfy these requirements shall be changed and maintained to create an active window display; any illumination of the display shall be internal to the façade of the building.

(7) *Lobbies for low-activity uses.* Section 30-13, Table B, permits office uses at street level by special permit only. Entryways and lobbies at street level are allowed for office uses occurring above or below street level subject to the following requirements:

a) Any dedicated entranceway and lobby space for such uses may not exceed a total of fifteen (15) linear feet of an exterior building wall and 400 square feet of gross floor area.

(8) *Open Space.* Parcels greater than one acre in area shall provide beneficial open space totaling no less than 5% of the total lot area. Parcels smaller than one acre in area are encouraged to provide and

maintain attractive landscaping where it enhances the public realm, environmental sustainability, and/or the appearance of the site.

(Ord. No. Z-51, 08-10-09; Ord. No. Z-69, 07-12-10; Ord. No. Z-72, 11-15-10; Ord. No. Z-75, 02-07-11; Ord. No. Z-77, 02-22-11; Ord. No. Z-101, 12-05-11; Ord. No. Z-108, 04-17-12; Ord. No. A-4, 10-01-12; Ord. No. A-6, 10-01-12)

SECTION 30-15

TABLE 1— DENSITY & DIMENSIONAL CONTROLS IN RESIDENCE DISTRICTS AND FOR RESIDENTIAL USE

ZONING DISTRICT	MINIMUM REQUIRED LOT AREA	LOT AREA PER UNIT[1]	FRONTAGE	SET BACKS FRONT	SET BACKS SIDE	SET BACKS REAR	TOTAL FLOOR AREA RATIO[8]	BUILDING HEIGHT[2, 4, 5, 6, 7]	MAXIMUM NUMBER OF STORIES[3]	MAXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
SINGLE RESIDENCE 1											
Single Dwelling Units	25,000	25,000	140	40	20	25		36	2.5	15%	70%
Lots created before 12/7/53	15,000	25,000	100	25	12.5	25		36	2.5	20%	65%
Special Permits:											
Single Att. Dwelling Units (30-8(b)(13))	3 acres	25,000	140	40	25	25	-	36	2.5	15%	70%
Single Family Detached (30-15(k))*	5 acres	15,000	50	15	7.5	15	-	36	2.5	20%	65%
SINGLE RESIDENCE 2											
Single Dwelling Units	15,000	15,000	100	30	15	15		36	2.5	20%	65%
Lots created before 12/7/53	10,000	15,000	80	25	7.5	15		36	2.5	30%	50%
Special Permits:											
Single Att. Dwelling Units (30-8(b)(13))	2 acres	15,000	100	30	25	25	-	36	2.5	20%	65%
Single Family Detached (30-15(k))*	5 acres	10,000	50	15	7.5	15	-	36	2.5	30%	50%
SINGLE RESIDENCE 3											
Single Dwelling Units	10,000	10,000	80	30	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	10,000	70	25	7.5	15		36	2.5	30%	50%
Special Permits:											
Single Att. Dwelling Units (30-8(b)(13))	1 acre	10,000	80	30	25	25	-	36	2.5	30%	50%
Single Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
MULTI-RESIDENCE 1											
Single & Two Family Dwellings	10,000	5,000	80	30	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	25	7.5	15		36	2.5	30%	50%
Special Permits:											
Attached Dwellings (30-9(b)(5))	15,000	4,000	80	25	25	25	-	36	2.5	25%	50%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
MULTI-RESIDENCE 2											
Single & Two Family Dwellings	10,000	5,000	80	25	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	25	7.5	15		36	2.5	30%	50%
Special Permits:											
Attached Dwellings	15,000	4,000	80	25	25	25	-	36	2.5	25%	50%
Multi-Family Dwelling	10,000	3,000	80	25	7.5	15	-	36	3	30%	50%
Garden Apartments (30-9(d))	24,000	2,000	80	20	14	15	-	36	3	35%	35%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	80	15	7.5	15	-	36	2.5	30%	50%

ZONING DISTRICT	MINIMUM REQUIRED LOT AREA	LOT AREA PER UNIT[1]	FRONTAGE	SET BACKS FRONT	SET BACKS SIDE	SET BACKS REAR	TOTAL FLOOR AREA RATIO[8]	BUILDING HEIGHT[2, 4, 5, 6, 7]	MAXIMUM NUMBER OF STORIES[3]	MAXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
MULTI-RESIDENCE 3											
Single & Two Family Dwellings	10,000	5,000	80	15	7.5	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	15	7.5	15		36	2.5	30%	50%
Special Permits:											
Attached Dwellings	15,000	4,000	80	25	10	15	-	36	2.5	25%	50%
Multi-Family Dwelling	10,000	1,200	80	15	⅓ bldg. ht.	½ bldg.ht.	-	42	3	45%	30%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
Residential Care Facility (30-9(f))[7]	10,000	1,200	80	15	⅓ bldg. ht.	½ bldg.ht.	1.0	42	3	45%	30%
MULTI-RESIDENCE 4											
Single & Two Family Dwellings	10,000	5,000	80	15	10	15		36	2.5	30%	50%
Special Permits:											
Multi-Family Dwelling	3 acres	1,000	-	50	50	50	-	-	3	20%	30%
Residential Care Facility[7]	3 acres	1,200	-	15	⅓ bldg. ht	½ bldg.ht.	1.0	42	3	45%	30%
BUSINESS #1, #2, #3 & #4	10,000	1,200	80	SEE TABLE 3 AND 30-15(h)							
MIXED USE 1 AND 2	10,000	10,000	80	SEE TABLE 3 AND 30-15(h							
MIXED USE 3/TOD	9 acres	1,200	80	SEE TABLES 3 for other dimensional controls							
MIXED USE 4	10,000	1,000	80	SEE TABLES 3 for other dimensional controls							

[1] This column is used for purposes of determining residential density in cases where more than one dwelling unit is provided on a lot.

[2] Building height shall also regulate structures.

[3] Allow three stories by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

[4] No space above the maximum height established in Table 1 shall be habitable.

[5] Allow by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 10 acres; the distance from any street(s) abutting the lot to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet; and the front, side, and rear setbacks for the lot are 50 feet from the lot line.

[6] A building with a sloped roof shall have a maximum height of thirty-six (36) feet. A building with a flat roof shall have a maximum height of thirty (30) feet.

[7] A residential care facility in the Multi-Residence 3 District or Multi-Residence 4 District with a sloped roof or a multi-family structure in the Multi-Residence 3 District with a sloped roof shall have a maximum height of forty-two (42) feet. A building with a flat roof shall have a maximum height of thirty-six (36) feet.

[8] See Sec. 30-15(u) Table A for determining Floor Area Ratio (FAR) for single and two-family dwellings.

* Editor's note—"Open Space Preservation Development" was formerly called "Cluster Development."

(Ord. No Z-44, 03-16-09; Ord. No. Z-91, 06-06-11; Ord. No. Z-77, 02-22-11; Ord. No. Z-108, 04-17-12; Ord. No. A-4, 10-01-12)

SECTION 30-15

TABLE 2— DIMENSIONAL REGULATIONS FOR RELIGIOUS AND NON-PROFIT EDUCATIONAL USES

ZONING DISTRICT[6]	LOT AREA	SET BACKS: [1] & [2] FRONT	SIDE	REAR	TOTAL FLOOR AREA RATIO[3]	BLDG HEIGHT[4]	MAXIMUM NUMBER OF STORIES[4]	MAIXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
SINGLE RESIDENCE 1									
Single Use Institution	25,000	40	20	25	.2	36	3	30%	50%
Multi-Use Institution	50,000	60	40	40	.2	36	3	30%	30%
Dormitories	25,000	60	40	40	.2	36	3	18%[5]	50%[5]
SINGLE RESIDENCE 2									
Single Use Institution	15,000	30	15	15	.33	36	3	30%	50%
Multi-Use Institution	30,000	50	30	30	.5	36	3	30%	30%
Dormitories	15,000	50	30	30	.5	36	3	18%[5]	50%[5]
SINGLE RESIDENCE 3									
Single Use Institution	10,000	30	10	15	.5	36	3	30%	50%
Multi-Use Institution	20,000	40	30	30	.5	36	3	30%	30%
Dormitories	10,000	40	30	30	.5	36	3	18%[5]	50%[5]
MULTI-RESIDENCE 1									
Single Use Institution	10,000	30	10	15	.5	36	3	30%	50%
Multi-Use Institution	20,000	40	30	30	.5	36	3	30%	30%
Dormitories	10,000	40	30	30	.5	36	3	18%[5]	45%[5]
MULTI-RESIDENCE 2									
Single Use Institution	10,000	25	10	15	.75	36	3	30%	50%
Multi-Use Institution	20,000	30	25	25	.75	36	3	30%	30%
Dormitories	10,000	40	25	25	.75	36	3	25%[5]	40%[5]
MULTI-RESIDENCE 3									
Single Use Institution	10,000	15	7.5	15	1.0	36	3	30%	50%
Multi-Use Institution	20,000	25	25	25	1.0	36	3	30%	30%
Dormitories	10,000	25	25	25	1.0	36	3	30%[5]	40%[5]

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ZONING DISTRICT[6]	LOT AREA	SET BACKS: [1 & 2] FRONT	SIDE	REAR	TOTAL FLOOR AREA RATIO[3]	BLDG HEIGHT[4]	MAXIMUM NUMBER OF STORIES[4]	MAIXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
MULTI-RESIDENCE 4									
Single Use Institution	10,000	15	7.5	15	1.0	36	3	30%	50%
Multi-Use Institution	20,000	25	25	25	1.0	36	3	45%	30%
Dormitories	10,000	25	25	25	1.0	36	3	30%[5]	40%[5]

[1] or (building height + building length + building width)/3, whichever is greater - applies to all Multi-Use Institutions and dormitories.

Notwithstanding the foregoing, in the event that two or more religious or non-profit educational institutions own abutting properties at least five (5) acres each in size in the Single Residence 3 District which they will use as a shared campus or facility, the board of aldermen may, upon petition of all the affected abutting religious or non-profit educational institutions, grant a special permit pursuant to section 30-24 and subject to site plan approval pursuant to section 30-23 binding on all the affected religious or non-profit educational institutions so petitioning said board to reduce the required side and/or rear setbacks provided in this table along their common property line(s) to accommodate the shared use of all such properties. The board may grant a special permit pursuant to section 30-24 on such a petition only upon making a specific finding that such a grant will serve the purposes of the zoning ordinance including, but not limited to those avowed purposes set out in section 30-2 and the preservation of usable open space through appropriate and sufficient increases in compensating front and/or side yard setbacks and that the lesser setback along the common property line(s) granted by special permit is in the public interest.

The aforesaid increase(s) in the compensating front and/or side yard setbacks shall be at least equal to the reduction of the side or rear yard along the common property line(s) provided, however, that the board of aldermen may give permission for a further reduction of minimum side and/or rear setbacks along the common property line(s) if it finds that such reductions are consistent with the purposes of the zoning ordinance and will enable the preservation of certain natural features, including topography, trees, wooded areas, rock outcrops, native plants, walls, fencing and areas of aesthetic or ecological interest.

The increased setback(s) shall be set aside as permanent open space and shall be restricted by either recorded deed and/or conservation restriction. The board of aldermen may designate that the public shall have permanent public access to the land set aside or any part thereof.

[2] In SINGLE RESIDENCE 1 and SINGLE RESIDENCE 2 where a Multi-Use Institution and dormitories with more than 3 acres of land abut single residence uses or are separated from such uses by an adjacent street, a 60 foot vegetative buffer shall be maintained from all property lines of the institutional use and for those exceeding 10 acres of land, said vegetative buffer shall be a minimum of 100 feet, and for those exceeding 20 acres of land, said vegetative buffer shall be a minimum of 150 feet.

[3] FAR may be increased by .1 for each additional 10% of the lot area that is devoted to usable open space up to a maximum FAR of 1.0.

[4] Building height may be increased by one story for every 150 feet of distance from streets and/or abutting properties but not to exceed 6 stories or 60 feet. Building height shall also regulate structures.

[5] Applicable when dormitories are located on their own lot. When developed in conjunction with other non-profit uses the building lot coverage and open space requirements of the Multi-Use Institution category shall apply.

[6] Religious and non-profit educational uses are allowed in all districts. The "As of Right" dimensional requirements for commercial districts, as set out in Table 3 of section 30-15 apply to such uses, except for the Public Use and Open Space/Recreation Districts, in which the dimensional controls for the Single Residence 1 zoning district from Table 2 shall apply.

SECTION 30-15

TABLE 3 — DIMENSIONAL REQUIREMENTS FOR COMMERCIAL DISTRICTS

ZONING DISTRICT[11]	MAX. # OF STORIES	BLDG. HEIGHT[12]	TOTAL FLOOR AREA RATIO	GROSS FLOOR AREA/SITE PLAN APPROVAL	THRESHOLD BY SPECIAL PERMIT	MINIMUM LOT AREA	LOT COVERAGE	BENEFICIAL OPEN SPACE	SET BACKS FRONT	SET BACKS SIDE[10]	SET BACKS REAR[10]
BUSINESS 1											
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
BUSINESS 2											
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
BUSINESS 3											
As Of Right	3	36	1.50	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
BUSINESS 4											
As Of Right	3	36	1.50	10,000-19,999	20,000	10,000			Avg.[1]	½ bldg. ht.[2]	0[3]
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
By Special Permit	5	60	2.25	10,000-19,999	20,000	25,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
By Special Permit	6	72	2.50	10,000-19,999	20,000	30,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
By Special Permit	7	84	2.75	10,000-19,999	20,000	35,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
By Special Permit	8	96	3.00	10,000-19,999	20,000	40,000			½ bldg. ht.[4]	½ bldg. ht.[2]	0[3]
BUSINESS 5											
As Of Right	3	36	1.00	10,000-19,999	20,000	0	.25		15	10[5]	15[5]
By Special Permit	4	48	1.50	10,000-19,999	20,000	0	.25		15	10[5]	15[5]
LIMITED MANUFACTURING	3	36	0	10,000-19,999	20,000	0	.25		25	20[6]	20[6]
MANUFACTURING											
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000			15[7]	½ bldg. ht.[8]	½ bldg. ht[8]
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000			15[7]	½ bldg. ht.[8]	½ bldg. ht.[8]

(continued)

ZONING DISTRICT[11]	MAX. # OF STORIES	BLDG. HEIGHT[12]	TOTAL FLOOR AREA RATIO	GROSS FLOOR AREA/SITE PLAN APPROVAL	THRESHOLD BY SPECIAL PERMIT	MINIMUM LOT AREA	LOT COVERAGE	BENEFICIAL OPEN SPACE	SET BACKS FRONT	SET BACKS SIDE[10]	SET BACKS REAR[10]
MIXED USE 1											
As Of Right	3	36	1.50	10,000-19,999	20,000	40,000			15[9]	7.5	7.5
By Special Permit	4	48	2.00	10,000-19,999	20,000	40,000			15[9]	7.5	7.5
MIXED USE 2											
As Of Right	2	24	1.00	10,000-19,999	20,000	10,000			15[9]	7.5	0
By Special Permit	3	36	1.50	10,000-19,999	20,000	10,000			15[9]	7.5	0
By Special Permit	4	48	2.00	10,000-19,999	20,000	10,000			15[9]	7.5	0
MIXED USE 3 – TOD											
As of Right	N/A	36	1.0	10,000-19,999	20,000	9 acres	N/A	N/A	15[9]	10	15
Mixed-Use Development Special Permit, per 30-13(g)[13]	N/A	135	2.4	N/A	N/A	9 acres	N/A	15%[13]	½ bldg.. ht.[13]	½ bldg.. ht.[13]	½ bldg.. ht.[13]
MIXED USE 4											
As of Right[14]	2	24	1.0	10,000-19,999	20,000	10,000	N/A	0% or 5%[14]	0-10[14]	0 or 20[14]	0 or 20[14]
By Special Permit[14]	4	48	2.0	10,000-19,999	20,000	10,000	N/A	0% or 5%[14]	0-10[14]	0 or 20[14]	0 or 20[14]
Mixed-use residential,by right[14]	3	36	1.5	10,000-19,999	20,000	10,000	N/A	0% or 5%[14]	0-10[14]	0 or 20[14]	0 or 20[14]
Mixed-use residential, by Special Permit[14]	5	60	2.5	10,000-19,999	20,000	10,000	N/A	0% or 5%[14]	0-10[14]	0 or 20[14]	0 or 20[14]

[1] Avg.—The setback on any lot shall be the average of the setbacks of the building nearest thereto on either side. A vacant lot or a lot where a building is set back more than ten (10) feet shall be counted as though occupied by a building set back ten (10) feet.

[2] ½ bldg. ht.—one-half the building height or a distance equal to the side yard setback of the abutting property at any given side yard except, when abutting a residential zone, the setback shall be one-half the building height or fifteen feet, whichever is greater.

[3] When abutting a residential or public use zone, the rear setback in the Business 1-4 Districts shall be 1/2 building height or 15 feet, whichever is greater.

[4] ½ bldg. ht.—The setback shall be one-half the building height unless the average as described in footnote 1 above is less, then apply Avg.

[5] 20 feet when abutting a residential district.

[6] 40 feet when abutting a residential district.

[7] 15 feet or 1/2 building height or the average setback of adjoining properties, whichever is greater.

[8] 1/2 building height, except, when abutting a residential or public use zone, the setback shall be 1/2 building height or 20 feet, whichever is greater. Except as noted in Section 30-19(i), parking need not comply with these setbacks.

[9] Minimum front setback; if building height exceeds one story, front setback must be equal to total height of building. Parking facilities shall be set back no less than twenty (20) feet in the Mixed Use 1 District and fifteen (15) feet in the Mixed Use 2 District.

[10] Except when abutting a residential district, the setback shall be 1/2 the building height or twenty (20) feet whichever is greater. Parking facilities shall be set back no less than five (5) feet from the side and rear setback lines.

[11] Religious and non-profit educational uses are allowed in all commercial districts as well as in other districts. Accordingly, the "As Of Right" Dimensional Requirements for Commercial Districts, as set out in this Table 3 of sec. 30-15 apply to such uses, except for the Public Use and Open Space/Recreation Districts, in which the dimensional controls for the Single Residence 1 Zoning District from Table 2 shall apply.

[12] Building height shall also regulate structures.

[13] See sec. 30-15(v) for additional dimensional requirements for developments within the Mixed-Use 3/Transit-Oriented District.

[14] See sec. 30-15(w) for additional dimensional requirements for developments within the Mixed Use 4 Zone.

NOTE: The front, side, and rear setback requirements for parking facilities in the Business 1-4 and the Manufacturing Districts shall not be less than five (5) feet or, when abutting a residential or a public use zone, less than ten (10) feet. (Ord. No. Z-108, 04-17-12; Ord. No. A-4, 10-01-12)

TABLE 4 – DIMENSIONAL CONTRALS FOR REAR LOT DEVELOPMENT IN RESIDENCE ZONES

ZONING DISTRICT	MIN. REQ. LOT AREA	VEHIC. ACCESS(1)	FRON-TAGE(2)	SETBACKS FRONT(3)	SETBACKS SIDE	SETBACKS REAR	ALT. RES. BUILDING SEP.(4) SIDE SEP.	ALT. RES. BUILDING SEP.(4) MIN TO LINE	ALT. RES. BUILDING SEP.(4) REAR SEP.	ALT. RES. BUILDING SEP.(4) MIN TO LINE	TOTAL FL. AREA RATIO	BLDG HEIGHT(5, 7)	MAX # STOR.(6)	MAX. BLD. LOT CO-VERAGE	MIN. REQ. OPEN SPACE
SR-1	30,000	20	140	40	30	38	60	20	76	25	0.12	36	2.5	13%	70%
SR-2	18,000	20	100	30	23	23	46	15	46	15	0.20	36	2.5	17%	65%
SR-3	12,000	20	80	30	15	23	30	10	46	15	0.24	36	2.5	25%	50%
MR-1	12,000	20	80	30	15	23	30	10	46	15	0.28	36	2.5	25%	50%
MR-2	12,000	20	80	25	15	23	30	10	46	15	0.28	36	2.5	25%	50%
MR-3	12,000	20	80	25	12	23	24	8	46	15	0.28	36	2.5	25%	50%
MR-4	12,000	20	80	25	15	23	30	10	46	15	0.28	36	2.5	25%	50%

NOTES:

1 May be provided in fee as part of the lot with street frontage 20 ft. wide or as a legal easement or right-of-way 20 ft. wide.

If provided in fee, the area utilized for vehicular access (lot stem portion) may not be counted more than 20% toward minimum lot area requirement.

2 Required for street lot. Also required for rear lot, but may be measured along the rear lot line of the lot in front.

3 Subject to special permit, a building on a rear lot may be located no closer than 25 ft. from the rear line of the lot in front.

4 Alternate side building separation standard (measured across lot line, building to building) may be utilized in place of required sideyard. Note min. distance to lot line.

Alternate rear building separation standard (measured across lot line, building to building) may be utilized in place of required rear yard. Note min. distance to lot line.

5 Building height applies as described in Table 1, Footnotes 2 and 4.

6 Allow three stories by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures

7 A building with a sloped roof shall have a maximum height of thirty-six (36) feet. A building with a flat roof shall have a maximum height of thirty (30) feet.

(Ord. No. Z-91, 06-06-11; Ord. No. Z-101, 12-05-11)

Sec. 30-16. Dimensional requirements for dormitories in residence districts.

In all residence districts the construction, alteration, enlargement, extension or reconstruction of a building or structure as, and the use of a building, structure or land for, a dormitory providing sleeping quarters for twenty (20) or more persons, shall be further subject to the procedures established in section 30-23 and to the following conditions:

(a) *Front yard setback.* The front yard depth or the setback line from the nearest street line shall not be less than the distances established in Table 2 of section 30-15.

(b) *Side and rear yards.* The side and rear yard depths measured from the boundary lines of the lot on which the building is located shall not be less that the distances established in Table 2 of section 30-15.

(c) *Building location.* A dormitory shall not be closer to any other building on the same lot than fifty (50) feet.

(d) *Courts.* An inner court shall have a minimum dimension at least equal to twice the average height of the surrounding walls and shall have an opening at ground level with a minimum height of eighteen (18) feet and a minimum width of eighteen (18) feet to permit access to service and emergency vehicles. An outer court shall be open to the full extent of its width at least equal to one and one-half (1-1/2) times the average height of the surrounding walls and a depth no greater than its width. The area of any court which exceeds fifteen (15) percent of the "Minimum open area" required herein shall not be included in the calculation of that minimum open area.

(e) *Building height.* The height of any dormitory measured to the roof plate line shall not exceed the limits established in Table 2 of section 30-15.

(f) *Lot coverage.* The maximum percentage of the lot area which may be covered by dormitory buildings, including accessory buildings or structures, shall not exceed the limits established in Table 2 of section 30-15.

(g) *Minimum open area.* The minimum percentage of the lot area which shall be free from buildings or structures of all kinds, access streets, ways, parking areas, driveways, aisles, walkways or other constructed approaches or service areas and also free from outdoor laundry, incinerator or other building service areas shall not be less than the limits established in Table 2 of section 30-15.

Sec. 30-17. Alteration, etc., of attached garage where below required height above grade.

In all residential districts, no garage first erected after March 16, 1953, which is an integral part of a dwelling shall be constructed, altered, enlarged, extended or reconstructed where the entrance to such garage is less than six (6) inches above the grade established by the city engineer for the highest point of the back edge of any sidewalk upon which the lot abuts, unless either the commissioner of inspectional services and the city engineer, or the persons performing their functions, shall both certify that in their opinion the surface drainage conditions at the location are such as to minimize the danger of flooding of such garage and dwelling. The certificate of opinion required by this section may be given either by separate certificate or by endorsement upon the building permit, and shall not be withheld if in fact surface drainage at the location is adequate for the purposes above specified. No certificate of opinion given pursuant to this section shall be deemed to be a representation to any person of the accuracy of that opinion nor shall any such certificate involve the city or any officer or employee thereof in any liability to any person. (Rev. Ords. 1973, §24-19; Ord. No. 119, 3-15-76; Ord. No. 190, 12-20-76)

Sec. 30-18. Permission for construction and operation of heliports.

In business 5, business 1, limited manufacturing and manufacturing districts, the board of aldermen may give site plan approval and grant a special permit in accordance with the procedures in section 30-23 and section 30-24 for the location, operation and utilization of heliports subject to the following conditions:

(a) In addition to the information required under sections 30-23 and 30-24, there shall be submitted with each request for permission to construct, operate or utilize a heliport, a site plan showing the direction of the prevailing winds, the approach-departure pattern, including the horizontal plan and elevation profile of the flight paths to be used, and distances to surrounding residential areas or residential zoning districts. There shall be submitted an approach-departure profile which shall show it clear of all obstructions and in conformity with Federal Aviation Agency and Massachusetts Aeronautics Commission regulations and recommendations.

(b) Said flight plan and approach-departure pattern may be modified at any time by the board of aldermen upon its own motion or upon petition by any interested city board or official or other interested person in accordance with the provisions of section 30-23 and section 30-24, provided, such modifications are not inconsistent with the requirements of any federal or state regulatory authority having jurisdictions thereover.

(c) No portion of a heliport shall be nearer than two hundred (200) feet to a residence district. A heliport shall not be used for sales, repairs or servicing of any kind, and no advertising sign or material shall be located on the heliport or on the structures or fences thereon. No helicraft shall operate from a heliport between the hours of 11:00 p.m. and 6:00 a.m.

(d) Heliport landing areas shall have a minimum area one hundred (100) feet by one hundred (100) feet which shall be completely paved and shall be kept free from loose material. The land area shall be completely and permanently enclosed by a fence at least four (4) feet in height, which fence shall be a wind deflection fence if the landing area is constructed on a building or other elevated place.

(e) Heliport landing areas shall be provided with means for the safe collection and disposition of fuel spilled in an emergency. Adequate fire protection and fire-fighting equipment shall be provided in accordance with federal, state and local requirements, and shall be regularly inspected and tested.

(f) Heliport landing areas shall be provided with marking, lighting and wind direction indications in conformity with Federal Aviation Agency and Massachusetts Aeronautics Commission regulations and recommendations.

(g) The board of aldermen may require evidence of certification and approval by the Massachusetts Aeronautics Commission, the Federal Aviation Agency, Civil Aeronautics Board or other appropriate agencies prior to the granting of a special permit for a heliport.

(h) A special permit granted under this section shall expire one year after approval and subsequent annual renewals may be granted by the board of aldermen without public hearing unless the board shall vote to require such a public hearing. (Rev. Ords. 1973, §24-23; Ord. No. 284, Pt. XIV, 6-19-78)

Sec. 30-18A. Wireless communication equipment.

(a) *Purpose.* The purpose of this section is to accommodate the communications needs of the general public in the city while protecting the public safety, and general welfare of the community by minimizing the adverse visual effects of wireless communication equipment towers, facilities and devices, by providing safeguards for the general public, by avoiding potential damage to adjacent properties, and by maximizing the use of existing towers and buildings, by concealing new equipment within or on existing towers or buildings, and by encouraging co-location of equipment to accommodate the needs of wireless communication in order to reduce the number of towers needed to serve the community.

(b) *Definitions*. These definitions are to be used for purposes of section 30-18A.

Wireless communication equipment shall mean any device or other apparatus, fixed at a location, for transmission and reception of telecommunication that performs the function of antennas, together with any supporting structures, equipment and facilities ancillary and/or accessory thereto, including, but not limited to, panel antennas, whip antennas, free-standing monopoles (not lattice shaped towers except as allowed in subsection (d)(2) below), dish and cone shaped antennas, satellite earth station antennas, personal wireless communication systems facilities, paging service facilities, cellular telephone service facilities, mobile radio service facilities and related equipment boxes.

Wireless Mesh Network: a comprehensive wireless communication network comprised of wireless communication equipment consisting of multiple peer radio access points or repeaters small enough to be mounted on the arm of existing municipal light or power poles, as allowed by the review process under Section 30-18A(g).

An *antenna* is a device, usually a metal rod, dish or panel, for receiving and transmitting electromagnetic signals, including, but not limited to radio, video, telephone or data transmissions.

Building-mounted wireless communication equipment is comprised of roof-mounted and facade-mounted wireless communication equipment.

Facade-mounted wireless communication equipment is wireless communication equipment attached to a vertical wall, exterior surface or ornamental feature other than the roof of a building or structure.

Interior-mounted wireless communication equipment is wireless communication equipment that is wholly within a building or structure, including such equipment within a mechanical penthouse, steeples, bell towers, cupolas or other architectural features which are not completely enclosed.

Roof-mounted wireless communication equipment is wireless communication equipment attached to the primary roof of the building.

Satellite earth station antenna is an antenna intended for transmission or reception of communications to or from one or more other satellite earth stations by means of one or more reflecting satellites.

(c) *Design and Operating Criteria.* All wireless communication equipment, except that described in subsections (d)(1) and (d)(7), must satisfy the following criteria and the applicable procedures of subsections (f) or (g) hereof:

(1) Wireless communication equipment shall be installed, erected, maintained and used in compliance with all applicable federal and state laws and regulations, including, but not limited to, radio frequency emissions regulations issued pursuant to the Telecommunications Act of 1996 including all successors to such laws and regulations. An applicant seeking to construct or install wireless communication equipment shall submit a report from a qualified engineer or other appropriate professional certifying that the proposed equipment meets the requirements of these regulations. This report shall be submitted prior to any administrative review, site plan approval or special permit application or at the time of a building permit application if there is no such review.

(2) Wireless communication equipment must at all times be maintained in good and safe condition and comply with all applicable FCC standards and shall be removed within thirty (30) days of the date when all use of such equipment ceases. This provision shall apply to all wireless communication

equipment and structures in support of that equipment, including such equipment and structures existing on the effective date of this section. Continued compliance with these conditions shall be maintained by the operator of the equipment and the owner of the structure. Failure to comply with these conditions shall constitute a zoning violation.

(3) All wireless communication equipment shall be sited, screened and/or painted or otherwise colored or finished to blend in with the building or structure on which it is mounted or in a manner which aesthetically minimizes the visibility of the devices in the surrounding landscape or on the building or structure to which they are attached. In certain circumstances, additional architectural features or changes to the facade may be necessary to maintain the balance and integrity of the design of the building or structure with building-mounted wireless communication equipment.

(4) Any fencing used to control access to wireless communication equipment shall be compatible with the visual character of the structures in the surrounding neighborhood to the extent possible.

(5) Equipment boxes for building-mounted wireless communication equipment must be either interior to the building on which it is located, completely camouflaged, and/or completely screened from view from the public way.

(6) All free-standing wireless communication equipment must meet any setback requirements for the district in which it is located and, to the greatest extent possible, shall be screened from the public way by fencing and/or landscaping. Such equipment shall be located in the rear yard of the lot on which it is located.

(7) No part of any building-mounted wireless communication equipment shall be located over a public way.

(8) The construction of wireless communication equipment shall avoid major topographic changes and shall minimize the removal of trees and soil in order for any topographic changes to be in keeping with the appearance of neighboring properties.

(9) The installation of wireless communication equipment shall avoid the removal or disruption of historic resources on and off-site. Historic resources shall include designated historic structures or sites, historical architectural elements or archaeological sites and shall comply with the requirements of the historic district and the landmark preservation ordinances.

(10) There shall be no illumination of the wireless communication equipment except as required by state and federal law.

(11) Equipment owned and operated by an amateur radio operator shall be constructed at the minimum height necessary to effectively accommodate amateur radio communications in order to minimize the aesthetic impact. The relative safety and aesthetic impact of different style towers or antennas shall be taken into consideration during the administrative site plan review process outlined in subsection (g).

(12) Wireless communication equipment must at all times be maintained and operated in a way which meets the standards of any ordinance of the City of Newton pertaining to noise ("Noise Ordinance"). An applicant seeking to construct or install any external noise producing equipment ancillary to antennas shall use best efforts to minimize noise emanating from such equipment by the use of air-tight seals and noise absorbing materials on the walls and ducts of such equipment. The applicant shall also submit a report from a qualified acoustical engineer or other appropriate professional certifying that the proposed equipment meets the requirements of the Noise Ordinance. This provision shall apply to all

wireless communication equipment and structures existing on the effective date of this section. Failure to comply with any such ordinance shall constitute a zoning violation.

(d) *Wireless Communication Equipment Allowed As-of-Right.* The following wireless communication equipment is allowed as-of-right, subject to the design and operating criteria of subsection (c) and the review process in subsection (g), if applicable:

(1) Equipment used solely for receiving or transmitting wireless communication customary for private residential use, even if such equipment is used in conjunction with non-residential structures, including but not limited to, a conventional television or radio antenna, fixed wireless personal communication system, direct broadcast satellite antenna one (1) meter or less in diameter, and multipoint distribution service antenna or home satellite dish of not more than two (2) meters in diameter or measured diagonally.

(2) Equipment owned and operated by an amateur radio operator licensed by the FCC, which device shall be installed at the minimum height necessary for the functioning of amateur radio communication in accordance with the licensing requirements for that location. Such equipment, which may include a ground-mounted lattice style tower, shall be allowed in accordance with the setback requirements for primary structures in the district in which it is located and the administrative site plan review process outlined in subsection (g) below. No commercial use of equipment or supporting structures which were installed for amateur radio operation is permitted.

(3) All interior-mounted wireless communication equipment is allowed in business, manufacturing and mixed use districts. In residential districts interior-mounted wireless communication equipment shall be permitted in existing steeples, bell towers, cupolas and spires of non-residential buildings or structures existing on January 5, 1998.

(4) Roof-mounted wireless communication equipment is allowed in business, manufacturing and mixed use districts if it meets the following conditions:

Height of building	Maximum height of equipment above the highest point of the roof	Required setback from edge of roof or building
More than 36 feet	12 feet above roof or 20% of building height, whichever is greater	½ foot for every foot of equipment height, including antenna
10-36 feet	10 feet	1 foot for every foot of equipment height, including antenna

If there is a parapet on any building or structure which does not exceed 36 feet in height and if the roof-mounted wireless communication equipment will be transmitting or receiving in the direction of that parapet, the required setback from the edge or edges of the roof of the building at or beyond the parapet shall be reduced by the height of such parapet. The height of a parapet shall not be used to calculate the permissible maximum height of roof-mounted wireless communication equipment. For the purposes of this section, a parapet is that part of any wall entirely above the roof line.

(5) Facade-mounted equipment located in the business, manufacturing and mixed use districts (a) which does not extend above the face of any wall or exterior surface in the case of structures that do not have

walls, (b) which does not extend by more than 18 inches out from the face of the building or structure to which it is attached and (c) which does not obscure any window or other architectural feature.

(6) Interior-mounted wireless communication equipment in the cupolas, spires or towers of buildings in public use districts.

(7) Satellite earth station antennas not otherwise exempt in subsection (d)(1), which do not exceed two (2) meters in diameter and which are located in business, manufacturing and mixed use districts.

(8) With prior notice to the clerk of the board of aldermen, exterior-mounted antennas, with a power source, not to exceed ten (10) feet in height as measured from the lowest point of attachment, screened from view in some manner and solely for municipal use on existing municipal structures in public use districts.

(e) *Wireless Communication Equipment Allowed by Special Permit.* The following wireless communication equipment is allowed by special permit, pursuant to the procedures outlined in subsection (f) below:

(1) Any interior-mounted wireless communication equipment in non-residential buildings or structures not otherwise allowed in subsection (d)(3) hereof.

(2) Any roof-mounted wireless communication equipment which does not meet the requirements of subsection (d)(4) hereof on a non-residential building in any district.

(3) Facade-mounted wireless communication equipment which does not meet the requirements of subsection (d)(5) hereof.

(4) Building-mounted or interior-mounted wireless communication equipment not otherwise permitted under subsection (d)(6) hereof located in public use districts.

(5) Satellite earth station antennas not otherwise allowed as-of-right in subsections (d)(1) and (d)(7) hereof.

(6) Any building-mounted wireless communication equipment on multi-family structures in residential districts not otherwise allowed as-of-right.

(7) Free-standing monopoles meeting the following criteria:

a) Free-standing monopoles shall be no higher than 100 feet.

b) The setback for a free-standing monopole shall be at least 125 feet from the property line.

c) The setback for a free-standing monopole shall also be at least four (4) feet for every one (1) foot of antenna height from the nearest residential structure and/or public right of way and two (2) feet for every one (1) foot of antenna height from the nearest non-residential structure.

d) Co-location of wireless communication equipment on existing towers and buildings is encouraged. The applicant for a wireless communication monopole shall demonstrate that the communication equipment planned for the proposed structure cannot be accommodated on an existing or approved tower, structure or building within a one-half mile search radius of a proposed monopole for one or more structural, technical, economic or other reasons as documented by a qualified engineer or other qualified professional including, but not limited to the following:

i) no such tower, structure or building exists.

ii) the structural capacity of the existing tower, structure or building is inadequate and cannot be modified at a reasonable cost, the proposed equipment will interfere with the usability of existing equipment.

iii) the owner of an appropriate tower, structure or building has effectively denied permission to co-locate by unreasonable delay or commercially unreasonable terms or conditions.

iv) the height of an existing tower, structure or building is not adequate to permit the proposed equipment to function.

e) Every special permit issued by the board of aldermen for a new monopole or tower shall be automatically subject to the condition that the permit holder must allow co-location upon the structure by other wireless communication providers upon commercially reasonable terms and conditions and without unreasonable delay, if such co-location is technically feasible. It is expressly provided that any requirement imposed by a permit holder which requires the payment of rent in excess of industry standards or which allows the co-location only if the requesting party provides comparable space on one of its structures to the permit holder shall be deemed to be commercially unreasonable.

(8) Modification or addition of wireless communication equipment on or to existing free-standing monopoles or towers, except those monopoles and towers constructed for the purposes allowed in subsection (d)(2) above.

(9) In public use districts wireless communication equipment attached to existing light or power poles, provided that the total height from the ground to the top of the antenna does not exceed sixty (60) feet and provided that all control and operating equipment associated with the antenna can be mounted on the same pole at a height no less than twenty (20) feet above the ground or camouflaged or completely screened from view in some other manner.

10) Any equipment ancillary to antennas otherwise allowed under subsections (c) or (d) hereof, which cannot be located in the rear yard and/or does not meet the setback requirements for the district in which it is located. An applicant may apply for a special permit allowing an alternate location by showing that such equipment (a) is required for successful transmission or reception or is otherwise required by the FCC, (b) cannot due to its size or other health or safety reasons be located within the building, and (c) cannot be located in the rear yard and/or within applicable setbacks for one or more of the following reasons: the size of the equipment; the size of the rear, front and/or side yards; the location within the rear yard or applicable setbacks would result in the removal of required parking; and the aesthetic purposes of the ordinance would be better served by such alternate location.

(f) *Special Permit Procedure.* Where a special permit is required for wireless communication equipment, a written application for a special permit shall be submitted in accordance with section 30-24. Whenever an application for a special permit is required for wireless communication equipment, site plan approval in accordance with the provisions of section 30-23, except section 30-23(c)(2), shall also be required and an application for such approval shall be filed concurrently with the application for special permit. The procedures for special permit set forth in section 30-24(c), except for section 30-24(c)(5), shall apply. The board of aldermen may grant a special permit subject to conditions, safeguards and limitations herein set forth, when, in its judgment, the purposes stated in subsection (a) and the applicable design and operating criteria set forth in subsection (c) hereof have been satisfied.

(g) *Wireless Mesh Networks allowed by permit with a majority vote of the Board of Aldermen*. In public use districts, wireless communication equipment consisting of radio access points or repeaters for wireless mesh networks may be installed on the bracket arms of existing municipal light or power poles by majority vote of the full board of aldermen, acting on the advice and after hearing by the committee having jurisdiction over grants of location for utility poles, so long as the board finds that:

(i) the purposes of Section 30-18A are met; (ii) the design and operating criteria set forth in 30-18A(c) are met; (iii) the total height from the ground to the top of any antenna involved in such equipment does not exceed sixty (60) feet and provided that all control and operating equipment associated with any access point can be mounted on the same bracket arm at a height no less than twenty (20) feet above the ground or colored or finished to blend in with the bracket arm on which it is mounted to be as visually unobtrusive as reasonably as possible; and, (iv) the applicant has demonstrated not only substantial public but also a municipal benefit from the installation and operation of such a network.

Applications for construction, expansion, addition to, rebuilding or conversion of wireless mesh networks shall be reviewed by the board of alderman. Review by the board of aldermen shall not be required where network work involves maintenance, repair or replacement of existing access points. *De minimis* modifications to the network, including an increase in number of devices limited to 10% above the number of access points approved by the board of aldermen or the location of an access point nearer than 200' to the next nearest access point may be approved by the director of planning and development, after notice to the clerk of the board and the commissioner of public works.

(1) *Applications*. A written application for review of a wireless mesh network, on forms to be provided by the department of planning and development, shall be submitted by delivery or registered mail, return receipt requested, to the clerk of the board of aldermen, who shall transmit such application to the board of aldermen and the department of planning and development.

The applicant shall notify immediate abutters to the network pathways where access points are to be installed and make the same notice by publication for two consecutive weeks in a newspaper of general circulation, and shall provide certification of such notification to the clerk of the board. The board, acting by and through its committee with jurisdiction over the filing of applications for public utility easements and poles, shall hold a public hearing on such application within 65 days of the application being filed with the clerk of the board, and certified as complete by the director of planning and development as if the subject of a special permit under section 30-18A.

Any approval of an application for a wireless mesh network shall lapse not later than one (1) year from the grant of such approval unless construction required by such site plan approval has begun. The board of aldermen may extend the period of time granted under this subsection 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 or its committee with jurisdiction over the original application 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 approval for more than two (2) years from the date of the grant of the requested relief.

The applicant shall submit to and maintain with the department of planning and development current as-built drawings for the locations of all devices to be installed as part of the mesh network.

(2) *Contents of the Application*. A completed application shall include:

a) A forecast of network access point locations. Such forecast shall include a system map or maps depicting the geographic extent of the network pathways;

b) The expected distance between access points, including a total number of access points to be installed, and any impact on tree cover;

c) Photographs showing a representative access point as it would be mounted on each type of existing light or power pole;

d) Drawings, dimensioned and to scale, of the proposed access point as installed on each type of existing light or power pole, as well as a sample device to be made available for inspection;

e) Structural analysis certifying that the access point may be safely installed on each type of existing light or power pole;

f) Equipment specifications and radio frequency emissions calculations for a typical access point; and

g) A demonstration of substantial municipal and public benefit.

(3) *Criteria for any Wireless Mesh Network.* In order to be eligible for any approval under this section, a wireless mesh network must meet the following criteria in addition to those findings specified above:

a) Only one access point may be installed on the bracket arm of any existing municipal light or power pole.

b) The installation shall be made to be as visually unobtrusive as possible.

c) All equipment must be low-powered and in compliance with FCC regulations.

d) The access point equipment shall be as small as possible and shall not exceed fourteen (14) inches in any dimension, exclusive of any antennas, so long as the antennas are no longer than thirty (30) inches.

e) No installation shall extend more than five (5) feet above or two (2) feet below the height of any existing municipal light or power pole to which it is attached.

f) No commercial signage or advertising may be affixed to any network component.

g) Existing trees and vegetation shall be protected as much as possible.

(4) *Repair and Upkeep of any Wireless Mesh Network.* All wireless mesh network devices shall be maintained in good order and repair. Paint finishes shall be maintained and repaired when blemishes are visible from the public way. The applicant shall provide an inspection schedule, and shall file copies of inspections with the director of planning and development.

(5) *Insurance*. The applicant shall continuously insure its wireless mesh network components against damages to persons or property in an amount established by the commissioner of public works based upon the nature and extent of the proposed network. On an annual basis, the applicant shall provide a Certificate of Insurance, in which the city shall be specifically listed as an additional insured, to the commissioner of public works.

(6) *Bond or Other Financial Surety*. All unused access points or parts thereof shall be removed within one year of the cessation of use at the owner's expense. The applicant shall post and submit a bond or other

financial surety acceptable to the commissioner of public works in an amount sufficient to cover the cost of dismantling and removing the access points in the event the commissioner of inspectional services deems it to have been abandoned for more than one year. Said amount shall be certified by an engineer or other qualified professional registered to practice in the Commonwealth of Massachusetts.

(h) *Administrative Site Plan Review for Wireless Communication Equipment.* Except for wireless communication equipment described in subsections (d)(1) or (d)(7) hereof, no wireless communication equipment shall be constructed or installed until an application has been submitted to the commissioner of inspectional services with two (2) copies of an accompanying site plan showing the location of the device along with any buildings, lot lines, easements and rights of way and also an elevation showing details of the device. The applicant shall simultaneously send a copy of the application and five (5) copies of the plans to the director of planning and development. The applicant shall also notify in writing immediate abutters and the aldermen of the ward in which the device is to be erected, installed or used of such application. The director of planning and development shall submit an advisory report to the commissioner of inspectional services within three weeks of the application filing date. In making his/her advisory report, the director shall evaluate the application based on the requirements of subsection (c) hereof and may seek input from relevant city agencies including, but not limited to the urban design commission, historical commission, historic district commission or any other city agency. The commissioner shall not approve a permit for wireless communication equipment until the advisory report of the director of planning and development has been received or three weeks have elapsed without receipt of such report, and until all required agency approvals have been issued. The commissioner has the authority to deny any building permit application which the commissioner determines does not comply with the requirements of subsection (c) hereof.

(i) *Exceptions.* In extraordinary instances, the board of aldermen may, in accordance with the procedures provided in subsection (f) hereof, grant a special permit to allow for exceptions to the provisions of section 30-18A if the board makes a determination that the applicant has shown that literal compliance would result in unreasonable discrimination among providers of functionally equivalent services or would have the effect of prohibiting the provision of personal wireless communication services as defined in Section 704 of the Telecommunications Act of 1996. Such exceptions may be conditioned to the extent possible to further the purposes set forth in subsection (a) hereof. (Rev. Ords. 1995, Ord. V-156, 1-5-98; Ord. No. Z-26, 05-19-08; Ord. No. Z-26, 05-19-08)

ARTICLE III.
PARKING AND LOADING FACILITIES

Sec. 30-19. Parking and loading facility requirements.

(a) Intent and Purpose. It is the intent of these provisions that any use of land involving the storage or entry upon the land of vehicles be so designed and operated as to reduce hazards to pedestrians upon the public sidewalks, to protect the use of adjacent property from nuisance caused by noise, fumes, and glare of headlights which may result from the operation of cars parking off the streets, to enhance and protect the visual quality of the city, to reduce congestion in the streets and contribute to traffic safety by assuring adequate and well designed areas for the off-street parking, loading, unloading, and maneuvering of vehicles associated with any use of land.

(b) Applicability. No land shall be used and no building shall be erected, enlarged, or used in any district in the city, except as provided hereinafter, unless off-street parking and loading facilities are provided in accordance with the requirements of this section.

The regulations of this section shall not apply to parking or loading facilities in existence or for which building permits have been issued prior to the date of adoption of this section, which conformed to all applicable regulations in effect when established, except that where parking or loading facilities are increased in capacity

after the adoption of this section, the expanded portion thereof shall be constructed in accordance with the regulations of this section.

(c) General Regulations.

(1) No reduction in the number of off-street parking stalls which are required by this section shall be allowed and no existing off-street parking stalls shall be eliminated unless replaced by an equal number of off-street parking stalls designed in accordance with the requirements of this section; provided, that this subparagraph shall not operate to prevent the elimination of existing parking stalls which are in excess of the number required by this section excluding the provision of subparagraphs (c)(2) and (c)(3) of this section.

(2) a) Whenever an enlargement or extension of the gross floor area in a building or structure or a change in use from one type of use to another, as those types of uses are set out in subparagraph (d) of this section, of a building or structure or portion thereof, increases the parking requirements for such building or structure under the provisions of subparagraph (d) of this section, the provisions of this section shall be complied with in accordance with the following formula: A - B + C = required number of parking stalls, provided that this number shall not exceed "A",

"A" being the number of off-street parking stalls required under this section;

"B" being the number of off-street parking stalls which would have been required under the provisions of this section to the building or structure and the use thereof prior to the date of the enlargement, extension or change of use of said building or structure;

"C" being the number of off-street parking stalls located on the premises, or adjacent premises of the owner, or located off-site with the permission of the board of aldermen, prior to the date of the enlargement, extension or change of use of said building or structure.

b) In the case of a change in use of churches, synagogues, theaters, halls, clubs, funeral homes, restaurants, other places serving food and other places of amusement or assembly, the number of off-street parking stalls which would be required for the new use or uses shall be determined by the existing floor area of the existing structure and not the seating capacity thereof. When such building or structure is located in a business, manufacturing or mixed use district, the number of off-street parking stalls which would have been required for such building or structure prior to the date of the enlargement, extension or change of use ("B" of the formula set forth above), shall be calculated under subparagraph 30-19(d)(10) or (11), whichever results in a greater parking requirement.

(3) The board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 to reduce or waive the requirement that parking be provided as would be required by subparagraph (c)(2) above in conjunction with the enlargement, extension or change in use of a building or structure, provided that this reduction or waiver shall not be applicable to any increase in gross floor area.

(4) All required parking facilities shall be provided and maintained so long as the use exists which the facilities were required to serve. Reasonable precautions shall be taken by the owner or operator of particular facilities to assure the availability of required facilities for the employees or other persons whom the facilities are designed to serve. Required parking stalls shall not be assigned to specific persons or tenants nor rented or leased so as to render them in effect unavailable to the persons whom the facilities are designed to serve.

(5) Municipal parking lots shall not be used to meet the parking requirements of this section.

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

(1) Two parking stalls for each dwelling unit in a one- or two-family dwelling. Such parking stalls may be stacked one behind the other and may be located within the side yard setback.

(2) Two parking stalls shall be provided for each dwelling unit in an apartment house, garden apartment, or attached dwellings, provided that the board of aldermen may grant a special permit in accordance with the procedure provided in section 30-24 for the construction of apartment houses, garden apartments, attached dwellings with a lesser parking stall requirement for each dwelling unit if circumstances warrant such modification, but in no case less than one and one-quarter (1-1/4) parking stalls per dwelling unit, except multi-family housing for low-income or elderly persons built under state or federal housing programs. For such public housing projects, one parking stall for each two (2) low-income dwelling units not reserved for the elderly and one parking stall for each four (4) dwelling units reserved for the elderly shall be provided.

(3) One stall for each room or suite designed or intended to be occupied independently by a person or a group of persons in a hotel or motor hotel, and one stall for each three (3) employees on the largest shift.

(4) One stall for each sleeping room in a boarding house, rooming house, lodging house, tourist house, congregate living facility and one stall for each three (3) employees on the largest shift.

(5) One stall for each five (5) occupants in a dormitory.

(6) One stall for each forty (40) square feet of floor space within a funeral home open to the public use, or a minimum of thirty (30) spaces, whichever is larger.

(7) Parking stalls shall be provided on the premises of an elderly housing with services facility, including residential care facilities and elderly congregate living facilities, on the basis of the following:

a) fifty one-hundredths (0.50) parking stall per dwelling unit, except when the board of aldermen determines that adequate transportation services are available, it may grant a special permit to reduce the requirement to a minimum of twenty-five one-hundredths (0.25) parking stall per dwelling unit;

b) twenty-five one-hundredths (0.25) parking stall per nursing home bed;

c) thirty-three one-hundredths (0.33) parking stall per employee on the largest shift.

(8) One stall for each three (3) beds in a hospital or sanitarium and one stall for each three (3) employees on the largest shift.

(9) One stall for each four (4) beds in a convalescent or rest home or other institution devoted to the board, care or treatment of humans and one stall for each three (3) employees on the largest shift.

(10) One stall for each 300 square feet or fraction thereof of gross floor area for use in any bank, post office, retail store, sales room, showroom or service establishment. In addition, one (1) stall shall be provided for each three (3) employees on the largest shift.

(11) One stall for each 250 square feet or fraction thereof of gross floor area, up to 20,000 square feet, and one stall for each 333 square feet or fraction thereof of gross floor area in excess of 20,000 square feet, in any office or professional building, except that parking requirements for gross floor area used for medical offices shall be regulated under subparagraph (12) below.

(12) One stall for each 200 square feet or fraction thereof of gross floor area used for medical offices, except that where such medical offices are in buildings used in conjunction with a hospital and located on the hospital property or abutting land, the number of parking stalls may be one-half of the requirements specified. In addition, one (1) stall shall be provided for each three (3) employees in any laboratory or pharmacy included within such building.

(13) One stall for each three (3) seats, permanent or otherwise, for patron use of restaurants and other places serving food or beverages and of theaters, halls, clubs, auditoriums and other places of amusement or assembly and one stall for each three (3) employees to be employed or anticipated to be employed on the largest shift. Places of assembly or amusement shall also provide one parking stall for each forty-five (45) square feet of gross floor area used for meeting function purposes when such space is customarily used concurrently with the seating space. In the case of such uses in conjunction with a hotel or motor hotel and in the same or an abutting building, the parking stall requirements with respect to patron use of restaurants and other places serving food or beverages shall be one-half (1/2) and with respect to patron use of theaters, halls, clubs, auditoriums and other places of amusement or assembly shall be one-fourth (1/4) of the preceding requirements.

(14) One stall for each six hundred (600) square feet of outdoor or open-air sales space for such uses as drive-in establishments, open-air retail businesses and amusements and other similar uses.

(15) One stall for each four (4) persons employed or anticipated to be employed by any storage business, storage warehouse, telecommunications and data storage facility, or radio or television transmission station and one additional stall for each twenty-five hundred (2,500) square feet of floor space.

(16) One stall for each employee, not residing on the premises, which is needed for compliance with the staffing requirements of the Office for Child Care Services at a family child care home, large family child care home or day care center as defined in section 30-1, or at a school serving children under fourteen (14) years of age.

(17) One stall for each four (4) persons employed or anticipated to be employed on the largest shift for all types of shops, buildings or structures used for research, laboratory, manufacturing or wholesale business and one additional stall for each one thousand (1,000) square feet of floor space.

(18) In the case of a combination, in a single integrated development, of three (3) or more uses enumerated herein, the board of aldermen may grant a special permit, in accordance with the procedure provided in section 30-24 to reduce the sum total of stalls required for each of the uses involved, but in no case may such reduction exceed one-third (1/3) of such total.

(19) One stall for each accessory apartment established pursuant to the provisions of section 30-8(d) or 30-9(h), whichever is applicable.

(20) One stall for each adult occupant in an association of persons.

(21) One stall for each 150 square feet or fraction thereof of gross floor area used in a health club or like establishment, and one stall for each three (3) employees to be employed or anticipated to be employed on the largest shift.

(22) Notwithstanding the other requirements of 30-19(d), by special permit from the Board of Aldermen in accordance with the procedures provided in section 30-24, the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the director of planning and development and peer reviewer at the petitioner's expense, if requested by the director of planning and development. Following the grant of a special permit under this section, no material change in the combination of uses, permitted either by right under section 30-13(f) or as part of a Mixed-Use Development special permit under section 30-13(g), shall be authorized until the petitioner submits a revised analysis demonstrating to the satisfaction of the director of planning and development that sufficient parking exists to accommodate the new combination of uses or requests and receives a modification of the special permit to authorize a change in the number of stalls provided.

(e) *Administration.* Any parking facility containing more than five (5) stalls and any loading facility shall not be constructed, altered or enlarged until an application on appropriate forms supplied by the commissioner of inspectional services with an accompanying off-street parking or loading plan and such other information as the commissioner of inspectional services may reasonably require shall have been filed with the commissioner of inspectional services and a permit for such construction, alteration, or enlargement shall have been issued by the commissioner of inspectional services. Said off-street parking or loading plan shall be a drawing at a scale of one-inch equals twenty (20) feet or one inch equals forty (40) feet, shall be stamped by a qualified Massachusetts registered engineer or land surveyor, and shall include:

(1) the location of all buildings, lot lines, easements and rights of way on the subject lot and abutting lots;

(2) the location and dimensions of all driveways, maneuvering aisles and spaces, parking spaces, storage areas, bicycle parking facilities, and loading facilities; and

(3) the location, size and type of materials for surface paving, curbing, wheel stops, landscaping materials, fencing, surface drainage, and lighting.

Upon receipt of an application for a parking or loading facility permit, the building official shall transmit a copy of the off-street parking or loading plan to the director of planning and development. The director of planning and development shall submit an advisory report to the building official within three (3) weeks of the application filing date. The building official shall not issue a permit until the advisory report of the director of planning and development has been received or three (3) weeks have elapsed without receipt of such report.

(f) *Locations of Required Accessory Parking Facilities.*

(1) Required off-street parking facilities shall be provided on the same lot or premises with the principal use served.

(2) Where the requirements in (f)(1) cannot be met, the board of aldermen may, in accordance with the procedure in section 30-24, subject to such bond, long term lease, easement or other assurance of permanence as it may deem adequate, grant a special permit to allow the required parking facility to be located on another lot which is within a district in which the use to be served by the parking facility would be permitted and which is within five hundred (500) feet of the lot on which the principal use served is located.

(3) In all residence districts, the board of aldermen may grant a special permit in accordance with the procedure in section 30-24 for the construction and operation of parking facilities accessory to a use in a business or manufacturing district; provided, that no part of such parking facility is further than one hundred and fifty (150) feet from the boundary line of a business or manufacturing district and provided that the parking facility is within five hundred (500) feet of the lot on which the principal use is located. Such permission shall be given only if the facility for which a permit is requested is to be used solely for the parking of passenger automobiles accessory to a use lawfully established in said business or manufacturing district. Such parking facilities are not to be used for sales, repair work or servicing of any kind, and no advertising sign or material is to be located on such lots.

(g) *Parking Facilities Containing Five Stalls or Less.* A parking facility containing five (5) stalls or less shall comply with the following requirements:

(1) No parking stall shall be located within any required setback distances from a street and sidelines, except that, in conjunction with a one- or two-family dwelling, one parking stall per dwelling unit may be located within required setback and sideline distances. However, in no case shall a parking stall be setback less than five (5) feet from the street.

(2) The minimum dimensions of a parking stall shall be as follows: stall width shall be at least nine (9) feet; stall depth shall be at least nineteen (19) feet for all angle parking and twenty-one (21) feet for parallel parking.

(3) The entrance and exit drives shall be a minimum of twelve (12) feet wide and a maximum of twenty (20) feet wide.

(4) An outdoor parking facility shall be graded and surfaced to accommodate motor vehicles during all weather conditions.

(h) *Design of Parking Facilities.* The layout and design of parking stalls, maneuvering aisles, and driveways within parking facilities containing more than five (5) stalls shall conform to the following requirements:

(1) Setback distances shall be as follows:

No parking stall shall be located within any required setback distances from a street and sidelines, and shall, in any case be set back a minimum of five (5) feet from the street. No outdoor parking shall be located within five (5) feet of a building or structure containing dwelling units.

(2) Minimum dimensions of parking stalls:

a) Stall widths shall be at least nine (9) feet.

b) Stall depth shall be at least nineteen (19) feet for all angle parking and twenty-one feet for parallel parking.

c) Parking facilities shall provide specially designated parking stalls for the physically handicapped as follows:

Total Number of Stalls	Handicapped Stalls
6-25	1 stall

26-40	2 stalls
41-100	4% but not less than 3 stalls
101-300	3% but not less than 4 stalls
301-800	2% but not less than 9 stalls
801+	1% but not less than 16 stalls

Handicapped stalls shall be clearly identified by a sign that states that these stalls are reserved for physically handicapped persons. Such stalls shall be located in that portion of the parking facility nearest the entrance to the use or structure which the parking facility serves. Handicapped stalls shall have a minimum stall width of at least twelve (12) feet and a minimum stall depth of at least nineteen (19) feet for all angle parking and twenty-four (24) feet for all parallel parking.

d) Where stalls head into a curb which bumpers can overhang, the length of the stall may be reduced by two (2) feet from the required stall depth dimensions; provided such bumper overhang distance shall not be used to meet the screening requirement of subsection (i) of this section.

e) End stalls restricted on one or both sides by curbs, walls, fences, or other obstructions shall have maneuvering space at the aisle end of at least five (5) feet in depth and nine (9) feet in width.

f) Stalls for the parking of noncommercial vans, buses, or other vehicles exceeding seven and one-half (7-1/2) feet by eighteen (18) feet in size shall be specifically identified on the off-street parking or loading plan and shall be of such dimensions as to accommodate the specified type of vehicle. Such vehicles shall be permitted to park only in the stalls so identified and approved by the building official.

(3) Minimum width of maneuvering aisles:

a) Minimum width of aisles providing access to stalls for one-way traffic shall be the following:

Angle of Parking Stall	Minimum Maneuvering Aisle Width
Parallel	12 feet
30 degree	12 feet
45 degree	14 feet
60 degree	19 feet
90 degree	24 feet

b) Minimum width of maneuvering aisles providing access to stalls for two-way traffic shall be twenty (20) feet or the width required above, whichever is greater.

(4) Entrance and exit driveways:

a) Entrance and exit driveways shall be a minimum of twelve (12) feet wide for one-way use only and a minimum of twenty (20) feet wide for two-way use.

b) The maximum width of entrance and exit driveways shall be twenty-five (25) feet, except in conjunction with loading facilities as provided in subsection (l) of this section.

c) Driveways shall be located so as to minimize conflict with traffic on public streets and where good visibility and sight distances are available to observe approaching pedestrian and vehicular traffic.

(5) Design of stall layout:

a) Parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle.

b) The dimensional and stall layout requirements of this section may be modified by the board of aldermen, in accordance with the procedure provided in section 30-24 where a parking facility or portion thereof is under full-time attendant supervision.

(i) *Landscaping.*

(1) Screening. Outdoor parking facilities containing more than five (5) stalls shall be screened from abutting streets and properties.

a) Screening materials shall be located along the perimeter of the parking facility abutting a street or properties other than the use or uses served by the parking facility. Screening shall consist of one or a combination of the following:

(i) A strip of at least five (5) feet in width of densely planted shrubs or trees which are at least three and one-half (3-1/2) feet high at the time of planting and are of a type that may be expected to form a year-round screen;

(ii) A wall, barrier, or fence of uniform appearance. Such wall, barrier, or fence may be opaque or perforated provided that not more than fifty (50) percent of the face is open. There shall be a landscaped strip with a minimum width of three (3) feet between the base of the wall, barrier, or fence and any street or abutting property. The wall, barrier, or fence shall be at least three (3) feet and not more than six (6) feet in height;

(iii) A landscaped earthberm at least three (3) feet in height and eighteen (18) feet in width.

b) Every effort shall be made to retain existing trees.

c) The screening as required herein shall be located so as not to conflict with any corner visibility requirements or any other city ordinances. Such screening may be interrupted by entrances or exits.

(2) Interior landscaping. Outdoor parking facilities containing twenty (20) stalls or more shall contain interior landscaping in accordance with the following requirements.

a) An area equivalent to at least five (5) percent of the area of a parking facility with twenty (20) stalls or more shall be landscaped and continuously maintained. Planting along the perimeter of a parking area, whether for required screening or general beautification, shall not be considered as part of the five (5) percent interior landscaping.

b) An interior planting area shall consist of at least twenty (20) square feet with no dimension less than five (5) feet. At least one tree shall be planted in each such planting area and there shall be at least one tree for every ten (10) parking stalls. The interior landscaping shall be distributed within the parking facility.

c) Trees required by the provisions of this section shall be at least three (3) inches in caliper at the time of planting and shall be species characterized by rapid growth and by suitability and hardiness for location in a parking lot.

d) Bumper overhang areas shall be landscaped with stone, woodchips, low plantings or other materials that will not be damaged as a result of bumper and oil drippings.

(j) *Lighting, Surfacing, and Maintenance of Parking Facilities.* Outdoor parking facilities containing more than five (5) stalls shall be lighted, surfaced, and maintained in accordance with the following requirements:

(1) Lighting.

a) All parking facilities which are used at night shall have security lighting. Lighting shall be so designed as to maintain a minimum intensity of one (1) foot candle on the entire surface of the parking facility.

b) All artificial lighting shall be arranged and shielded so as to prevent glare from the light source onto adjacent streets and properties.

(2) Surfacing and curbing.

a) Parking facilities shall be surfaced, graded and drained to the satisfaction of the city engineer.

b) Parking facilities shall be surfaced with asphalt, concrete, or other durable material, except that less durable surfacing materials may be permitted on emergency access driveways and portions of the parking facility designated for infrequent overflow parking.

c) Paved surfaces shall be marked with four-inch painted lines or some other permanent curb or marking system so as to clearly indicate the stall to be occupied by each motor vehicle, in accordance with the dimensions specified in subsection (h) of this section, which dimensions shall be measured perpendicular to the curb or marking system.

d) Parking facilities shall be drained so that surface water shall not drain onto public ways or abutting properties.

e) Curbing, wheel stops, guard rails, or bollards shall be placed at the edges of surfaced areas, except driveways, in order to protect landscaped areas.

f) Curb ramps with a minimum width of three (3) feet shall be provided to accommodate the movement of handicapped individuals.

(3) Maintenance.

a) Parking facilities shall be kept clean, plowed, and free from rubbish, debris, and snow. All plant materials shall be maintained in a healthy condition and whenever necessary shall be replaced with new plant materials to insure continued compliance with screening and interior landscaping

requirements. All fences, barriers, and walls shall be maintained in good repair and whenever necessary shall be replaced. Whenever necessary, the surfacing, lighting, and markings shall be repaired or replaced.

(k) *Bicycle Parking Facilities.* In the design and construction of parking facilities containing twenty (20) stalls or more, space shall be allocated exclusively for bicycle parking.

(1) Bicycle parking shall be provided in the amount of one bicycle space per ten (10) parking stalls or fraction thereof, except that no more than thirty (30) such bicycle parking spaces shall be required.

(2) Bicycle parking spaces shall be located near the entrance to the use or structure which the parking facility serves and shall, if possible, be within view of pedestrian traffic, without impeding pedestrian flow, so as to minimize the risk of thievery.

(3) Each bicycle parking space shall be sufficient to accommodate bicycles of at least seven (7) feet in length and two (2) feet wide, and shall be provided with some form of steel frame permanently anchored to a foundation, to which a bicycle frame and at least one (1) wheel may be conveniently secured using a chain and padlock or other bicycle lock in common usage The separation of the bicycle parking spaces and the amount of corridor space associated therewith shall be adequate for convenient access to every bicycle space when the parking facility is full.

(l) *Off-street Loading Requirements.*

(1) Application of the off-street loading requirements.

a) No application for a permit for the erection of a new building, or the development of land shall be approved, unless it includes a plan for off-street loading facilities required to comply with the regulations set forth in this section.

b) Where a building existing on the date of adoption of this section is altered or expanded in such a way as to increase the gross floor area by five thousand (5,000) square feet or more, only the additional gross floor area shall be counted in computing the off-street loading requirements. Alterations or expansions aggregating less than five thousand (5,000) square feet subsequent to the date of adoption of this section do not require such provision of loading space.

c) Where retail, or other stores are designed or constructed as a group or as a unified building, the aggregate of individual stores shall be treated as one building for the purpose of calculating off-street loading facilities.

d) Where mixed uses occur, off-street loading facilities shall be the sum of the requirements for the several individual uses computed separately, except that such facilities may be reduced by special permit from the board of aldermen in accordance with the procedure provided in subsection (m) of this section if it can be demonstrated that such individual uses are not in operation at the same time.

(2) Off-street loading facilities shall be provided as follows:

a) Table of Off-Street Loading Requirements (next page)

Table of Off-Street Loading Requirements

Number of bays required for new or expanded uses
by gross floor area of structure or land use
(in thousands of square feet)

	Under 5	5-50	51-100	101-150	151-300	Over 300*
Retail Trade Wholesale and Storage Transportation Terminal Manufacturing Public Utility	0	1	2	3	4	1
Business Services Office Building Hotel, Motel & Dormitory Research Laboratory	0	1	1	2	3	1
Recreation Institution	0	0	1	1	2	1

* for each additional 150

b) Where the computation of required loading bays results in a fractional number, only the fraction of one-half or more shall be counted as one.

c) Loading facilities shall not be reduced in total extent or usability after their installation, except when such reduction is in conformance with the requirements of this section.

(3) Off-street loading facilities shall be located and designed as follows:

a) Each required loading bay shall not be less than ten (10) feet in width, thirty-five (35) feet in length, and twelve (12) feet in height, exclusive of driveways. Maneuvering space shall be located entirely on the lot with immediate and direct ingress to the building intended to be served. All such facilities shall be designed with appropriate means of vehicular access to a street or alley as well as maneuvering area, and no driveways or curb cuts providing access to such loading facilities shall exceed thirty (30) feet in width.

b) Off-street loading bays may be enclosed in a structure and must be so enclosed if the use involves regular night operation, such as that of a bakery, restaurant, hotel, bottling plant or similar uses and if the lot is located within one hundred (100) feet of a residence district.

c) All driveways and loading areas shall be graded, surfaced and suitably maintained to the satisfaction of the city engineer and to the extent necessary to avoid nuisances of dust, erosion, or excessive water flow across public ways.

d) Any lighting shall be arranged and shielded so as to prevent direct glare from the light source onto adjacent streets and properties.

e) Such facilities shall be designed and used in such a manner as at no time to constitute a nuisance or hazard or unreasonable impediment to traffic.

(m) *Exceptions.* In particular instances, the board of aldermen may, in accordance with the procedures provided in section 30-24, grant a special permit to allow for exceptions to the provisions of this section if it is determined that literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features. (Rev. Ords. 1973, §24-21; Ord. No. 33, 12-2-74; Ord. No. 202, Pt. II, 3-21-77; Ord. No. 284, Pt. XIV, 6-19-78; Ord. No. T-57, 11-20-89; Ord. No. T-114, 11-19-90; Ord. No. T-183, 11-4-91; Ord. No. V-173, 5-18-98; Ord. No. W-34, 3-5-01; Ord. No. X-9, 3-4-02; Ord. No. Z-108, 04-17-12)

Sec. 30-20. Signs and other advertising devices.

(a) *Intent and purpose.* It is recognized that signs perform important functions in the city, which are essential for the public safety and general welfare, such as communicating messages, providing information about goods and services available, and providing orientation. It is further recognized that because of their potential detrimental impact on the visual and perceptual environment, signs must be regulated in order to:

(1) prevent hazards to vehicular and pedestrian traffic;

(2) prevent conditions which have a blighting influence and contribute to declining property values;

(3) provide for easy recognition and legibility of all permitted signs and other uses in the immediate vicinity;

(4) preserve the amenities and visual quality of the city and curb the deterioration of the village commercial areas.

It is the intent of these provisions to protect property values, create a more attractive business climate, enhance and protect the physical appearance of the city, provide a more enjoyable and pleasing environment and to encourage the most appropriate use of land.

(b) *Applicability.* All signs shall comply with the regulations for the erection and construction of signs contained in the State Building Code and applicable city ordinances. No sign shall be erected, displayed, or maintained within the city, except those specifically provided for hereinafter. Signs which are allowed by this section shall be either accessory signs or nonaccessory directory signs and shall comply with all dimensional and other applicable regulations in this ordinance.

(c) *Permit procedure.*

(1) Except as hereinafter provided, no sign shall be erected on the exterior of any building or on any land, and no such sign shall be enlarged or altered, with the exception of copy changes on changeable letter panels, clocks, or thermometers, until an application on appropriate forms supplied by the commissioner of inspectional services with such information including plans, drawings, and photographs as the commissioner of inspectional services may require, shall have been filed with the commissioner of inspectional services, and a permit for such erection, alteration or enlargement has been issued by the commissioner of inspectional services. In addition, an outdoor advertising permit from the Commonwealth of Massachusetts outdoor advertising board is required for any nonaccessory directory sign. Upon receipt of an application for

a sign permit the commissioner of inspectional services shall notify the urban design commission and the director of planning and development regarding said application within two (2) weeks of said date of filing, if they deem it necessary. The director of planning and development shall submit an advisory report, including any recommendation of the urban design commission, to the commissioner of inspectional services within three (3) weeks of the application filing date. The fees for sign permits shall be established from time to time by the board of aldermen. Within two (2) months after the erection, alteration or enlargement of any sign, the owner or operator of said sign shall file two (2) eight (8) by ten (10) inch photographs, taken after installation.

(2) The following signs shall be allowed by right without the necessity of a permit therefor:

a) Signs erected by or on the order of a governmental agency when limited to governmental purposes, and excluding any advertising;

b) Names of buildings, date of erection, monumental citations and commemorative tablets, when made a permanent and integral part of a building, not to exceed ten (10) square feet;

c) Banners or flags emblematic of or issued by national, state, or local governments;

d) Signs indicating the name and address of the occupant of a dwelling, not to exceed one square foot. Where a permitted accessory use or occupation exists, such sign shall not exceed two (2) square feet;

e) Awning signs in business, limited manufacturing and manufacturing districts;

f) Window signs, in nonresidential buildings, not to exceed twenty-five (25) percent of the area of the window;

g) Customary signs on gasoline pumps indicating in usual size and form the name and type of gasoline and the price thereof;

h) Clocks and thermometers displaying no information other than the time and temperature;

i) Holiday decorations and lights when in season;

j) Temporary signs as specified in subsection (h) of this section;

k) Signs not to exceed two (2) square feet which indicate warnings, hazards, or public conveniences such as "trespass," "beware of dog," or rest room signs.

(d) *Prohibited signs.* The following signs shall not be permitted, constructed, erected, or maintained:

(1) Nonaccessory signs;

(2) Signs constructed, erected, or maintained on the roof of a building or which extend above the roof plate line.

(3) Portable signs not permanently affixed, anchored, or secured to the ground or a structure on the lot it occupies, including trailer signs and signs affixed to or painted on a vehicle permanently parked on the premises so as to serve as a sign, but excluding signs affixed to or painted on a vehicle temporarily parked on the premises;

(4) Window signs which cover more than twenty-five (25) percent of the area of the window;

(5) Any sign which advertises or calls attention to any products, businesses, or activities which are no longer sold or carried on at any particular premises;

(6) String lights used in connection with commercial premises with the exception of temporary lighting for holiday decoration.

(e) *Regulation of signs in residence districts.* No sign shall be erected or maintained in a residence district except as provided in subsection (c)(2) of this section and except as hereinafter expressly provided:

(1) For each dwelling within a residential building housing not more than two (2) families, there may be one sign displaying the name of the occupant and address of the premises. Such sign shall not exceed one square foot, except where a permitted accessory use or occupation exists, it shall not exceed two (2) square feet.

(2) For each residential building housing more than two (2) families, or in the case of a group of such buildings forming a single housing development, there may be one principal wall sign, not to exceed fifteen (15) square feet, or one free-standing sign not to exceed ten (10) square feet. In addition, there may be one secondary wall sign for each separate building in a group which shall not exceed two (2) square feet.

(3) There may be two (2) signs identifying churches, schools, and other institutional uses on each street frontage, one of which may not exceed twenty (20) square feet in area and one of which may not exceed ten (10) square feet in area. One sign per each street frontage may be free-standing and may be used for notices and announcements of services and events. In addition, if there are a group of buildings forming a complex or campus, there may be any number of additional signs located within the campus, not to exceed ten (10) square feet per sign.

(4) There may be one wall sign, not to exceed twenty (20) square feet, for a valid nonconforming or permitted nonresidential use. The board of aldermen may permit one standing sign as provided in subsection (1) of this section to identify a valid nonconforming or permitted nonresidential use, however, such sign shall not exceed fifteen (15) square feet.

(5) There may be signs indicating "entrance," "exit," "parking," or the like, erected on a premises for the direction of persons or vehicles, not to exceed three (3) square feet per sign.

(f) *Regulation of signs in commercial districts.* In business, limited manufacturing, manufacturing, and mixed use districts only those signs may be erected or maintained which are permitted in subsection (c)(2) of this section, which are allowed in a residence district as provided in subsection (e), or which comply with the following provisions:

(1) Principal signs. Except as provided in subsection 30-20(j)(2), for each business establishment there may be one principal wall sign not exceeding three (3) square feet for each foot of sign frontage of the wall to which it is affixed or one hundred (100) square feet, whichever is less, except that where a business establishment is located on a corner where the frontage on the second street is at least seventy-five (75) percent of the frontage on the first street, there may be two (2) such principal wall signs. 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 of the principal wall sign, as specified in the formula above, may be divided between two (2) such wall signs which would together constitute the principal wall sign. Where permission is granted for a free-standing sign, as provided in subsection l) of this section, said free-standing sign shall be considered the principal sign;

(2) Secondary signs. Except as provided in subsection 30-20(j), for each separate building, entrance, or frontage on a street or parking area, there may be one secondary wall sign not exceeding one square foot of sign frontage of the wall to which it is affixed, or fifty (50) square feet, whichever is less. Secondary signs may not be erected on the same wall as a principal sign and there may not be more than two (2) secondary signs;

(3) Directory signs. There may be one directory wall sign indicating the occupants or tenants of the building to which the sign is affixed, said sign not exceeding an area determined on the basis of one square foot for each occupant of tenant. If a building has a second entrance with frontage on a street or parking area, there may be a second directory wall sign as provided above. Such signs shall not be deemed nonaccessory directory signs;

(4) Marquee signs. There may be one marquee sign for a theatre;

(5) Awning signs. Awning signs are permitted, provided sign lettering does not occupy more than twenty (20) percent of the awning area;

(6) Window signs. Window signs not exceeding in the aggregate twenty-five (25) percent of the window area through which they are visible are permitted;

(7) Gasoline station signs. Gasoline selling and service stations may maintain product identification signs (tires, oil...) provided that said signs are consolidated in one display on the subject premises and do not exceed twenty (20) square feet in the aggregate;

(8) Directional signs. Signs indicating "Entrance," "Exit," "Parking," or the like, erected on a premises for the direction of persons or vehicles, not to exceed three (3) square feet per sign;

(9) Standing signs. In particular instances, the board of aldermen may permit standing signs, kiosks, or public information bulletin boards as provided in subsection (1) of this section.

(10) *Short term event signs*. The commissioner of inspectional services may permit an establishment to display on its premises one non-illuminated sign announcing a special event of limited duration to take place on the premises. Such sign may be displayed for a period not to exceed seventy-two hours, including time required for installation and removal. The commissioner shall issue such a permit to the same establishment no more than twice per calendar year. Applications for such permits shall be submitted in accordance with section 30-20(c)(1), but shall be submitted no later than one week prior to the proposed date of installation. Applications for such permits shall not be subject to notice to and review by the urban design commission and the director of planning.

(g) *Regulation of signs in open space/recreation and public use districts.* In public use districts no sign shall be erected, displayed or maintained except as hereinafter expressly provided:

(1) Those signs specifically exempt from prohibition, including the display of placards for the expression of political, religious, or public service ideas, so long as the placards remain in the physical possession of a person.

(2) Regulatory signs as may be erected by the city, county, state, or agencies thereof.

(3) Signs for the identification of public buildings or public premises, or allowed uses in open space/recreation and public use districts, or valid nonconforming uses existing in open space/recreation and public use districts. These identification signs shall not exceed twenty (20) square feet in area.

(4) In particular instances, the board of aldermen may permit standing signs, public information bulletin boards and exceptions to the maximum area requirement of twenty (20) square feet for signs set out in subsection 30-20(g)(3) above, as provided for in subsection 30-20(l), but in no event shall any standing sign exceed thirty-five (35) square feet in area in an open space/recreation or public use district.

(h) *Temporary signs.* Temporary signs shall not be illuminated and shall comply with the following provisions:

(1) Temporary identification signs. One temporary identification sign to identify a property or use during the period from the submission of a sign application to the building official or during the special permit procedure outlined in subsection (l) of this section to thirty (30) days after the decision, may be erected, provided that in the event of an unfavorable decision such temporary sign shall be removed forthwith, and provided that the temporary sign conforms with all applicable dimensional regulations of this section, that it is, in fact, a temporary sign not involving any substantial expense, and that it is displayed in a manner which will not deface the building facade or otherwise impinge upon the review of the proposed sign.

(2) Construction signs. One or more signs during the construction or alteration of a building identifying the building, owner, contractor, architects and engineers and whether any business is or is not to be conducted therein may be erected. Such signs shall not exceed in the aggregate thirty-two (32) square feet and shall be removed within forty-eight (48) hours after completion of the construction or alteration.

(3) Real estate signs. One unlighted sign, not exceeding twelve (12) square feet in residential districts and thirty-two (32) square feet in commercial districts, advertising the sale, rental or lease of the premises or part of the premises or the willingness to build on the premises on which the sign is displayed may be erected. Such signs shall be removed within forty-eight (48) hours after the sale, rental or lease.

(4) Event signs. Signs not exceeding thirty (30) square feet, announcing a fund raising drive or event of a civic, philanthropic, educational or religious organization, displayed on the site of the event or the property of the sponsoring agency and limited to one per each lot, except that if a lot has frontage on more than one street, there may be a free-standing sign for each street frontage. Such signs shall not be erected before fourteen (14) days preceding the event and shall be removed within forty-eight (48) hours after the event.

(5) Yard or garage sale signs. Signs, not exceeding five (5) square feet, announcing a yard or garage sale, which are displayed on private property and limited to one per each premises, may be erected. Such signs shall not be erected before three (3) days preceding the sale and shall be removed within twenty-four (24) hours after the sale.

(6) *Election signs.* Except as otherwise provided in these ordinances, election signs on a single lot shall be allowed in all zoning districts and shall conform to the following:

a) The face of the sign shall be no higher than and no wider than three (3) feet;

b) The total area of all signs on the lot shall not exceed thirty-two (32) square feet;

c) Signs may be located anywhere on the lot, but shall not create a traffic safety hazard by blocking visibility of traffic on a public street from a driveway. Signs shall not overhang a public sidewalk; however, where there is no sidewalk, no part of the sign shall be closer than eight (8) feet to the edge of the paved portion of the public way;

d) Signs shall not include any names or logos advertising goods, services, or businesses or otherwise constituting commercial speech;

e) Signs shall not use obscene language in violation of established community standards;

f) Signs shall not be artificially illuminated except as permitted by section 30-20(i)(4);

g) Election signs may be erected no earlier than forty-five (45) days before an election and shall be removed within forty-eight (48) hours after the election; and

h) No more than one (1) election sign per candidate or per ballot issue shall be erected on a single lot.

(i) *Illuminated signs.*

(1) No sign shall contain any moving parts or flashing or blinking lights so as to create an animated effect, except such portions of a sign which consist solely of indicators of time and temperature.

(2) No red or green lights or any lighting effect utilizing such colors shall be used on any sign if, in the opinion of the chief of police, such light or lighting effect would create a hazard to the operation of motor vehicles.

(3) Any lighting of a sign shall be continuous and shall be either interior, nonexposed or exterior illumination. All illumination shall be of reasonable intensity and shielded in such a manner that all direct light falls on the sign or the wall to which it is affixed and does not shine onto any street or nearby property.

(4) No sign shall be lighted between the hours of 11:00 p.m. and 7:00 a.m., except those signs identifying police or fire stations, a residential building, or in the case of a commercial establishment, signs which may be lighted during a period extending from one-half hour before opening for business and to one-half hour after closing. The board of aldermen may specifically grant a special permit, in accordance with the procedure provided in section 30-24, for other signs to be illuminated if said board finds that such illumination is in the public interest.

(j) *Construction and maintenance.*

(1) The construction, alteration, repair and maintenance of all signs, as allowed by this section, together with their appurtenant and auxiliary devices in respect to structural and fire safety, shall be governed by the provisions of the State Building Code. The provisions of this section, where more restrictive in respect to location, use, size or height of signs and other applicable regulations shall take precedence.

(2) Wall signs shall be affixed either parallel or perpendicular to a wall of a building. Where a building or structure to which a parallel wall sign is to be affixed has an identifiable sign band as determined by the director of planning and development in consultation with the urban design commission, or is part of a block of commercial establishments which, except for the petitioned property, is the subject of uniform signage, the parallel wall sign shall be located within said identifiable sign band and/or shall be consistent with any uniform signage. A parallel wall sign shall project no more than twelve (12) inches from the building surface and shall not extend above the roof line or beyond the sides of the building. A perpendicular wall sign shall be attached at a right angle to the wall of a building; it shall have no more than two (2) faces; and it shall not project in any linear dimension more than six (6) feet, subject to the provisions of sections 26-1 to 26-6 of the Revised Ordinances, as amended. When a projecting sign is closer than twelve (12) feet to the corner of a building, its projection shall be no more than a distance equal to one-half the horizontal distance from the sign to that building corner.

(3) No sign shall be erected so as to obstruct any door, window or fire escape on a building.

(4) Any sign which advertises or calls attention to any products, businesses or activities which are no longer sold or carried on at any particular premises shall be removed by the occupant or owner of the premises within thirty (30) days. If any such sign is not removed within the thirty-day period, the building official shall give written notification, in hand or by certified mail, return receipt requested, to the owner or occupant of the premises that the building official shall have such sign removed and assess any costs of the removal to the owner or occupant. If within thirty (30) days from the date of receipt of the notification the sign has not been removed by the owner or occupant, then the building official shall remove said sign.

(k) *Nonconforming signs.*

(1) Any nonconforming wall sign legally erected prior to the adoption of this section, or any amendment hereto, may be continued to be maintained but shall not be enlarged, reworded, redesigned or altered in any way unless it conforms with the provisions contained herein. Any sign which has been destroyed or damaged to the extent that the cost or repair or restoration will exceed one-third of the replacement value as of the date of destruction shall not be repaired, rebuilt, restored or changed unless in conformity with this chapter.

(2) The exemption herein granted shall not apply to any nonaccessory sign or to any sign which has been illegally erected, has been abandoned, or has not been repaired or properly maintained, as provided in subsections (j)(1) and (j)(5) above.

(l) *Exceptions.* In particular instances, the board of aldermen may, in accordance with the procedures provided in section 30-24, grant a special permit to allow standing signs and exceptions to the limitations imposed by this section on the number, size, location and height of signs if it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street is such that standing signs or exceptions should be permitted in the public interest. In granting such a permit, the board shall specify the size, type and location and shall impose such other terms and restrictions as it may deem to be in the public interest and in accordance with the building code, provided that, except as further limited in subsection (e)(4) of this section, any such standing sign shall not exceed thirty-five (35) square feet in area, or ten (10) feet in any linear dimension, or sixteen (16) feet in height from the ground. Where a single lot is occupied by more than one establishment, whether in the same structure or not, there shall not be more than one free-standing sign for each street frontage. In granting such a permit, the board shall specify the size, type and location of any such sign and shall impose such other forms and restrictions as it may deem to be in the public interest, and in accordance with the building code.

(m) *Guidelines.* The director of planning and development may from time to time prepare and issue guidelines to clarify the provisions of this section. (Rev. Ords. 1973, §24-25; Ord. No. 51, Pt. I, 2-3-75; Ord. No. 89, 10-6-75; Ord. No. 119, 3-15-76; Ord. No. 141, 7-6-76; Ord. No. 158, Pt. II, 10-18-76; Ord. No. 196, 2-22-77; Ord. No. R-273, 11-15-82; Ord. No. T-64, 12-18-89; Ord. No. V-7, 3-20-95, Ord. No. V-90, 9-3-96; Ord. no. Z-27, 05-19-08)

Sec. 30-21. Applicability of chapter to existing building; nonconforming uses; prior permits.

(a) Except as provided in section 30-21(c) below, this chapter or any amendment thereof shall not apply to buildings, structures or uses lawfully in existence or lawfully begun prior to the first publication of notice of the public hearing on such ordinance required by section five of chapter 40A, nor to the use of land to the extent that it was used at the time of adoption of the same or of any corresponding provision of any prior ordinance.

(1) A special permit is not required from the board of aldermen for lawful nonconforming buildings or structures in the following cases, (however, such buildings or structures shall be subject to otherwise applicable regulatory provisions of this chapter and any amendment thereof, specifically including but not limited to section 30-19):

a) Alteration, reconstruction, extension or structural change to a single or two-family residential structure which does not increase the nonconforming nature of said structure, and no such increase shall be deemed to have occurred solely because the lot area, or the lot frontage, or both, are nonconforming, and no such increase shall be deemed to have occurred solely because the lot area per unit is nonconforming unless the number of units increases;

b) Change in use to a use permitted as of right, in a business, mixed use, manufacturing or limited manufacturing district;

c) Alteration, reconstruction, structural change, but not an extension or enlargement of a lawful nonconforming building or structure for a use permitted as of right, in a business, mixed use, manufacturing or limited manufacturing district;

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

(2) A special permit from the board of aldermen shall be required in the following cases:

a) Any change or substantial extension of such use, except as provided above in subsections (a)(1)b) and d);

b) Any alteration, reconstruction, extension or structural change of such building or structure to provide for its use in a substantially different manner or greater extent than the existing use, except as provided above in subsections (a)(1)a) and c); and

c) As provided in section 30-21(b) below.

(3) This chapter or any amendment thereof shall apply to the following cases:

a) Any building or structure or the use of any building, structure or land existing in violation of the ordinances in force at the time this chapter or any corresponding provision of any prior ordinance was adopted;

b) Any nonconforming building or structure not used for a period of two (2) years or any nonconforming use abandoned for a period of two (2) years; and

c) Any nonconforming use which is changed to a conforming use. No reversion to a nonconforming use shall be permitted thereafter.

(b) A nonconforming building or structure may be structurally or substantially altered or reconstructed or may be altered or enlarged to permit the extension of a nonconforming use, and a nonconforming use may be extended in an existing building or structure or enlargement thereof, or may be introduced into a new building as a part of a nonconforming establishment existing on December 27, 1922, and a nonconforming use may be changed to another nonconforming use; provided, that a special permit is obtained from the board of aldermen in accordance with the procedure provided in section 30-24. In granting such a permit, the board of aldermen shall make a finding that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and shall impose such conditions as may be necessary to protect the neighborhood from injury. As used in this paragraph, the word “establishment” shall include buildings, structures and lands.

(c) Regardless of whether there are increases in the nonconforming nature of a structure, the board of aldermen deems that the following changes to lawfully nonconforming structures are *de minimis* and that these changes are not substantially more detrimental to the neighborhood pursuant to chapter 40A, section 6 of the General Laws. The following alterations, enlargements, reconstruction of or extensions to a lawful nonconforming building or structure used for residential purposes may be allowed in accordance with the procedures set forth below; provided that (1) relief is limited to that portion or portions of the building or structure which is presently dimensionally nonconforming, (2) the resulting changes on the nonconforming side will be no closer than five feet to the side or rear property line, (3) the resulting distance to the nearest residence at the side where the proposed construction will take place is equal to or greater than the sum of the required setbacks of the two adjacent lots, (4) the resulting construction will meet all building and fire safety codes, and (5) the *de minimis* relief provided in this section shall not apply to buildings in which the nonconformity is due solely to FAR requirements set out in section 30-15(u) Table A, nor shall it be used to increase the FAR beyond that shown in Table A:

(1) Dormers that do not extend above the height of the existing roof peak and do not add more than four hundred (400) square feet of floor area;

(2) Decks or deck additions or porches less than two hundred (200) square feet in size;

(3) First floor additions in the side and rear setbacks which do not total more than two hundred (200) square feet in size;

(4) Second floor additions which do not total more than four hundred (400) square feet in size;

(5) Enclosing an existing porch of any size;

(6) Bay windows in the side and rear setbacks which are cantilevered and do not have foundations;

(7) Bay windows which protrude no more than three (3) feet into the front setback and are no less than five (5) feet from the alteration to the lot line;

(8) Alterations to the front of the structure if within the existing footprint; and

(9) Alterations and additions to the front of a structure of not more than seventy-five (75) square feet in size, so long as the alteration, addition, reconstruction or extension does not encroach any farther into the front setback.

(d) This chapter or any amendment thereof shall not affect any permit issued or any building or structure lawfully begun before the first publication of notice of the public hearing on such chapter or any amendment thereto required by section 5 of chapter 40A of the General Laws, but shall apply to any building or special permit issued after the first notice of said public hearing; provided, that construction work under such a permit is commenced within six (6) months after it is issued and the work, whether under such permit or otherwise lawfully begun is continued through to completion as continuously and expeditiously as it is reasonable. Notwithstanding the foregoing provisions of this section, all land use petitions for site plan approval or special permits which were filed with the city clerk on or before April 29, 1987 and which were approved subsequent to that date shall be subject to the provisions of the Newton Zoning Ordinance, in effect on April 29, 1987. (Rev. Ords. 1973, §§ 24-26; Ord. No. 284, Pts. VIII(A), (B), XIV, 6-19-78; Ord. No. 303, Pt. VI, 11-20-78; Ord. No. T-93, 6-18-90; Ord. No. T-115, 11-19-90; Ord. No. T-313, 12-6-93; Ord. No. T-314, 12-6-93; Ord. No. W-51, 7-9-01; Ord. No. X-39, 12-2-02; Ord. No. Z-51, 08-10-09; Ord. No. Z-77, 02-22-11)

State law reference —Nonconforming uses and structures, G.L. c. 40A, § 6

ARTICLE IV.

ZONING ADMINISTRATION

The purpose of this article is to protect the health, safety, convenience and general welfare of the inhabitants of the city by providing for a review of plans for certain proposed uses and structures in order to better control potential impacts on traffic, parking, municipal and public services, utilities, and environmental quality in the city, to administer the provisions of this ordinance and to ensure that the proposed uses and structures will be located, designed and constructed in a manner which promotes the appropriate use of land and upholds the purposes and objectives set forth in section 2A of Chapter 808 of the Acts of 1975.

Sec. 30-22. Review of Accessory Apartment Petitions (RAAP).

(a) *Applicability.* Whenever approval is required for an accessory apartment under the provisions of Section 30-8(d)(1), the procedure set forth in this section shall be followed.

(b) *Applications.*

(1) The applicant shall file a site plan application for the proposed development with the director of planning and development and the commissioner of inspectional services. Such application shall consist of two (2) sets of plan(s) prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Such site plan(s) shall be drawn at a suitable scale, on sheets no larger than twenty-four (24) by thirty-six (36) inches. Except when waived by the director of planning and development, the plans shall include the following information:

a) Evidence of the applicant's ownership of and residence at the subject property;

b) Boundaries, dimensions and area of the subject lot(s);

c) Use of the existing building(s) or structure(s) on the subject lot(s);

d) All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot(s) with the dimensions thereof;

e) Facade elevations for any proposed new construction and/or alteration to the existing building or structure;

f) Floor plans for all habitable space or space to be made habitable.

(2) At the time an applicant files an application, he/she shall give written notice of said filing and send a copy of the application and one set of plans to each of the three aldermen representing the ward in which the proposed project is to be located; give written notice of said filing to the clerk of the board of aldermen; and give written notice to all immediate abutters of the property upon which the project is to be located.

The applicant shall give all reasonable assistance to the director of planning and development in his/her review of the site plan, including, but not limited to attendance at at least one meeting called by the director of planning and development.

(c) *Procedures.*

(1) The director of planning and development shall review said plan for compliance with section 30-8(d)(1). Further, the director may consider the application in light of the criteria set forth below:

a) Convenience and safety of vehicular and pedestrian movement within the site to adjacent streets;

b) Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between any existing or proposed structures and the street shall be discouraged;

c) Design and location of exterior landings and stairs in a manner appropriate to the structure and unobtrusive to the neighborhood;

d) Disruption of historically significant structures and architectural elements.

(2) During said review the director of planning and development shall make recommendations to the applicant for changes in the plans, which changes shall be consistent with accepted and responsible planning principles.

Upon completion of the 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 applicant with the procedural requirements as stated above and whether in his/her opinion, the applicant has complied with the requirements of section 30-8(d). This statement shall be made within sixty (60) days after receipt of the complete and proper site plan application as described in section 30-22(a).

If no such statement is received by the commissioner of inspectional services within the above-stated time period, he/she shall accept an application for the creation of the accessory apartment by a building permit, or occupancy permit if a building permit is not required, without receipt of such statement and he/she shall have six (6) months from the date of application within which to issue the building or occupancy permit.

If the applicant does not apply for a certificate of occupancy within one (1) year from the date of the original application to the director of planning and development, he/she must file for review under the procedures set forth above.

(3) The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the certificate of occupancy for the accessory apartment which states that the accessory apartment may not be held in separate ownership from the principal use, that the owner must live in either the accessory apartment or the principal dwelling, and that before ownership of the property changes, the current owner must apply to the commissioner of inspectional services for a new occupancy permit. Before issuing such occupancy permit, the commissioner of inspectional services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are met.

(4) The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(d) If it shall be determined by a court of competent jurisdiction that any provision or requirement of section 30-22 is invalid as applied for any reason, then sections 30-22 and 30-8(d)(1) shall be declared null and void in their entirety. (Ord. No. T-114, 11-19-90; Ord. No. Z-95, 10-03-11)

Sec. 30-23. Site Plan Approval.

(a) *Applicability.* Whenever site plan approval is required under the provisions of this ordinance, the procedure set forth in this section shall be followed.

(b) *Applications.* A written application for a site plan approval, on forms provided by the city clerk and accompanied by fifteen (15) sets of plans prepared as provided below, shall be submitted in accordance with the procedures of this section and the Rules and Orders of the board of aldermen pertaining to special permit and site plan approval petitions to the city clerk, who shall transmit such application to the board of aldermen and the department of planning and development.

The plans submitted with an application for site plan approval shall be prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Such site plan(s) shall be drawn at a suitable scale, on sheets no larger than twenty-four (24) by thirty six (36) inches. When more than one (1) sheet is required, a key sheet shall be provided. The site plan(s) shall include the following information:

(1) Boundaries, dimensions and area of the subject lot(s);

(2) Use, ownership, zoning of, and existing buildings or structures on the subject lot(s); such information shall also be provided for all parcels adjacent to the subject lot(s);

(3) Existing and proposed topography of the subject lot(s) at two (2) foot intervals;

(4) Existing and proposed easements, if any;

(5) Existing and proposed wetlands and watercourses, if any;

(6) All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot(s), with the dimensions thereof;

(7) All facilities for sewage, refuse and other waste disposal, for surface water drainage, utilities, proposed screening, surface treatment, exterior storage, lighting, and landscaping, including fencing, walls, planting areas, and signs; or

(8) Facade elevations and floor plans for any proposed new construction and/or alteration to the existing building or structure.

(c) *Procedures.*

(1) The board of aldermen or a committee thereof shall hold a public hearing within sixty-five (65) days of the filing of an application for site plan approval. Notice of such public hearing shall be provided as required by G.L. c.40A, §11.

(2) When conducting a site plan approval, the board of aldermen shall consider the application in light of the following criteria:

a) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible;

b) Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage;

c) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the site;

d) Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between the street and existing or proposed structures shall be discouraged;

e) Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas;

f) Location of utility service lines underground wherever possible. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines;

g) Avoidance of the removal or disruption of historic resources on or off-site. Historical resources as used herein include designated historical structures or sites, historical architectural elements or archaeological sites.

h) Significant contribution to the efficient use and conservation of natural resources and energy for projects proposing building(s), structure(s), or additions to existing building(s) or structure(s), if those proposed buildings, structures, or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area.

The board of aldermen may condition approval of a site plan submittal in a manner consistent with the objectives set forth in these criteria.

(4) Any approval of an application for site plan approval shall lapse not later than one (1) year from the grant of such approval unless construction required by such site plan approval has begun. The board of aldermen may extend the period of time granted under this subsection 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 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 site plan approval for more then two (2) years from the date of the grant of the requested relief.

(5) Site plan approval from the board of aldermen for any purpose for which such approval is required under this ordinance shall be granted by a majority vote. (Ord. No. V-9, 2-21-95; Ord. No. Y-17, 5-21-07; Ord. No A-6, 10-01-12)

Sec. 30-24. Special Permits.

(a) Whenever a special permit is required under the provisions of this ordinance, a written application for a special permit, on forms provided by the city clerk and accompanied by plans prepared as provided in section 30-23(b) shall be submitted in accordance with the procedures of this section and the Rules and Orders of the board of aldermen pertaining to special permit and site plan approval petitions to the city clerk, who shall transmit such application to the board of aldermen and the department of planning and development. Whenever an application for a special permit is required under the provisions of this ordinance, site plan approval in accordance with section 30-23 shall also be required and an application for such approval shall be filed concurrently with the application for special permit.

(b) *Contents of the Application.* Each application for a special permit shall be accompanied by a site plan submission prepared in accordance with the provisions of section 30-23(b).

The applicant shall also submit a three-dimensional (3D) computer-generated model, including such details as necessary to show the relationship of the project to its surroundings. The level of detail included in the model shall be at the discretion of the Director of Planning and Development. The architect of record shall certify that the model is an accurate representation of the proposed design. For any commercial and/or multi-family development with a gross floor area of 20,000 square feet or more a model shall be provided as follows: for a proposed development containing a gross floor area of 20,000 to 50,000 square feet, the model shall show the proposed development, all abutting properties and abutters to such abutting properties; for a proposed development containing a gross floor area 50,001 to 100,000 square feet, the 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; for a proposed development containing a gross floor area in excess of 100,000 square feet, the 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) *Procedures.*

(1) 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.

(2) The board of aldermen or a committee thereof shall hold a public hearing within sixty-five (65) days of the filing of an application for special permit. Notice of such public hearing shall be provided as required by G.L.c. 40A, §11.

(3) The board of aldermen shall act upon any application for special permit not later than ninety (90) days following the public hearing.

(4) The application for special permit shall be deemed approved if the board of aldermen fails to act upon the application not later than ninety (90) days following the public hearing.

(5) Any approval of an application for special permit shall lapse not later than one (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 subsection 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 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 then two (2) years from the date of the grant of the special permit.

(6) The Newton Biosafety Committee shall serve as an advisory body to the board of aldermen with regard to any application for a special permit filed pursuant to section 30-24. The 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 section 30-24.

(7) A special permit from the board of aldermen for any purpose for which a permit is required under this ordinance shall be granted only by two-thirds vote of all the board of aldermen.

(8) *Project Phasing.* Any development subject to a special permit under section 30-13(g) may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

(9) *Adequacy of public facilities.* Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the petitioner as part of the special permit application process under 30-13(g) with the project scope determined by the director of planning and development and the commissioner of public works (peer reviews may be required, hired by the city and paid for by the petitioner):

a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)

b) Adequacy of water, sewer, and storm water infrastructure, including the water, sewer, and storm water analysis required in section 30-24(j)(8)

c) Net fiscal impacts, including the fiscal impact analysis required in section 30-24(j)(9)

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within twelve months of full occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development comply with the special permit.

The special permit shall also require a bond or other security satisfactory to the director of planning and development and commissioner of public works to secure performance. The bond or other security may be forfeited, at the election of the director of planning and development and commissioner of public works, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances.

(10) *Post-Construction Traffic Study.* A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the Mixed-Use Development. The special permit shall require a bond or other security satisfactory to the commissioner of public works and director of planning and development to secure performance as specified below:

a) Monitoring of vehicle trips for this purpose shall begin within twelve months of full occupancy of each phase, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. Measurements shall be made at all driveway accesses to the Mixed-Use Development and/or intersections studied in the pre-construction Roadway and Transportation Plan. The commissioner of public works may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the level of service projected by the pre-construction Roadway and Transportation Plan.

ii) The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Mixed-Use Development at all points studied in the pre-construction Roadway and Transportation Plan shall be measured by a traffic engineering firm retained by the city and paid for by the petitioner or successor.

iii) Mitigations will be required if actual total number of vehicle trips to and from the Mixed-Use Development measured per subsection (ii), above, summed over the points of access exceeds the weekday evening Adjusted Volume projected per section 30-24(i)(5) by more than ten percent (10%) as a result of traffic generated by the Mixed-Use Development. Within six months of notification, the owner of the Mixed-Use Development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner and listed in the Mixed-Use Development special permit in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The commissioner of public works and director of planning and development must approve any mitigation efforts prior to implementation.

(d) 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. The board of aldermen shall not approve any application for a special permit unless it finds, in its judgment, that the use of the site will be in harmony with the conditions, safeguards and limitations herein set forth, and that the application meets all the following criteria (except that uses accessory to activities permitted as a matter of right and which activities are necessary in connection with scientific research or scientific development or related production may be permitted provided the board of aldermen finds that the proposed accessory use does not substantially derogate from the public good):

(1) The specific site is an appropriate location for such use, structure;

(2) The use as developed and operated will not adversely affect the neighborhood;

(3) There will be no nuisance or serious hazard to vehicles or pedestrians;

(4) Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved;

(5) In cases involving construction of building(s) and/or structure(s) or additions to existing building(s) and/or structure(s), if those proposed building(s) and/or structure(s) or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

(e) In the case of a special permit involving recombinant DNA research or technology, as defined in sections 12-21 *et seq.* of the Revised Ordinances, as amended, the applicant shall be required to meet the requirements of section 30-24(d) and shall also be required to demonstrate that the proposed use meets applicable health and safety criteria, including, without limitation, the following:

(1) The National Institute of Health (NIH) guidelines published in the Federal Register of May 7, 1986, as amended and as adopted by the biosafety committee, and any other health guidelines and regulations the federal government may from time to time promulgate;

(2) The Massachusetts Department of Public Health (DPH) guidelines known as, "State Sanitary Code, Chapter VIII: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste", 105 CMR 480.000, as amended;

(3) Sections 12-21 through 12-30, as amended, entitled "Recombinant DNA Research";

(4) Code of Federal Regulations, Title 10, Parts 0 to 199 pertaining to low-level radioactive waste management.

The biosafety committee shall serve as an advisory body to the board of aldermen with regard to the additional health and safety findings required by section 30-24(e).

The biosafety committee's findings on the above criteria (1) through (4) shall be deemed presumptively valid unless the board of aldermen makes contrary written findings. The committee may make recommendations relating to the above criteria, and shall render its report within a time to be specified by the board of aldermen.

(f) *Inclusionary Zoning*

Purposes: The purposes of this section 30-24(f) are to promote the public health, safety, and welfare by encouraging diversity of housing opportunities in the City; to provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City's goal of preserving its character and diversity; to mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households; to increase the production of affordable housing units to meet existing and anticipated housing needs within the City; to provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and to establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.

(1) Definitions.

a) "Eligible Household" shall mean: for rental housing, any household whose total income does not exceed 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size; and in the case of for-sale housing, any household whose total income does not exceed 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size, which is defined as the number of bedrooms plus one.

b) "Inclusionary Unit(s)" shall mean any finished dwelling unit required to be for sale or rental under section 30-24(f) of the zoning ordinances.

i) For Inclusionary Units that are rented to Eligible Households, the monthly rent payment, including utilities and parking, shall not exceed 30 percent of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom, except in the event of an Eligible Household with a Section 8 voucher in which case the rent and income limits established by the Newton Housing Authority, with the approval of the U.S. Department of Housing and Urban Development, shall apply.

ii) The sales price of inclusionary units for sale shall be affordable to an eligible household having an income ten (10) percentage points lower than the maximum eligible income for that unit as

provided in section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income."

iii) Where fewer than three Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.

iv) Where three or more inclusionary units are provided in a development under section 30-24(f)(3), the eligible household income limit for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80% of the area median income at the time of marketing. The eligible household income limit for the remaining inclusionary units may be set at any level(s) up to 120% of the area median income at the time of marketing."

v) Where two or more Inclusionary Units are provided in a development under section 30-24(f)(3), Inclusionary Units required to be offered for rental shall be provided to Eligible Households such that the mean income of Eligible Households in the development does not exceed 65 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size. Where one Inclusionary Unit is provided in a development under section 30-24(f)(3), the Inclusionary Units required to be offered for rental shall be provided to an Eligible Household with a median income of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of rental of Inclusionary Units and adjusted for household size.

vi) Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:

a. The income eligibility for the unit exceeds 80% of the area median income, or

b. The unit is exempted from this requirement by another provision of section 30-24(f), or

c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines."

c) 'area median income ('AMI')' shall mean the median income for households within the designated statistical area that includes the city of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development."

(2) Scope. Where a special permit is required under these Ordinances for residential development or for a business or mixed-use development that includes residential development beyond that allowable as of right or where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure, or an open space preservation development, the development shall be subject to the

inclusionary zoning provisions of this section. This inclusionary zoning section does not apply to accessory units under section 30-8 (d) and 30-9(h) or to a conventional subdivision of land under G.L. c.41, §§ 81K *et seq*. other than an open space preservation development under section 30-15(k).

(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of market rate units in the development."

(4) Cash Payment.

a) Eligibility. The inclusionary unit requirements of section 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a fee in lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the board of aldermen, in acting upon the special permit for the development, makes specific findings that there will be an unusual net benefit to achieving the city's housing objectives as a result of allowing a fee rather than inclusionary units. The findings shall include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the receipts reserved for appropriation fund.

b) *Fee amount.* The first two units in a development granted a certificate of occupancy shall require no fee in lieu. For each remaining unit in the development the fee in lieu shall be equal to 12% of the sales price at closing of each unit as verified by the planning and development department or if rental housing the cash payment shall be equal to 12% of the estimated assessed value of each unit as determined by the city assessor.

c) Fee recipient. The fee payment shall be made to a receipts reserved for appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton housing authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the purposes of this Section 30-24(f) and without undue concentration of units in a limited number of locations. The authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein."

(5) Off-Site Development. Where an Applicant has entered into a development agreement with a non-profit housing development organization, Inclusionary Units otherwise required to be constructed onsite and within the development may be constructed or rehabilitated off site, the Applicant and the non-profit housing development organization must submit a development plan for off-site development for review and comment by the planning and development department prior to submission to the board of aldermen. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with subsections a), b), and c) of section 30-24(f)(6). As a condition of granting a special permit for the Applicant's development, the board of aldermen shall require that off-site Inclusionary Units shall be completed no later than completion of the Applicant's Market Rate Units. If the off-site Inclusionary Units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of

Market Rate Units equal to the number of off-site Inclusionary Units which have not been completed. Where the board of aldermen determines that completion of off-site Inclusionary Units has been delayed for extraordinary reasons beyond the reasonable control of the Applicant and non-profit housing developer, the board of aldermen may, in its discretion, permit the Applicant to post a monetary bond and release one or more Market Rate Units. The amount of the bond shall be sufficient in the determination of the planning and development department to assure completion of the off-site Inclusionary Units.

(6) Design and Construction. In all cases, Inclusionary Units shall be fully built out and finished dwelling units. Inclusionary Units provided on site must be dispersed throughout the development and must be sited in no less desirable locations than the Market Rate Units and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of Market Rate Units in the development, and satisfy the following conditions:

a) Inclusionary Units shall have habitable space of not less than 650 square feet for a one bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the Market Rate Units with the same number of bedrooms, whichever is greater; provided that Inclusionary Units shall not exceed 2,000 square feet of habitable space;

b) the bedroom mix of inclusionary units shall be equal to the bedroom mix of the Market Rate Units in the development. In the event that Market Rate Units are not finished with defined bedrooms, all Inclusionary Units shall have three bedrooms;

c) the materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to that of the Market Rate Units in the development, as reviewed by the planning and development department; provided that amenities such as so-called designer or high end appliances and fixtures need not be provided for Inclusionary Units.

(7) Habitable Space Requirements. The total habitable space of Inclusionary Units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all Market Rate Units and all Inclusionary Units in the proposed development. As part of the application for a special permit under section 30-24(f), the Applicant shall submit a proposal including the calculation of habitable space for all Market Rate and Inclusionary Units to the planning and development department for its review and certification of compliance with this section as a condition to the grant of a special permit.

(8) Inclusionary Housing Plans and Covenants. As part of the application for a special permit under section 30-24(f), the Applicant shall submit an inclusionary housing plan that shall be reviewed by the Newton Housing Authority and the planning and development department and certified as compliant by the planning and development department. The plan shall include the following provisions:

a) a description of the Inclusionary Units including at a minimum, floor plans indicating the location of the Inclusionary Units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the Applicant;

b) A marketing and resident selection plan which shall:

i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton's human rights ordinance (Section 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military

status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs.

ii) Include an affirmative fair housing marketing and tenant selection plan for the inclusionary units based upon the procedures established by the Massachusetts Department of Housing and Community Development (MDHCD) for marketing, local preferences, and lotteries under *Comprehensive Permit Guidelines* Section III as in effect June 1, 2009.

iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists;

iv) Provide for local selection preferences for up to 70% of the inclusionary units, or such lower share as may be required by other applicable authorities.

v) Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.

vi) Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants."

c) Agreement by the Applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of Eligible Households in accordance with the approved marketing and resident selection plan; provided that the listing of Eligible Households for inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of Eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the planning and development department; and provided further that the Applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of Eligible Households.

d) Agreement by the Applicant to develop, advertise, and provide a supplemental listing of Eligible Households to be used to the extent that Inclusionary Units are not fully subscribed from the Newton Housing Authority or the planning and development department listings of Eligible Households;

e) Agreement that any special permit issued under section 30-24(f) shall require the Applicant to execute and record a covenant in the Middlesex Registry of Deeds or the Land Court Registry of Deeds for Middlesex County as *the* senior interest in title for each Inclusionary Unit and enduring for the life of the residential development, as follows:

i) for purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit initial sale and subsequent re-sales of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the planning and development department which incorporate sections 30-24(f)(1)b)(ii), (f)(8)b), (f)(8)c), (f)(8)d), and (f)(8)e); and

ii) for rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the city solicitor, which shall limit rental of Inclusionary Units to Eligible Households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate sections 30-24(f)(1)b)(i), (f)(8)b), (f)(8)c), (f)(8)d) and (f)(8)e);

f) at the discretion of the applicant and with the agreement of the Newton housing authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton housing authority for sale or rental to eligible households; and

g) in the case of rental housing, an agreement to submit an annual compliance report to the director of planning and development, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton housing authority."

(9) Public Funding Limitation. The intent of section 30-24(f) is that an Applicant is not to use public funds to construct Inclusionary Units required under this section; this provision however, is not intended to discourage the use of public funds to generate a greater number of affordable units than are otherwise required by this subsection. If the Applicant is a non-profit housing development organization and proposes housing at least 50 per cent of which is affordable to Eligible Households, it is exempt from this limitation.

(10) Elder Housing with Services. In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an Applicant seeks a special permit for housing with services designed primarily for elders such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This section shall not apply to a nursing facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

a) Maximum Contribution The Applicant shall contribute 2.5 percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the director of planning and development, based on analysis of verified financial statements and associated data provided by the Applicant as well as other data the director may deem relevant.

b) Determination. The board of aldermen shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the director of planning and development. In considering the number of units or beds, the director may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The Applicant shall provide financial information requested by the director. If the petitioner or Applicant is making a cash contribution, the contribution shall be deposited in accordance with section 30-24(f)(4).

c) Contributed Units or Beds. Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.

d) Selection. The Applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the Applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the Applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the Applicant or manager shall recruit eligible persons and households through an outreach program approved by the director planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) annually in a form and with such information as is required by the director of planning and development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.

e) Residential Cash Balances If, after calculation of the number of units or beds to be contributed under this section 30-24(f), there remains an annual cash balance to be contributed, that amount shall be contributed as set out in subparagraph b) above. Any such contribution shall not reduce the contribution required in future years.

(11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction, as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4).

(12) No Segmentation. An Applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of this section 30-24(f). Where the board of aldermen determines that this provision has been violated, a special permit will be denied. However, nothing herein prohibits phased development of a property.

(13) No Effect on Prior or Existing Obligations. This amendment to section 30-24(f) shall have no effect on any prior or currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under section 30-24(f) applied for or granted prior to the effective date of this amendment.

(14) No Effect on Accessory Apartments. This section 30-24(f) shall not apply to accessory apartments regulated under sections 30-8(d) and 30-9(h).

(15) Severability, effect on other laws. The provisions of section 30-24(f) are severable. If any subsection, provision, or portion of this section is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this section shall continue to be valid.

(16) Incentives.

a) Density. A density bonus may be granted equal to one unit for each additional inclusionary unit provided above the number required by section 30-24(f)(3), Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to 25% as set forth in section 30-15 table 1, the "Lot area per unit" column, provided that the proposed project, including bonus units, is consistent with the special permit requirements provided in section 30-24(d). To the extent determined by the director of

planning and development to be necessary for accommodating the bonus units, increases by up to 25% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25% in minimum amount of open space may be allowed per the requirements of section 30-15 Table 1.

b) Expedited Review. Developments in which the percentage of inclusionary units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews."

(g) Natural resources and energy. All applications for a special permit authorizing proposed building(s) and/or structure(s) or additions to existing building(s) and/or structure(s), if those proposed building(s), structure(s), or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, shall submit evidence that the site planning, building design, construction, maintenance, or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

(h) Conditions of Approval. The board of aldermen shall not approve any application for a special permit unless it finds that said application complies in all respects with the requirements of this ordinance. In approving a special permit, the board of aldermen may attach such conditions, limitations, and safeguards as it deems necessary to protect or benefit the neighborhood, the zoning district and the City. Such conditions may include, but are not limited to, the following:

(1) requirement of front, side or rear yards greater than the minimum required by this ordinance;

(2) limitation of the number of occupants, size, method of time of operation, or extent of facilities;

(3) requirement of off-street parking or other features beyond the minimum required by this, or any other applicable ordinance.

(i) *Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District*. In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

(1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Mixed-Use Development and applicable general laws relating to zoning and land use.

(2) *Housing, public transportation, parking, and utility infrastructure improvements*. The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas including:

a) Improved access and enhancements to public transportation;

b) Improvements to parking, traffic, and roadways;

c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;

d) Public safety improvements;

e) On-site affordable housing opportunities, except where otherwise allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and

f) Water, sewer, and storm water infrastructure improvements which increase capacity and lower impacts on the surroundings.

(3) *Fiscal Impacts.* The proposed Mixed-Use Development has a positive fiscal impact on the city after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

(4) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-Use Development and abutting parcels and streets, with consideration given to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to improve traffic and access in nearby neighborhoods.

(5) *Enhanced open space*. Appropriate setbacks, buffering, and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the proposed Mixed-Use Development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas, trails, and natural resources, including the banks of the Charles River and adjacent public property, whether or not they are currently available for public use, are provided and take full advantage of the unique opportunities of the site and its nearby natural features for use and enjoyment by the community at large.

(6) *Excellence in place-making*. The proposed Mixed-Use Development provides high quality architectural design and site planning so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the Mixed-Use Development and its surroundings.

(7) *Comprehensive signage program*. Notwithstanding the requirements of Section 30-20, all signage for the proposed Mixed-Use Development shall be in accordance with a comprehensive signage program developed by the petitioner and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the Mixed-Use Development and character of the streetscape.

(8) *Pedestrian scale*. The proposed Mixed-Use Development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel.

(9) *Public space*. The proposed Mixed-Use Development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make connections to the surrounding neighborhood, as well as to the commercial and residential components of the Mixed-Use Development, to other commercial activity, and to each other.

(10) *Sustainable design*. The proposed Mixed-Use Development at least meets the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).

(11) *Adequacy of parking.* Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.

(12) *Pedestrian and Neighborhood Considerations*. If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a negative impact on pedestrians or surrounding neighborhoods, the petitioner has proposed feasible mitigation measures to eliminate such negative impact:

a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;

b) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;

c) Traffic signal additions, alterations, or roundabouts; and

d) Relocation or alterations to public transport access points.

(13) *Accessible Design*. Consideration is given to issues of accessibility, adaptability, visitability, and universal design in development of the site plan.

(j) *Additional Filing Requirements for Special Permit in the Mixed-Use 3/Transit-Oriented District*

In addition to the provisions of sections 30-23 and 30-24, petitioners for a grant of a special permit under section 30-13(g) shall submit:

(1) *Conceptual Plans.* Prior to submittal of an application for a special permit in the MU3/TOD, which will include items (2) to (12) below, petitioners shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Committee shall provide a forum for a public presentation whereby the Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:

a) Project description, including project purpose or design rationale

b) Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;

c) Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to adjacent public property, whether or not it is currently available for public use, north arrow and scale; and

d) Other information as may be requested by city staff to perform a zoning review and preliminary impact analyses.

(2) A three-dimensional (3D) computer-generated model that shows the relationship of the project to its surroundings consistent with section 30-24(b);

(3) Narrative analysis describing design features intended to integrate the proposed Mixed-Use Development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site-specific considerations, as well as an explanation of how the proposed Mixed-Use

Development satisfies each criterion in Section 30-24(i);

(4) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;

(5) Site plans showing any by-right or zoning-exempt alternatives;

(6) A Roadway and Transportation Plan reflecting the "EOEEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the commissioner of public works, director of planning and development, and peer review consultants. The Plan should include the following:

a) Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles.

b) Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts.

c) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed-Use Development, documenting:

i) The projected Base Volume of trips to and from the Mixed-Use Development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the commissioner of public works and director of planning and development;

ii) The projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the Mixed-Use Development guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;

iii) The means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(8) and (9) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more; and

iv) The projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.

d) Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Mixed-Use Development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues. Analysis shall include:

i) The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and

ii) Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.

(7) A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand, such as, but not limited to, Red Sox home games.

(8) Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the commissioner of public works, director of planning and development, and peer review consultants and shall include the following:

a) A study of the proposed project's surface water runoff relating to the Charles River and associated deep marsh system that shows how all storm water will be infiltrated on site, and which explores all feasible methods of reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:

i) A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the Massachusetts Department of Environmental Protection's "Stormwater Management Handbook" and the City of Newton "Requirements for On-Site Drainage (Stormwater Management)";

ii) A drainage analysis based on the City's 100-year storm event of seven inches over a 24-hour period, showing how runoff from impervious surfaces will be infiltrated on-site;

iii) An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;

iv) If a connection to the city's drainage system is proposed, a closed circuit television (CCTV) inspection, prior to approval of this permit, which shall be witnessed by the engineering division; the petitioner shall provide the city inspector with a video or CD prepared by a CCTV specialist hired by the petitioner. A post-construction video inspection shall also take place and be witnessed as described above; and

v) An evaluation of hydraulic capacity of the downstream drainage system submitted to the engineering division to determine any impact to the municipal drainage system.

b) A master plan and schedule of the sanitary sewer system improvements, including:

i) A plan showing a reduction in infiltration and inflow into the sanitary sewer system to the satisfaction of the Commissioner of Public Works;

ii) A calculation of the life cycle cost of the proposed sanitary system;

iii) A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and

iv) A study showing how the developer will comply with the city's cross connection control program relating to sewer and drain pipes.

c) A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.

d) A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal that demonstrates compliance with Chapter 11 of the City Code and the Massachusetts Department of Environmental Protection Waste Ban. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes; and

e) A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the city, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The petitioner must coordinate this test with both the fire department and utilities division; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be submitted to the fire department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the utilities director.

(9) Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

(10) Proposed phasing schedule, including infrastructure improvements;

(11) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon; and

(12) Submittal in electronic form of all documents required by sections 30-23 and 30-24 (including this section 30-24(i)) and any supplemental reports, memoranda, presentations, or other communications submitted by the petitioner or its representatives to the Board of Aldermen and pertaining to the special permit application, unless the petitioner demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city website within a reasonable time after receipt. (Rev. Ords. 1973, §24-29; Ord. No. 31, Pt. IV, 12-2-74; Ord. No. 51, Pt. II, 2-3-75; Ord. No. 202, Pt. III(L), 3-21-77; Ord. No. 212, 5-2-77; Ord. No. 272, Pt. IV, 5-15-78; Ord. No. 284, Pts. X, XIV, 6-19-78; Ord. No. R-238, 3-15-82; Ord. No. R-259, 8-9-82; Ord. No. T-76, 3-5-90; Ord. No. T-101, 8-13-90; Ord. No. T-198, 12-16-91; Ord. No. T-319, 12-20-93; Ord. No. V-9, 2-21-95; Ord. No. X-48, 4-23-03; Ord. No. X-125, 12-20-04; Ord. No. Y-17, 5-21-07; Ord. Z-50, 07-13-09; Ord. Z-108, 04-17-12; Ord. No. A-6, 10-01-12)

ARTICLE V.
MISCELLANEOUS

Sec. 30-25. Applicability of chapter to building and lands of public service corporations.

This chapter shall not apply in particular respects to any buildings, structures or lands used or to be used by a public service corporation if, upon petition of the corporation, the department of public utilities shall, after notice given pursuant to section 11 of chapter 40A of the General Laws, and public hearing in the city, determine the

exemptions required and find that the present or proposed use of the buildings, structures or lands is reasonably necessary for the convenience or welfare of the public. (Rev. Ords. 1973, §24-27; Ord. No. 284, 6-19-78)

Cross reference — Poles, wires and conduits, Ch. 23

State law reference — exemptions for public service corporations, G.L. c. 40A, § 3

Sec. 30-26. Alteration, etc., of structure when shape or size of lot is changed.

(a) Except to the extent that this section provides otherwise, whenever a lot upon which stands a building or structure erected after the passage of this chapter or of any corresponding provision of any prior ordinance is changed in size or shape so that the lot, building or structure no longer complies with the provisions of section 30-15, such building or structure shall not thereafter be used until it is altered, reconstructed or relocated so as to comply with the provisions of section 30-15. For purposes of this section, the size or shape of a lot shall be deemed to have been changed only if the lot was combined, merged, subdivided, or resubdivided by recording a deed, plan, or certificate of title in the Middlesex South District Registry of Deeds or the Registry Section of Land Court. The date of such change shall be the date of recording.

For purposes of implementing this section, no lot, building or structure shall be deemed in noncompliance with the provisions of section 30-15 if the lot was changed in size or shape

(1) solely as a result of a taking of a portion of the lot for a public purpose, or as a result of a conveyance of a portion of the lot by the owner thereof to the City of Newton, any other body politic, or any agency or department thereof, in lieu of such a taking,

or

(2) in compliance with the requirements of sections 30-26(b), (c), or (d).

(b) The provisions of section 30-26(a) shall not apply to a lot in any residential zoning district, or a building or a structure located on the lot, if the lot changed in size or shape at any time on or after October 11, 1940, if the change was in accordance with all of the following requirements:

(1) At the time such lot changed in size or shape,

a) either

i) if the lots were changed before December 7, 1953, all of the lots met the requirements of section 30-26(b)(2),

or

ii) if the lots were changed on or after December 7, 1953, either

A) the number of resulting lots did not exceed the number of lots that had existed immediately prior to the change(s), and all of the resulting lots met the requirements of section 30-26(b)(2), or

B) the number of resulting lots exceeded the number of lots that had existed immediately prior to the change(s), and all the lots, and all of the building(s) and structure(s) on the lots, conformed to the requirements in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in question,

and

b) no other lot, and no building or structure on any lot, was rendered nonconforming, or more nonconforming, by reason of the change in size or shape of such lot. For purposes of implementing section 30-26(b), a lot, or a building or structure on a lot, shall be deemed "rendered nonconforming, or more nonconforming" if the lot was changed in size or shape in a manner not in conformity with the provisions of section 30-26(b).

(2) Except as provided in section 30-26(b)(3) through (6), following the change in lot size or shape or both, the resulting lot area, lot frontage, lot area per unit, lot coverage, and usable open space of the lot, and the resulting height, number of stories, and front, side, and rear setbacks, of the building(s) and structure(s) on the lot, met any of the following requirements:

a) the lot area, lot frontage, lot area per unit, and usable open space, and the front, side, and rear setbacks all were either unchanged or increased, and the lot coverage, height, and number of stories were either unchanged or decreased; or

b) if there was a decrease of lot area, lot frontage, lot area per unit, or usable open space, or front, side, or rear setback, or if there was an increase of lot coverage, height, or number of stories, the change resulted in conformity with the following requirements:

i) if the lot in question was created before December 7, 1953, the requirements shall be those prescribed in Table 1 of section 30-15 for lots created before December 7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred, or

ii) if the lot in question was created after December 7, 1953, the requirements shall be those prescribed in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time the change in lot size or shape or both occurred.

(3) If more than fifty percent (50%) of a single-family or a two-family dwelling is demolished, and if the size or shape of the lot was changed at any time after January 1, 1995, the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to any subsequent addition, construction, reconstruction, alteration, or structural change shall be the requirements prescribed in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

(4) In any Multi-Residence zoning district, if a single-family dwelling is converted to a two-family dwelling, and if the size or shape of the lot was changed at any time after January 1, 1995, the two-family dwelling shall always be subject to the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances prescribed in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

(5) If, before a change in size or shape of two or more lots, a lot, regardless of when the lot was created, had lot area and lot frontage that was equal to or greater than the minimum required for a lot created after December 7, 1953, in the zoning district in which the lot was located, the requirements for lot area and lot frontage that shall apply to any subsequent change in the size or shape of the lot shall be the requirements prescribed in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

(6) If, following the change in size or shape of two or more lots, any one or more of the resulting lots has lot area or lot frontage or both that is equal to or greater than twice the minimum required for a lot created after

December 7, 1953, in the zoning district in which such lot was located at the time when the lot was changed, the requirements for lot area, lot frontage, lot area per unit, usable open space, lot coverage, floor area ratio, height, number of stories and front, side, and rear setback distances that shall apply to every lot whose size or shape was changed shall be the requirements prescribed in Table 1 of section 30-15 for lots created after December 7, 1953, in the zoning district in which the lot was located at the time when the lot was changed.

(c) The board of aldermen may grant a special permit, in accordance with the requirements and procedures prescribed in section 30-24, to allow the area of a lot in a residential zoning district to be reduced by up to five percent (5%) of the applicable lot area required in Table 1 of section 30-15, but only if the grant of such a special permit

(1) does not result in the creation of any nonconformity that did not previously exist with respect to frontage, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or useable open space percentage,

and

(2) is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood.

(d) The board of aldermen may grant a special permit, in accordance with the requirements and procedures prescribed in section 30-24, to allow the frontage of a lot in a residential zoning district to be reduced by up to five percent (5%) of the applicable lot area required in Table 1 of section 30-15, but only if the grant of such a special permit

(1) does not result in the creation of any nonconformity that did not previously exist with respect to lot area, lot area per unit, front setback, side setback, rear setback, height, number of stories, lot coverage percentage, or useable open space percentage

and

(2) is consistent with and not in derogation of the size, scale, and design of other lots, buildings and structures in the neighborhood. (Rev. Ords. 1973, § 24-28; Ord. No. W-50, 7-9-01)

ARTICLE VI.
ZONING BOARD OF APPEALS

Sec. 30-27. Zoning Board of Appeals.

A zoning board of appeals is established and shall consist of five (5) members to be appointed by the mayor, subject to confirmation by the board of aldermen.

Each member shall be appointed for a term of three (3) years. Vacancies shall be filled for the balance of the unexpired term in the same manner in which original appointments are made. The zoning board of appeals shall annually elect a chairman from its members and a clerk. No member shall act in a case in which he is in any way interested.

The mayor shall annually appoint for a term of one year, subject to confirmation by the board of aldermen, five (5) associate members of the zoning board of appeals. The associate members shall be sworn and shall qualify in the same manner as regular members. In the case of a temporarily unfilled vacancy, inability to act, or interest on the

part of a regular member, the chairman shall designate one of the associate members to fill such vacancy or serve in place of such regular member, as the case may be. Members and associate members of such board shall serve without compensation.

(a) Appeals may be taken to the zoning board of appeals as provided in chapter 40A, sections 8 and 15 of the General Laws, as at the time in effect. The zoning board of appeals shall hold a hearing upon any appeal or other matter referred to it or on any petition for a variance in the manner provided in, and after notice given as required by, chapter 40A, section 11 of the General Laws, as at the time in effect.

(b) The zoning board of appeals shall have the following powers:

(1) To hear and decide appeals taken by:

a) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of chapter 40A; and

b) Any person, including an officer or board of the city, or of any abutting city or town, or the metropolitan area planning council, aggrieved by an order or decision of the commissioner of inspectional services, or other administrative official, in violation of any provision of Chapter 40A or any section of this chapter. Any appeal under subsection (b)(1) shall be taken within thirty (30) days from the date of the order or decision which is being appealed.

(2) To grant, upon appeal or upon petition in cases where a particular use is sought for which no permit is required with respect to particular land or structures, a variance from the terms of this chapter where it is determined that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that the desired relief may be granted without substantial detriment or the public good and without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise.

Prior to the exercise of any of the powers enumerated above, the zoning board of appeals shall hold a hearing on any appeal, application or petition transmitted to it by the city clerk within sixty-five (65) days from the transmittal to the board.

The board shall cause notice of such hearing to be published and sent to parties in interest as provided by section 11 of chapter 40A, and by the rules of the board.

In exercising the foregoing powers the zoning board of appeals may, in conformity with this chapter, reverse or affirm in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and to that end shall have all the powers of the commissioner of inspectional services, and may direct the commissioner of inspectional services to issue a permit.

In exercising the powers under paragraph (2) of this subsection, the zoning board of appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structures but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance or within such a lesser period as the board may determine, they shall lapse, and may be re-established only after notice and a new hearing pursuant to this section.

(c) The concurring vote of four (4) members of the zoning board of appeals shall be necessary to reverse any order or decision of the commissioner of inspectional services, or to decide in favor of the appellant for a permit on any matter upon which it is required to pass under this chapter, or to effect any variance in the application of this chapter.

(d) No appeal, application or petition which has been unfavorably and finally acted upon by the board of appeals shall be acted favorably upon within two (2) years after the date of such final unfavorable action unless the following criteria are met:

(1) At least four (4) members of the board must find specific and material changes in the conditions upon which the previous unfavorable action was based, and must describe such findings in the record of its proceedings;

(2) All but one member of the planning board consents thereto; and

(3) Notice is given to parties in interest as to the time and place of the proceedings when the question of such consent will be considered.

(e) The zoning board of appeals shall adopt rules, not inconsistent with the provisions of this chapter, for conducting its business and otherwise carrying out the purposes of this chapter; a copy of these rules shall be filed with the office of the city clerk. Meetings of the board shall be held at the call of the chairman and also when called in such other manner as the board shall determine in its rules. Such chairman, or in his absence the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the zoning board of appeals shall be open to the public.

The decision of the board shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition. Failure by the board to so act within said one hundred (100) days shall be deemed to be a grant of relief, application or petition sought. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and setting forth clearly the reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the city clerk and shall be a public record, and notices of decisions shall be mailed forthwith to parties in interest as designated in subsection (a) of this section, to the planning board and to every person present at the hearing who requests that notice be sent to him and states an address to which such notice is to be sent. (Rev. Ords. 1973, §24-30; Ord. No. 190, 12-20-76; Ord. No. 284, Pt. XI(A)-(J), 6-19-78; Ord. No. R-2, 5-7-79; Ord. No. T-8, 1-17-89; Ord. No. T-40, 8-14-89; Ord. No. T-116, 12-3-90)

State law reference—Zoning boards of appeal, G.L. c. 40A, § 12

Editor's Note—The original appointments of members under this section were for staggered terms of one, two, three, four and five years.

ARTICLE VII.
MISCELLANEOUS; ENFORCEMENT

Sec. 30-28. Amendments.

(a) The board of aldermen may, from time to time, change this chapter by amendment, addition or repeal, but only in the manner provided in chapter 40A, section 5 of the General Laws as of the time in effect. Under the provisions of chapter 40A, section 5 of the General Laws, the committee on land use of the board is hereby designated a committee for the purpose of holding public hearings on the matter of repealing or modifying provisions of this chapter in the absence of a contrary order by the board.

(b) Any person making application to the board of aldermen for a change in this chapter pursuant to subsection (a) of this section shall pay to the city clerk at the time of filing such application fee prescribed by section 17-3 of the Revised Ordinances, as amended. (Rev. Ords. 1973, § 24-31; Ord. No. 284, Pt. XII, 6-19-78)

Sec. 30-29. Reserved.

Sec. 30-30. Effect of invalidity of any part of chapter.

If it shall be determined by a court of competent jurisdiction that any provision of this chapter is invalid as applying to any particular land, building or structure by reason of such land, building or structure having been placed in an excessively restrictive district, such land, building or structure shall thereby be zoned in the next least restrictive district created by this chapter. (Rev. Ords. 1973, §24-33)

Sec. 30-31. Enforcement.

(a) *Building Permits.*

(1) The commissioner of inspectional services shall enforce the provisions of this ordinance and shall have the same powers as are provided for executing and enforcing the state building code. He shall not grant a permit for the construction, alteration, enlargement, extension, reconstruction, moving or razing of any building or structure or for use, change in use, moving or extension of use in any building or structure which would violate the provisions of this ordinance.

(2) The applicant for a building permit shall, upon the granting of such permit, post a copy of the building permit in view and protected from the weather on the site of operation within a reasonable time after the granting of the permit and prior to the start of construction.

(b) *Violations.*

(1) If the commissioner of inspectional services is informed, in accordance with G.L. chapter 40A, section 7, or otherwise has reason to believe that any provision of this ordinance is being or may be violated, he or his designee shall investigate the alleged violation and inspect the property in question.

(2) If the commissioner of inspectional services determines that the provisions of this ordinance are being violated, he shall give notice thereof in writing to the owner of the property at which the violation is occurring or to the duly authorized representative thereof, and shall order that the violation cease.

(c) *Right of Appeal.* Decisions of the commissioner of inspectional services may be appealed to the zoning board of appeals within thirty (30) days of such decision.

Sec. 30-32. Penalty.

Whoever violates any of the provisions of this chapter shall be punished by a fine of not more than three hundred dollars ($300.00) for each day during which the violation continues. Upon any well-founded information in writing from any citizen that this chapter is being violated, or upon his own initiative, the commissioner of inspectional services shall take immediate steps to enforce this chapter by causing complaint to be made before the district court or by applying for an injunction in the superior court.

Notwithstanding the provisions of this section, where non-criminal disposition of specified sections of the zoning ordinances by civil fine has been provided for in sections 20-20 and 20-21 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. chapter 40, section 21D, said zoning violations may be enforced in the manner provided in such statute. The penalty for violation of each such violation is set out in section 20-21 accordingly. (Rev. Ords. 1973, §24-35; Ord. No. 7, 7-1-74; Ord. No. 190, 12-20-76; Ord. No. 195, 2-22-77; Ord. No. T-126, 3-4-91)

Sec. 30-33. Other regulations.

(a) *Other Regulations.* Nothing contained in this ordinance shall be construed so as to repeal or nullify any existing ordinance or regulation of the city, but shall be in addition thereto. Where the subject matter herein contained is elsewhere regulated, the more stringent provision shall prevail.

(b) *Limitations.* This ordinance shall not be deemed to effect, in any matter whatsoever, any easements, covenants or other agreements between parties; provided that where this ordinance imposes a greater restriction upon the use of buildings or land or upon the erection, construction, enlargement of buildings than is imposed by other provisions of the ordinances of the city, rules, regulations, certificates or other authorizations or by easements, covenants or agreements, the provisions of this ordinance shall prevail.

(c) *Validity.* Nothing in this ordinance shall be construed as establishing regulations or restrictions which are not uniform for each class or kind of buildings, structures, or land, and for each class or kind of use in each district.

Sec. 30-34. Keno.

(a) Purpose. Whereas the deleterious effects of gambling and wagering on individuals, families and the public health, safety, convenience and welfare are known and documented, it is the policy of the City of Newton to regulate and condition the operation of establishments allowing Keno, or similar games of chance, entertainment or amusement, whether operated live or through audio or video broadcast or closed-circuit transmission, and to prohibit persons under eighteen (18) years of age from engaging in or participating in any manner in Keno or other such games of chance, entertainment or amusement.

(b) No building or structure, or any portion thereof, shall be used for Keno, or similar games of change, entertainment or amusement unless the following conditions are satisfied:

(1) It must be a restaurant-business which is duly licensed by the Newton Board of Licensing Commissioners pursuant to both G.L. c. 140 as a common victualler selling prepared food to patrons and pursuant to G.L. c. 138, §12, whereby alcoholic beverages may be sold to and drunk on the premises by patrons. The alcoholic beverages license may be either an "all alcoholic beverages" license, or a "wine and malt beverages" license.

(2) The restaurant-business must provide a lounge or similar area within the premises which is physically separated from the regular dining area by a wall, partition or other means deemed acceptable to the Newton Board of Licensing Commissioners. Keno, or similar games of chance, entertainment or amusement shall be restricted to this separate lounge or similar area. The restaurant-business shall not permit minors unaccompanied by a parent or adult guardian to enter, occupy, or remain in the restricted lounge or similar area, and shall prominently post signs to this effect therein.

(3) No person under eighteen (18) years of age shall be permitted to engage in or participate in any manner in Keno or other such games of chance, entertainment or amusement, pursuant to this section, G. L. c. 10, §29, as amended, and the regulations promulgated thereunder, including, but not limited to 961 CMR 2.00, 2.20(3) and 2.27(5).

a) Any establishment found to have violated the state law or state regulations or the provisions of this section regarding the prohibition of minors in this regard shall be deemed an unlawful use in violation of the Newton Zoning Ordinances, and shall be subject to enforcement proceedings and penalties provided under G. L. c. 40A, §7, and the Newton Zoning Ordinances, sections 30-31 and 30-32.

b) Any 'person', including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, which is found to have violated the state law or state regulations regarding prohibition of minors in this regard shall be subject to the statutory penalties of G.L. c. 10, §29, as amended, and revocation of their license as a lottery sales agent pursuant to state law, including but not limited to Massachusetts Lottery Commission regulations 961 CMR 2.00, 2.13(1), 2.20(3) and 2.27(5).

(4) No restaurant-business shall provide more than two (2) video monitors for broadcast or closed-circuit transmission of Keno or similar games of chance, entertainment or amusement in the aforesaid lounge or similar area. Said limitation shall not apply to regular television programming of network, independent television stations, or television stations provided by cable, satellite, or similar systems.

(c) No affirmative rights are granted by this section. The city shall not be precluded from exercising any legislative powers it may now have or which may be granted to the city by the General Court in future legislative enactments to prohibit or further regulate Keno, or similar games of chance, entertainment or amusement.

(d) Any 'person', including a business as defined in the Massachusetts Lottery Commission regulations, 961 CMR 2.03, who has filed prior to June 10, 1996 an application for a Keno license with the Massachusetts Lottery Commission and who thereafter receives from said Commission a valid Keno license, pursuant to G. L. c. 10, §27A, will be exempt from the provisions of sections 30-34(b)(1) and 30-34(b)(2) hereof relating to possession of a license to sell alcoholic beverages and provision of a separate lounge or similar area, but only at the location for which the application was filed prior to June 10, 1996. (Rev. Ords. 1995, Ord. No. V-89, 8-12-96)

Sec. 30-35. Adult entertainment uses.

(a) *Purpose.* The purpose of this section is to address and mitigate the secondary effects of adult entertainment uses that are referenced and defined herein. Secondary effects have been shown to include urban blight, increased crime, adverse impacts on the business climate of a city, adverse impacts on property values, adverse impacts on the tax base and adverse impacts on the quality of life in a city. All of said secondary impacts are adverse to the health, safety, and general welfare of the City of Newton and its inhabitants.

The provisions of this ordinance have neither the purpose nor the intent of imposing a limitation on the content of any communicative matter or materials, including sexually-oriented matter or materials. Similarly, it is not the purpose or intent of this ordinance to restrict or deny access by adults to adult entertainment establishments or to sexually-oriented matter or materials that are protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights of distributors or exhibitors of such matter or materials. Neither is it the purpose or intent of this ordinance to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

(b) *Definitions.* Adult Entertainment Use(s) shall include the following:

Adult Bookstore, as defined by G.L. chapter 40A, section 9A is an establishment having at least fifteen (15%) percent of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.

Adult Motion Picture Theatre, as defined by G.L. chapter 40A, section 9A is an enclosed building used for presenting motion pictures, slides, photo displays, videos, or other material for viewing, distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement.

Adult Paraphernalia Store, as defined by G.L. chapter 40A, section 9A is an establishment having at least fifteen (15%) percent of its stock in trade, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity.

Adult Video Store, as defined by G.L. chapter 40A, section 9A is an establishment having at least fifteen (15%) percent of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.

Adult Night Club, any establishment which provides the display of live nudity for its patrons. For the purposes of this section, "nudity," "sexual conduct," "sexual excitement," and "sexual activity" are as defined by G.L. chapter 272, section 31.

(c) *Design and Operating Criteria*. Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this ordinance and may be permitted only upon the grant of a special permit pursuant to section 30-24. Such special permit shall not be granted unless each of the following standards has been met:

(1) An adult entertainment use shall not be located within:

500 feet from the nearest religious use, school, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river;

1,000 feet from any nearest adult entertainment use as defined herein whether within or without the City of Newton boundaries, nor within 1,000 feet of an existing adult entertainment use in an adjacent municipality, nor within 1,000 feet of a zoning district allowing an adult entertainment use within such adjacent municipality;

500 feet from the nearest establishment licensed under G.L. chapter 138, section 12 to manufacture, with intent to sell or expose or keep for sale, store, transport, import or export of alcoholic beverages.

The distances specified above shall be measured by a straight line from the nearest property line of the proposed adult entertainment use to the nearest property line of any of the designated uses set forth herein.

(2) No adult entertainment use shall be located within 150 feet from any residential property line. The distance shall be measured by a straight line from the nearest exterior wall of the adult use structure to the nearest property line of any residential use.

(3) All building openings, entries, and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.

(4) No material described in the definitions of adult entertainment uses in this ordinance that depicts, describes or relates to nudity or sexual conduct as defined in G.L. chapter 272, section 31 shall be so located in or on the building housing such adult use which is visible to the public from the outside of the premises in which an adult use is permitted. No advertising, or other material, whether displayed in the window or affixed to the building shall be permitted which depicts, describes or relates to nudity or sexual conduct as defined in G.L. chapter 272, section 31.

(5) No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

(6) The proposed adult entertainment use shall comply with all dimensional and parking requirements set forth in section 30-19 of this ordinance. In addition, no off-site parking as is allowed by special permit under section 30-19(f)(2), shall be permitted.

(7) No adult entertainment use shall have a freestanding accessory sign. All signage shall comply with all requirements set forth in section 30-20, including but not limited to section 30-20(i).

(8) Adult entertainment uses shall not be open to the public between the hours of 11:30 P.M. and 6:00 A.M.

(9) At no adult entertainment use shall alcoholic beverages be allowed or suffered to be used or consumed.

(10) If the adult entertainment use allows for the showing of films or videos within the premises, the booths in which the films or videos are viewed shall not be closed off by curtains, doors, or screens. All such booth openings shall be clearly seen from the center of the establishment.

(11) The applicant must demonstrate full compliance with the design and operating criteria provided herein.

(d) *Adult Entertainment Uses Not Allowed As-of-Right*. Adult entertainment uses are not included within the definition of retail sales or services or of any other lawful business permitted as of right or by special permit as provided in Chapter 30. In no instance shall an adult entertainment use be allowed as-of-right.

(e) *Adult Entertainment Uses Allowed Only by Special Permit*. Adult entertainment uses shall be allowed only by special permit in the following districts: ***Mixed Use 1 and Limited Manufacturing.***

(1) *Special Permit Application.* Where a special permit is required for adult entertainment uses, a written application for a special permit shall be submitted in accordance with sections 30-24(a) and 30-35(c). The application for a special permit for an adult use shall provide the following: name and address of the legal owner of the establishment; name and address of all persons having legal, beneficial, equitable or security interests in the adult use; name and address of the manager(s) and assistant manager(s); the number of employees; proposed security precautions; a map showing all properties that lie within 1000 feet of the property boundary; and a plan of the physical layout of the premises showing, among other things, the location or proposed location of the adult books, adult paraphernalia or adult videos; a sworn statement that neither the applicant nor any person having a legal, beneficial, equitable, or security interest in the establishment has been convicted of violating G.L. chapter 119, section 63 or G.L. chapter 272, section 28.

The legal owner of an adult entertainment use having received a special permit shall promptly notify the special permit granting authority of any changes in the above information within ten (10) days and failure to do so will be grounds for revocation of the special permit.

(2) *Special Permit Procedure.* The procedures for special permit set forth in section 30-24(c), except for 30-24(c)(5), shall apply. The board of aldermen may grant a special permit subject to the conditions, safeguards, and limitations herein set forth, when, in its judgment, the purposes stated in subsection (a) and criteria in subsection (c) hereof have been satisfied.

(3) *Expiration.* A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be eligible for renewal for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon notification of adverse changes regarding the public safety factors applied at the time that the original special permit was granted.

(4) No special permit shall be issued to any person convicted of violating the provisions of G.L. chapter 119, section 63 or G.L. chapter 272, section 28 or registered with or required to be registered under the Sex

Offender Registration Law, G.L. chapter 6, sections 178C et. seq., or its successor.

(f) *Existing Adult Entertainment Uses.* Any adult entertainment use in existence upon the effective date of section 30-35 shall apply for an adult entertainment use special permit within 90 days of the adoption of this section.

(g) *Severability.* If any section or portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.
(Rev. Ords. 1995, Ord. No. V-183, 6-29-98)