Chapter 270

BUILDING AND SITE DEVELOPMENT

GENERAL REFERENCES

Noncriminal disposition — See Ch. 315.

Sewers — See Ch. 510.

Signs — See Ch. 526.

Soil removal — See Ch. 534.

Wetlands — See Ch. 627.

Zoning — See Ch. 650.

Subdivision of land — See Ch. A676.

ARTICLE I
General Provisions

§ 270-1. Definitions.

In the interpretation of this chapter, the meanings of words and phrases shall beaccording to the definitions included in Chapter 650, Zoning, as amended, unless the context shows another sense to be intended.

ARTICLE II
Permits and Approvals

§ 270-2. Site plan review and approval.

A. Site plan required.

(1) Purpose. The purpose of site plan review and approval shall be:

(a) To assist those wishing to build projects within the City by providing them with the necessary information about the City's requirements prior to the start of any construction or issuance of permits.

(b) To ensure compliance with all applicable codes and standards.

(c) To the extent practicable:

[1] To assure that all elements of site use and layout are designed so as to protect the public health, safety and welfare, both on site and off site.

[2] To maximize convenience, improve visual appearance and enhance property values.

[3] To minimize negative environmental impact, and adapt to climate change impacts, and implement sustainable building practices through means including both on-site and off-site improvements and othermitigating measures.

(2) Prior approval required.

(a) General. No building permit shall be issued for and no person shall undertake any use or improvement subject to this section, including earth movement, tree removal or site development (except as noted below), unless site plan approval therefor has been first granted to such person.

(b) Prior earthmoving. Under certain circumstances set forth in Subsection F, a preliminary site plan may be approved allowing specified site work to proceed in advance of approval of a final site plan. In addition to the circumstances set forth in Subsection F, documentation must be provided to show that earthmoving will not result in the intensification of flood impacts in the project area or significant changes in the water table are caused by such earthmoving or tree removal.

(3) Applicability.

(a) General. Except as provided below under Subsection A(3)(b), Exceptions, site plan review and approval shall be required for any of the following: new construction of any building or structure; addition to an existing building or structure; increase in area of on-site parking or loading areas, whether paved or otherwise; increase in impervious surfaces which may intensify flood and heat impacts; change in location of any exterior feature required by the Code of the City of Marlborough, including but not limited to paving, parking, loading areas, access roads, driveways, curb cuts, sidewalks, fencing and exterior storage; reduction of required

landscaping or screening; tree removal; and other activities which could result in an increase in urban heat island impacts and stormwater runoff; change of use or expansion of use requiring a change in any exterior site requirements identified in Chapter 650, Zoning, or creating a different impact on the surrounding area, including impacts to the watershed or adjacent waterbodies; change in use of an existing curb cut creating an increase of 10% or more in vehicle trips caused by expansion of the project or by a change of use from one use category to another as listed in Chapter 650, Zoning, Table of Off-Street Parking Requirements, or by addition of a drive-through facility; or as otherwise required by Chapter 650, Zoning.

Change in use or occupancy of an existing building, except for 1 and 2-family dwellings, may require Site Plan Approval and compliance to the extent practicable to the requirements herein. ~~in vehicle trips caused by expansion of the project or by a change of use from one use category to another as listed in Chapter 650, Zoning, Table of Off-Street Parking Requirements, or by addition of a drive-through facility; or as otherwise required by Chapter 650, Zoning.~~

~~(a)~~(b) Exceptions. The only exceptions to the above shall be installation of newlandscaping, ordinary repairs to existing site development work, minor changes in location of existing walkways, parking areas, loading areas ordriveways constituting less than 100 square feet additional area (whether paved or unpaved), provided that the changes are in full compliance withChapter 650, Zoning. Approvals under the Subdivision Control Law[1] shall not apply.

B. Site plan application.

(1) Project definitions. For the purpose of this section, the following definitions shall apply:

~~MINOR RESIDENTIAL PROJECTS~~ SINGLE ONE- AND TWO-FAMILY LOT DEVELOPMENT PROJECTS - One- and two-family dwellings,including all new construction, additions and site improvements thereto and minor modifications or site improvements to existing multifamily dwellings which do not increase the number of parking spaces or dwelling units.

MINOR SITE PLAN PROJECTS - Any site plan containing less than 8,000 square feet of building gross floor area (with the exception of one- and two-family residential). Site plans for existing buildings shall be considered Minor Site Plans. Any projects involving parking lots or landscaping only where no building is present or being altered, and no utility changes are proposed shall also be considered Minor Site Plans.

~~NONRESIDENTIAL AND MAJOR RESIDENTIAL PROJECTS~~MAJOR SITE PLAN PROJECTS - All projects except those listed in the definitions listed ~~of "minor residential projects"~~ above.

(2) Preapplication review.

(a) Single One- and Two- Family Lot Development Projects~~Minor residential projects~~. The applicant may request the applicable coordinating department identified in Subsection E(1) to schedule an informal preapplication review to establish submission requirements.

(b) Minor and Major Site Plan Projects ~~Nonresidential and major residential projects.~~ The applicant shall request the applicable coordinating department identified in Subsection E(1) to schedule an informal preapplication review, with those people the coordinating department deems appropriate, for the purpose of reviewingpreliminary proposals and alternatives. By this means, obviously inappropriate plans may be

eliminated, the City may have the opportunity to have input into the planning and design process at its earliest level and submission information can be established.

(3) Formal submittal. One copy of a site plan shall be submitted to each of the City reviewing departments identified in Subsection E(3) as follows:

(a) An application form properly completed and signed.

(b) Information identified in the preapplication review and in Subsection C.

(c) Fees. [See Subsection B(4) below.]

(4) Fees and expenses. To reimburse the City for the cost of site plan processing

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1. Editor's Note: See Ch. A676, Subdivision of Land.

and review, inspection and other costs, fees as specified in Article III of this chapter shall be tendered to the City by the applicant at the time of application and shall constitute a part thereof.

(5) Preparation. The site plan shall be prepared and stamped by a registered professional engineer and/or landscape architect, as appropriate, unless either the work is limited to minor modifications or additions to a structure or site not affecting utilities or parking requirements or the requirement is waived bythe City coordinating departments identified in Subsection E(1) as being unnecessary for purposes of the particular site, in which case the site plan must be prepared with sufficient clarity and detail to show the nature of the work to be performed.

(6) Public notice. The applicant shall provide public notice as follows:

(a) Applicability. All projects except the following:

[1] Minor residential projects as defined in Subsection B(1) above.

[2] Minor modifications to nonresidential and major residential projects as defined in Subsection B(1) above, provided that said modifications do not increase building floor space by more than 10% or 2,000 square feet, whichever is greater.

[3] Any project requiring a public hearing for a special permit or subdivision of land as a result of the particular application for site plan approval.

(b) Type of notice. The applicant shall publish a notice in a newspaper of general circulation within the area at least once within two weeks of filing a site plan application. Proof of said publication shall be provided to the coordinating department identified in Subsection E(1) prior to certification of completeness of submission under Subsection E(2).

(c) Content of notice. The notice shall provide a brief description of the project, including size, use, street address and the name of the applicant and the availability of site plans for public inspection. Specific requirements for the notice may be established as provided under Subsection H.

(7) Standing to file application. A site plan shall not be considered valid unless the applicant has written consent of the owner or owner's agent filed with the application.

C. Submission requirements. The site plan shall contain the following information unless waived as indicated below for projects not requiring such material for purposes of review. Where appropriate, show existing conditions on one sheet and proposed conditions on a separate sheet. Sheet size should normally be a maximum of 24 inches by 36 inches unless otherwise approved as indicated below.

(1) ~~Minor residential projects~~Single one- and two- family lot development projects: See definition under Subsection B(1). Waivers to submission materials and sheet size may be requested from the coordinating departments

identified in Subsection E(1).

(a) Small additions/site improvements. Submit information necessary for review as determined by the Building Commissioner. All information should be on one sheet, if possible. At a minimum, provide items in Subsection C(2)(a) and (b) below in their entirety. Other information should be limited to details of the specific improvement. All applications must be accompanied by a certified plot plan (survey) of the lot, showing lot lines, dimensions and setbacks. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) New construction and large additions. Submit all items listed under Subsection C(2) below except the following: those in Subsection C(2)(f)[2], (j)[2], (l), (m) and (n).

(2) Nonresidential and major residential projects: See definition in Subsection B(1). Waivers to submission materials and sheet size may be requested from the coordinating department identified in Subsection E(1). For small additions or site improvements, submit information necessary for review as determined by the coordinating department, similar to that required in Subsection C(1)(a) above. For new construction and large additions, submit the information listed below:

(a) Title block:

[1] Proper heading, containing project title (if any).

[2] Name and address of owner, engineer, landscape architect and/or surveyor.

[3] Street number (as assigned by the City Engineer).

[4] Assessor's plate and parcel number.

[5] Scale of drawing.

[6] Date and revision date.

[7] Approval signature block: Provide space for date and signature by all appropriate City reviewing departments listed in Subsection E(3).

(b) General information on cover sheet:

[1] Locus map: Show location of site and names of all surrounding streets within 1,000 feet of boundaries of lot. [See item in Subsection C(2)(d)[2] below concerning location of buildings on surrounding lots.] Identify on locus map all other parcels within 1,000 feet in which applicant has any financial interest.

[2] North arrow.

[3] Zoning: district in which the property lies and any zoning district boundary lines which may cross the locus, including floodplain and wetland protection districts. Show zoning lines on locus map and other plans, if appropriate.

[4] The lot: completely dimensioned or show dimensions on other sheets.

[5] Lot area: in acres and in square feet.

Existing conditions. Show existing conditions, including buildings and structures, setback dimensions, parking, driveways, landscaped areas, boundaries of wooded areas and wetlands, topography and drainage easements; The plan shall also show the location, size and type of all trees with a trunk 12 inches in diameter or greater @DBH.

(c)

~~(c)~~(d) Proposed buildings and structures:

[1] Location of all proposed buildings and structures on the lot and those to remain: Show all building and yard dimensions, foundation and building limits, including overhangs, porches, decks and similar appurtenances.

[2] For proposed nonresidential and multifamily residential developments: Show approximate location of all existing buildings on all abutting lots and on lots across street. Use a separate sheet if necessary or incorporate on locus map.

[3] Building heights, stories and elevations: number of stories;elevations of foundation sill, cellar floor and first floor; and building heights, as defined by zoning.

~~[3]~~[4] Flood elevations: Submit table comparing FEMA flood elevations with ground level elevation, basement top of wall elevation, and sill elevations of all opening at ground level or below.

~~[4]~~[5] Floor areas: building floor areas for each floor and in total.

[6] Side elevations: On a separate sheet, show side views of the building. For multiple structures or similar cases, this requirement may be waived by the coordinating department identified in Subsection E(1).

Site plan: indicating solar orientation of building to evaluate passive cooling and impact of shading on adjacent sites.

~~[5]~~[7]

~~(d)~~(e) Parking, driveways and exterior features:

[1] Location: Locate all driveways, walkways, parking spaces, pickup, delivery, loading, storage and rubbish disposal areas, outdoor lighting and similar exterior site features.

[2] Uses: identification of all proposed uses on site, in proposed locations.

[3] Calculation of parking spaces required according to Chapter 650, Zoning. Provide specific listing of proposed uses, floor areas, and

parking spaces, according to categories in Chapter 650, Zoning, Table of Off-Street Parking Requirements.

~~(e)~~(f) Floor area ratio (FAR), lot coverage and landscaping:

[1] FAR and lot coverage: identification of all areas included within lot coverage and landscape areas and calculation of FAR, if applicable, and percentage of lot coverage. (See definitions in Chapter 650, Zoning.) Show calculation on the same sheet.

[2] Plantings: planting plan in conformance with zoning requirements, showing plantings, fencing and screening. The general planting plan must be submitted with the initial application. A detailed plan with specified plantings can be submitted at a later date with approval of the coordinating department identified in Subsection E(1).

~~(f)~~(g) Topography: existing and proposed topography at ~~two~~one-foot contour intervals (NGVD datum preferred). Specify the datum plane on which elevations are based.

~~(g)~~(h) Easements: location and type of any easements and any drainage system (natural or otherwise) within the site and within 50 feet of the property, or that may be needed to evaluate issuance of permit.

~~(h)~~(i) Utilities: location of all existing utilities, septic systems and wells within100 feet in any direction of the proposed work.~~, unless waived by the City Engineer~~. Also show the location and all pertinent data relating to the proposed services. If a private sewage disposal system is involved in the project, a design plan shall be submitted with the site plan. Applicant shall provide annotation indicating any utilities located in floodplain areas.

~~(i)~~(j) Wetlands and open space.

[1] Wetlands: boundaries of wetland and floodplain areas as defined under MGL c. 131, § 40, Massachusetts Wetlands Protection Act; MGL c. 131, § 40A, Massachusetts Inland Wetlands Restriction Act; Marlborough Code Chapter 650, Zoning, § 650-23, Floodplainand Wetland Protection District.

[2] Open space: location of existing or potential publicly accessible open space parcels or trails abutting the project site or located within500 feet of the project site. This information may be shown on a locus map, if appropriate.

~~(j)~~(k) Erosion control: plan for projects which will disturb more than 5,000 square feet of surface area. Erosion control plans shall follow current MassDEP guidelines. The Erosion Control Plan shall provide details on construction sequencing and its relationship to site stabilization during the various phases of site construction.

~~(k)~~(l) Signs: Signs are included as part of a site plan.~~, but the necessary information can be submitted and approved at a later date, at the option of the applicant.~~ The proposed location, dimensions and general features of all signs shall be submitted before building ~~occupancy~~ permit issuance. Detailed information shallbe shown on a separate plan submitted in accordance with Chapter 526, Signs.

~~(l)~~ Impact reports (general):

(m)

~~[1]~~ [1] Information. In certain cases, particularly large or complex

projects which are expected to create a substantial or unusual impact, the City Planner or Engineer may require the applicant to provide relevant reports or other information for purposes of demonstrating that proposed improvements on site or off site are adequate and will not create adverse impact on the neighborhood or City. The applicant shall also demonstrate that the proposed improvements on site or off site will not create adverse impacts on existing mature trees, wetlands resources, groundwater table levels, and floodplain areas. If increases to flooding or urban heat island effects are anticipated, the applicant shall provide a plan to mitigate these risks. The applicable City officials shall notify the applicant of this

requirement within a reasonable period of time following submission of the site plan.

[2] Review. In particular cases where warranted (see below), the applicant may be required to assist said departments in review of said reports by providing for independent technical consultants to review technical reports on behalf of the City. The applicable City officials shall notify the applicant of the particular circumstances where such technical assistance may be necessary.

~~(m)~~(n) Traffic impact report (if required). If deemed necessary for purposes of review by the Planning and Engineering Departments, a traffic impact report shall be submitted by the applicant for site plan approval. The report shall, if so required, be prepared by a professional engineer.

[1] Scoping meeting to identify streets or intersections to be studied:

[a] The streets or intersections to be studied shall be identified by the City Planner and Engineer within 14 days following a scoping meeting which the applicant may attend and which shall be held within 30 days of formal submission.

[b] The minimum percent of traffic (average daily or peak hour) generated by the proposed project and having an impact on the street or intersection to be studied shall be 5%.

[2] Report content. The report shall generally include information on theitems listed below, unless the scope is modified by the City Planner and Engineer because of special circumstances, such as coordination with other projects, with similar reports required by state agencies, with the City Master Plan or other long-range plans. No report shallbe required if the applicant is required to file an environmental impact statement for traffic purposes by the Commonwealth ofMassachusetts.

[a] Provide traffic accident data, average daily and peak hour vehicle volumes, and capacity analysis of streets and intersections scoped as provided for by Subsection C(2)(n)[1] above. The capacity analysis shall include level of service, volume-to-capacity ratio, period of delay, and other measures as appropriate and as defined by the Transportation Research Board of the National Research Council.

[b] Future "no build" traffic conditions: Provide similar information to that listed in Subsection C(2)(n)[2][a] above at the future design year specified for full occupancy of the entire project or at some other design year specified by the City Planner based upon long-range City transportation study needs. Include background growth and impact of other proposed developments, excluding the project in question.

[c] Future "build" traffic conditions: Provide similar information to

that listed in Subsection C(2)(n)[2][a] and [b] above assuming full occupancy of the project, with and without proposed off-site mitigating road improvements. Alternative measures for mitigation shall be analyzed if appropriate.

[d] Traffic mitigation plan: description of proposed measures for mitigation, identifying those measures committed to by applicant and those measures proposed to be implemented by others. Demonstrate how the mitigation plan is coordinated with the City and/or state long-range plan and/or with other projects in the same general area. Provide summary of costs of proposed measures, breakdown of component costs, calculation of pro-rata share of the cost attributable to the proponent based on impact of the project, and proposed cost sharing for improvements which may be undertaken by or funded jointly by others.

[3] Report evaluation. See Subsection D(2)(d) and (e) below for traffic planning and mitigation evaluation criteria.

(o) Climate Impact Statement.

[1] If deemed necessary, the applicant shall submit a public climate impact statement describing their preliminary exposure rating for extreme heat and extreme precipitation from the Climate Resilience Design Standards Tool, which FEMA flood zone the site is in, whether planned activities will result in significant site disruptions, earth removal, or removal of existing large-canopy trees, and how the planned development or redevelopment will incorporate climate adaptation and resilience strategies.

~~[3]~~[2] A 676-22 Tree Preservation and Protection Plan. A. The intent of the Tree Preservation and Protection Plan is to encourage the preservation and protection of trees during land clearing and subdivision layout. Locations of mature trees as noted in the required report submitted by a Certified Arborist shall be taken into consideration when designing the subdivision layout. Trees are recognized for their abilities to mitigate heat island effects; provide shade cover; reduce energy consumption; improve air quality; reduce noise pollution; reduce topsoil erosion and storm water runoff; provide wildlife habitat; sequester carbon; enhance the quality of life and the environment of the city; increase property values; and enhance the overall appearance of the community. The Planning Board strongly encourages the preservation of existing significant vegetation and as such strongly discourages the total “clear cutting” of subdivision property. No part of this tree preservation requirement shall discourage the removal of Hazardous Trees, an act which may be important to public health and safety. Significant mature trees over 24” in diameter @ DBH, should be 25 strongly considered when laying out the proposed subdivision roadway and lot layouts, these trees should be retained if the location is deemed feasible. B. The

Tree Preservation and Protection Plan shall show the existing conditions of the subdivision property, noting the size and type of all trees 12 inches in diameter or greater @ DBH along with the roadway right-of-way layout, all easement layout lines and zoning setbacks (rear, sides and front) and the limits of proposed grading within the lots that could adversely affect the health and viability of existing trees. C. After reviewing and taking into account the Certified Arborist's report the Tree Preservation and Protection plan shall be prepared to show the extent of tree removal and tree preservation for the proposed subdivision design. If feasible, shade trees 12 inches in diameter or greater @ DBH, located in the side and rear yard building setbacks for each individual lot depicted on the Definitive Plan, shall be retained. All trees that would be removed as part of the subdivision design would be noted as (REM.) for to be removed or as (RET.) for to be retained.

~~(n)~~(p) State curb cut permit.

[1] When the proposed development requiring site plan approval also requires a state curb cut permit, site plan approval by the City may be withheld until the applicant submits to the City Planner and Engineer a copy of the required permits issued by the Commonwealth of Massachusetts Department of Public Works.

[2] The applicant shall submit a copy of any application for a state curb cut permit to both the City Planner and Engineer at the same time as said application is submitted to the state.

[3] The location of any curb cut must conform to the site plan approved by the City. The issuance of any curb cut permit prior to approval of a site plan shall not constrain the conditions that may be imposed by the City at site plan approval.

D. Site plan review criteria.

~~(1) Applicability.~~

~~(a) Except as provided for below, the criteria shall apply to all principal and accessory buildings and structures and to all exterior site features, however related to the major buildings or structures.~~

~~(b) Exceptions: The criteria shall not apply to single- or two-family dwellings on their own lots.~~

~~(2)~~(1) ~~Criteria.~~ The following criteria shall be considered by the appropriate departments in the review and evaluation of a site plan:

(a) General.

[1] Purpose. These criteria are intended to provide general guidance to the applicant in the preparation of plans, as well as guidelines for review. The criteria are not intended to be exhaustive, nor to be applied in cases which may prove infeasible or inappropriate to the particular circumstances. Rather, each site should respond to its own unique conditions and problems, including the impacts of climate change. The criteria are not intended to discourage creativity, invention and innovation, but are intended to encourage good design and exemplary projects offering solutions toproblems, such as future climate impacts created on site and off site where possible. The issues andconcerns represented by the criteria enumerated below shall beaddressed in the final site plan.

[2] Design alternatives. Where an applicant believes that he or she will have serious practical difficulties in meeting these criteria or a site situation is presented that may call for a different approach, then the applicant may, at the applicant's option, present information which demonstrates this concern in the preliminary stages of preapplication review. The applicant may also submit for consideration more than one alternative site plan or part of said site plan intending to demonstrate the above concerns. City reviewing departments shall take these design alternatives into account and shall not be precluded by these criteria from approving a preferred alternative layout which, in their opinion, results in the best overall solution for the particular situation and which is also more beneficial to the City and the neighborhood.

(b) Urban and natural landscape. The development shall be integrated into the surrounding urban or natural landscape and shall be designed to protect abutting properties and community amenities to the extent practicable and appropriate. The development shall not exacerbate flooding or heat island effects on abutting properties. Development shall, to the extent practicable:minimize destruction of unique, valuable, natural or historical features; minimize removal of mature trees and vegetation, and where tree coverage does not exist or has been removed, new planting may be required; maximize retention of open space; minimize noise and dust; screen objectionable features from neighboring properties and roadways; provide linkages and foot trails between open spaces accessible to the public or potentially accessible to the public, where practical and in accordance with the City's Open Space and Recreation Plan, Master Plan or Neighborhood Plan, subject to applicable law; provide important wildlife corridors to preserve existing habitat or enhance habitat where practical. These criteria shall be used for review by the Planning and Conservation Departments and others as may be appropriate.

(c) Building and service area design and operation: Buildings shall, to the extent practicable, be related harmoniously with the prevailing character of buildings in the vicinity that have a visual relationship to the proposed buildings. The achievement of such relationship may include siting of buildings, use of appropriate building materials, screening, breaks in roof and wall lines and other techniques and shall provide adequate light, air,

circulation and separation between buildings. Variation in detail, form

and siting may be used to provide visual interest and avoid monotony. Exposed storage areas, machinery, service areas, loading areas, utility buildings and structures, exterior brightly lighted areas and other unsightly or noisy uses or uses having a potential adverse impact, if permitted in the district, shall be clearly identified on the site plan and shall be set back, buffered, screened or otherwise designed so as to protect the neighbors from objectionable impact or features, including to renewable energy systems. These criteria shall be used for review by the Planning and Building Departments and others as may be appropriate. Professional architectural advice may be sought in the review process where necessary.

(d) Traffic and pedestrian movement. The plan shall maximize convenience and safety of vehicular and pedestrian movements occurring or likely to occur both within the site and also in relation to ways likely to be affected by traffic from the site. The plan shall demonstrate adequate circulation and access within the site, as well as adequate access to and from the site and along streets affected by the site, and shall include provision for proposed traffic or pedestrian improvements located off site if deemed necessary. [See following Subsection D(2)(e) for determination of adequacy of off-site mitigation.] Streets, sidewalks and raised curbing along the site frontage shall be upgraded to City standards if required. Green infrastructure and pedestrian safety features shall be incorporated into the plan, where possible. These criteria shall be used for review by the Engineering and Planning Departments and others as may be appropriate. The plan shall alsodemonstrate the following:

[1] Efforts to minimize:

[a] Points of conflict between vehicular and pedestrian movement and between different vehicular movements.

[b] Routing of traffic through predominantly residential streets.

[c] Left-turning movements on streets.

[d] Number of curb cuts.

[e] Number of vehicular trips on street.

[2] Efforts to maximize:

[a] Distance between curb cuts.

[b] Sharing of curb cuts and common driveways with adjacent sites or lots, where warranted by traffic or topographic considerations.

~~[c]~~ Interconnection between driveways, parking lots and pedestrian pathways on adjacent sites or lots, thereby avoidingcongestion and inconvenience caused by use of streets foraccess to adjacent sites.

[c]

~~[d]~~ [d] Separation of pedestrian, bicycle and vehicular circulation through the implementation of green infrastructure and other nature-based solutions, if possible.~~.~~

~~[e]~~ [e] Convenience of circulation system layout in order to enhance pedestrian and/or public transportation.

~~[f]~~ [f] Site distance and safety.

[3] Parking location and transportation systems management. Parking location and access may be required to meet City and/or statepolicies and plans related to transportation systems management intended to reduce reliance on the automobile and to reduce traffic congestion. For example, parking may be better located behindcertain uses, such as offices, in order to encourage pedestrian accessbetween buildings, public transit, ride-sharing and other modes of transportation.

(e) Off-site traffic impact report and traffic mitigation criteria (where required): [See Subsection C(2)(n) for information which may be required in a traffic impact report.] These criteria shall be used for reviewby the Planning and Engineering Departments and others as may be appropriate. Traffic mitigation criteria shall include the following where appropriate:

[1] Mitigation measures. Mitigation measures may include but are not limited to nonstructural measures, e.g., transportation demand management, arrangement of uses on site, timing of lights, restriping, etc., as well as structural/engineering solutions, e.g., roadways, signalization and lane widening. Nonstructural mitigationmeasures should be used first to minimize the amount of traffic generated by a project, then structural measures should be pursued to minimize the traffic impacts of a project.

[2] State guidelines. Mitigation measures should be developed in a manner compatible with current MDPW/MEPA Guidelines for EIR/ EIS Traffic Impact Assessments, as may be amended and as may be deemed applicable.

[3] Conformance to area-wide long-range plan for traffic. The traffic mitigation plan shall, where possible, be compatible with long-range plans developed or promulgated by various City or state departments, agencies or commissions or committees, so that construction of traffic improvements can take place, in phases if necessary, with minimal waste or disruption when future improvements are made by others.

[4] Commitment to mitigation. Site plan approval may be subject to an agreement to perform an overall mitigation scheme or funding program meeting the above criteria.

[5] Degree of mitigation:

[a] Pro-rata share. To the extent that the project impacts on state and/or local transportation systems, the project proponent shall provide a minimum of its pro-rata share of the cost of

mitigating those impacts. Alternatively, the proponent may be required to carry out structural/engineering solutions at locations to be identified by the above-referenced City departments to the extent practicable and in proportion to their pro-rata share. Where pro-rata share cannot be established on a formula basis, then a share amount shall be established which, in the opinion of the above-designated City departments, is reasonable based on the information in the traffic report and other relevant information.

[b] Mitigation design goals:

[i] Preconstruction or better. For all intersections and segments, the goal of mitigation is to restore operations to preconstruction conditions or better.

[ii] Failing intersections. For failing intersections (Level of Service E or F) preconstruction, the goal of mitigation is to provide Level of Service D or better. (This may require pooling of mitigation funds by several proponents in order to carry out more costly but more effective long-term improvements.)

[iii] Coordinated design. For complex or major intersections requiring joint effort by several proponents: Project proponents will be expected to provide mitigation commensurate with the impact of their project in a coordinated manner. Alternative plans may be required prior to approval which address mitigation for any future design year specified by the City Planner under Subsection C(2)(n)[2] commensurate with other projects or planning studies.

~~[iii]~~[iv] Design of traffic features respond to projected flood risks and any new roads, curb cuts, and sidewalks will be designed with adequate elevations and infrastructure sizing to handle increased stormwater volumes.

(f) Public safety criteria. The development shall, at a minimum, provide adequate means for emergency vehicular access, and the site plan shall be reviewed for any factor affecting public safety. These criteria shall be used for review by the Police and Fire Departments and others as may be appropriate. Flood data for main accessways for emergency vehicles should be accounted for to ensure access is maintained during a flood event.

(g) Storm drainage and erosion control. The site plan shall show adequate measures to prevent pollution of surface water or groundwater, to minimize erosion, sedimentation, increased rate of runoff and potential for flooding and other adverse impacts on abutting property. Drainage shall be designed so that the downstream rate of runoff shall not be increased. Drainage should be designed for future design storm volumes.

Applicant should use the Executive Office of Energy and Environmental Affairs Climate Resilience Design Standards –tool to understand future precipitation depth on site. This information should be verified with a hydraulic and hydrologic model if possible, to encourage proper sizing of piped and green infrastructure These criteria shall be used for review by the Engineering and Conservation Departments and others as may be appropriate.

(h) Wetlands and floodplains. The site plan shall be consistent with the requirements of Chapter 650, § 650-23, of the Code of the City of Marlborough, as amended, and with MGL c. 131, §§ 40 and 40A, as amended.

(i) Sewer and water. The development shall be serviced by adequate water supply and waste disposal systems and shall not place excessive demands on City infrastructure. These systems shall be in conformance with the City Master Plan or long-range plan for such infrastructure. These criteria shall be used for review by the Engineering Department and others as may be appropriate and, in cases where septic systems are required, by the Board of Health. (Entrance Fee language to be added)

(j) Utilities. Electric, telephone, cable television and other such utilities shall be underground where physically and environmentally feasible. These criteria shall be used for review by the Engineering and Planning Departments and others as may be appropriate.

(k) Advertising features. The size, location, lighting and materials of all exterior signs shall conform to Chapter 526, Signs, as amended. The design of signs and abutting features shall not detract from the design of proposed buildings and structures and the surrounding properties. All signs shall be reviewed as an integral element in the design and planning of all development on the site, and all existing signs on site shall be brought into conformity as a requirement of site plan approval. These criteria shall be used for review by the Planning and Building Departments and others as may be appropriate.

(l) Construction impact. The development shall minimize dust, noise, erosion, inconvenience or other disturbance during the construction process. These criteria shall be used for review by the Planning, Building, Engineering and Conservation Departments and others as may be appropriate. ~~Existing trees should be preserved if possible during construction. The City will review plans to determine whether the Applicant has adequately made efforts to do so.~~

(m) City ordinances. The site plan shall comply with all requirements of Chapter 650, Zoning, and other applicable ordinances of the City of Marlborough, and with all other provisions of this section, as amended.

(n) Trees. Trees are recognized for their abilities to mitigate heat island effects; provide shade cover; reduce energy consumption; improve air quality; reduce noise pollution; reduce topsoil erosion and storm water runoff; provide wildlife habitat; sequester carbon; enhance the quality of life and the environment of the city; increase property values; and enhance the overall appearance of the community. The City strongly encourages the preservation of existing significant vegetation where possible during construction. The City will review plans to determine whether the Applicant has adequately made efforts to do so.

~~(m)~~(o)

~~(3)~~(2) Time limit for compliance. All exterior site conditions existing at the time of adoption of this section shall be brought into compliance with this section to the maximum practical extent at the time when a new site plan or an amended site plan is required as specified by this section and before use or occupancy or change of use or occupancy of said site, subject to MGL Chapter 40A et al. If any elements of the existing development are nonconforming with zoning, they

shall be upgraded so that they conform after the new proposal has been completed, to the maximum practical extent.

~~(4)~~(3) Plan modifications. Before issuing approval of a site plan, the reviewing departments may request the applicant to make modifications in the proposed design of the project to ensure that the above criteria are met.

~~(5)~~(4) Conditions. Site plan approval may be subject to conditions, modifications andrestrictions imposed by the reviewing departments identified below. Such conditions may include requirements for contributions toward or implementation of off-site improvements needed as a result of the impact of the development, for example on stormwater flooding or urban heat island impacts, restrictions on the use of curb cuts accessing the site and requirements for securing the performance of all proposed work, including

proposed off-site improvements, by a performance bond, covenant or similar instrument as appropriate.

E. Approval action by City departments.

(1) Review and coordination.

(a) Coordinating department. The department identified below shall be the City coordinating department responsible for determining the requirements deemed applicable to the site plan and shall assist applicants by providing information about the City's requirements. In addition, said department shall coordinate review by other City departments responsible for site plan review as indicated in Subsection E(3) below:

[1] ~~Minor residential projects~~Single One- and Two- Family Lot Development Projects: the Building Department. [See definitionof projects in Subsection B(1).]

[2] ~~Nonresidential and major residential projects~~Major Site Plan Projects: the Planning Department. [See definition of projects in Subsection B(1).]

(b) Phased approvals. Applicants may request approval of site plans inphases. Said request shall be in writing and must be agreed to by the coordinating department identified in Subsection E(1)(a) above.

(2) Certification of completeness of application.

(a) Certification. The coordinating department [identified in Subsection E(1) above] shall, within 30 days, review the material submitted with any formal written application as defined in Subsection B(3) and shall certify as to the completeness of the application. Said certification shall not imply that the application will be approved nor limit the conditions or modifications that may be required prior to site plan approval.

(b) Completeness. A submission shall not be considered complete until all items required under Subsections B and C, including impact reports required under Subsection C(2)(m) and (n), have been properly completed and submitted, until any environmental impact reports required by the Commonwealth of Massachusetts have been certified as adequately complying with state requirements, and until any special permit or variance required by Chapter 650, Zoning, has been granted. Any order of conditions required from the Conservation Commission may be issued after certification of completeness.

(3) City departments responsible for final review and approval.

(a) Minor residential projects: See definition in Subsection B(1). Site plan approval shall be required from the Engineering and Building Departments and, in addition, the Conservation Department, Board of Health and other departments as may be necessary, if so required by the Building Commissioner in writing. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) Nonresidential and major residential projects. Site plan approval shall be

required from the following City departments: Planning, Engineering, Building and, in addition, Conservation, Fire, Police, Board of Health and other departments as may be necessary, if so required by the City Planner in writing.

(4) Final action by City departments.

(a) Transmittal. Final action by each department designated above shall be transmitted in writing to the coordinating department identified in Subsection E(1) above.

(b) Final action shall consist of either:

[1] Approval of the site plan as submitted;

[2] Approval of the site plan subject to conditions, modifications and/or restrictions set forth therein which, in the opinion of the City reviewing departments, are necessary to cause the site plan to meet the site plan review criteria set forth in Subsection D; or

[3] Denial of the application for site plan approval if, in the opinion of the City reviewing departments, the application is incomplete or the site plan fails to meet any one or more of the site plan review criteria set forth in Subsection D and the applicant fails or declines to make such amendments to the site plan as are necessary to cause the site plan to meet said criteria.

(c) Time period for action. Except as provided below under extensions of time, final action of the City reviewing departments shall be made within the time periods specified below following the date of certification of completeness of application:

[1] Minor residential projects: 45 days.

[2] Nonresidential and major residential projects: 90 days.

(d) Extensions of time for final action: A department may communicate to the applicant the necessity for an extension of time, based upon clearly defined reasons. Said extension shall not exceed a period of 60 days unless agreed to in writing by the applicant and the reviewing departments.

(e) Resubmittal of denied site plan: The applicant may, at the applicant's option, resubmit at any time a site plan with such modifications necessary to correct the reasons for denial. The City reviewing departments shall act on said resubmittal within the time periods provided in Subsection E(4)(c) above. Application fees for a resubmittal shall be 25% of any fees for a new submittal, provided that said resubmittal shall occur within one year of denial.

(5) Certification of final site plan: As provided for by Subsection H, the City reviewing departments may adopt rules relating to the procedure for administration and recordkeeping of final action and approval of final site

plans. Said procedures may include but shall not be limited to certification by all appropriate City reviewing departments of an approved final site plan incorporating all changes and with conditions, if any, attached in writing.

(6) Deviations from final site plan: Deviations may be allowed under the following circumstances:

(a) Minor deviations: if specifically sanctioned in writing by the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) Major deviations: if specifically sanctioned in writing by all reviewing departments listed in Subsection E(3) above as appropriate.

(c) All changes involving the requirements of § 270-3, Road opening/curb cut permit: if specifically sanctioned in writing by the City Engineer and City Planner.

~~(7)~~ As-built site plan required upon completion. Upon completion of the project requiring such site plan and prior to the issuance of an occupancy permit, there shall be forwarded to the Department of Public Works, Engineering Division, site plans depicting as-built conditions, in paper and electronic format, in accordance with their requirements.~~as follows:~~

~~(a) For single- and two-family dwellings: a standard blueprint.~~

~~(b) For all buildings or developments other than single- and two-family dwellings: sepia Mylar.~~

~~(c)~~(d)

~~(8)~~(7) Implementation and completion of plan.

(a) Time period. An approved or conditionally approved site plan shall be carried into effect and completed by the applicant within two years of the date of final action.

(b) Extensions of time. The City coordinating departments [identified in Subsection E(1) above] may, at the time of the approval or conditional approval of any site plan or thereafter, upon application therefor, grant such extensions of time, each not longer than one year, as they shall deem necessary to carry the site plan into effect.

~~(9)~~(8) Reapplication and resubmission.

(a) General. Any reapplication and resubmission required shall be in accordance with the provisions of the Code of the City of Marlborough at the time of reapplication. Submission materials required for reapplication shall be as deemed necessary by the coordinating departments identified in Subsection E(1) above.

(b) Nothing herein shall be deemed to extend the time periods for compliance with other state or local ordinances.

F. Prior earthmoving and tree removal.

(1) Purpose. This section is intended to protect the public health, safety and welfare and the natural environment from destructive tree removal and earthmoving operations

prior to receiving approval of final site plans, while allowing commencement of prior earthmoving under certain safeguards.

(2) Definitions. For the purposes of this section, "prior earthmoving and tree removal" shall mean the removal, fill or change of grade of earth materials and the cutting of wooded areas which are undertaken in order to establish new uses on the site or to construct or locate buildings and features accessory thereto such as ways,driveways, areaways, walks or parking areas, and these activities shall be considered a part of construction and development. For areas that are 5,000 sq. ft. in size or more or where more than xxx # trees are being removed.

~~(2)~~(3) Prior earthmoving and tree removal activities will be reviewed to understand their impact on site drainage, vegetation, and groundwater levels. Adverse impacts should be avoided where possible.

~~(3)~~(4) Prior approval required. Prior earthmoving for the purposes defined above shall be subject to approval under this section. See Subsection A(2)(b).

~~(4)~~(5) Special provisions. Prior earthmoving, as defined above, shall be allowed without prior review and approval under this section for the following uses:

(a) Construction of one- and two-family dwellings.

(b) Land clearance for agricultural or forestry purposes.

~~(5)~~(6) Preliminary site plan. Where prior earthmoving is intended to precede construction by several months, the submission and approval of the site plan may be undertaken in two stages at the option of the applicant: a preliminary site plan stage and a final site plan stage.

~~(6)~~(7) Submission requirements. The information for the preliminary site plan shall be less than required for the final site plan. The information shall be limited toproperty boundaries, existing and proposed topography at ~~two~~one-foot or lesser contour intervals, the general character of soil to be removed (based onclassification of the United States Soil Conservation Service) or soil to be added or relocated, the location of woodlands, wetlands and floodplains, water table levels, the location and depth of any utility conduits or pipes and the approximate location of any existing and proposed buildings, structures, driveways or physical features accessory thereto. The preliminary site plan shall demonstrate that prior earth moving or tree removal will not cause an intensification of flood impacts in the project area or significant changes to the water table. Other material shall be submitted only if deemed necessary by the reviewing departments.

~~(7)~~(8) Review and approval.

(a) The procedure for review and approval of preliminary site plans shall be identical to the procedure established above for final site plans, except that the reviewing departments shall be limited to Planning, Engineering, Building and Conservation and shall not include other departments unless required by the coordinating department identified in Subsection E(1).

~~(b) The preliminary site plan shall be treated as a separate site plan for the purposes of this section, and the approval of the preliminary stage of a site plan shall not be construed to assure the subsequent approval of the final site plan.~~

G. Enforcement.

(1) Building permit effective date. A final site plan must be approved prior to issuance of a building permit which may otherwise be required for the

development.

(2) Compliance prior to issuance of certificate of use and occupancy. No certificate of use and occupancy shall be granted until the provisions outlined in § 270-6C have been complied with.

(3) License or permit (if required). Approval of any license or permit application or license or permit renewal pending before any City board, agency or commission administering a municipal ordinance or regulation may be withheld at the discretion of said board, agency or commission until notification by the Building Commissioner or other department responsible for site plan review and approval that the development and any associated on-site or off-site improvements comply with the approved final site plan and any conditions imposed thereon. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(4) Period of validity of site plan approval. See Subsection E(8).

(5) Performance bond: See Subsection D(5).

(6) Enforcement officer.

(a) Designated officer: The Building Commissioner is hereby authorized and directed to enforce all of the provisions of this article. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) Site inspections. The City reviewing departments, their agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties for the administration and review of this chapter and may make or cause to be made such examinations, inspections or surveys as said departments deem necessary.

(7) Penalties. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(a) Any owner of property who violates or permits a violation of this section shall be subject to ~~a fine of $50 per day~~daily fines, said fines to be assessed each andevery day the violation continues after issuance of a violation notice by the Building Commissioner upon the identified violator. All fines shall be payable to the City of Marlborough ~~through the City Clerk's office~~.

(b) In addition to the procedures for enforcement as described above, the provisions of this chapter, the conditions of an approval granted under this chapter or any decisions rendered by the City reviewing departments under this chapter may be enforced by the Building Commissioner by noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D. The fine for any violation disposed of through this procedure shall be $50 for each offense. Each day such violation continues shall be deemed a separate offense.

H. Rules on procedure. The departments responsible for site plan review and approval may, upon joint agreement, periodically amend or add rules and regulations relating to the procedures and administration of this section. The Planning Department shall

be responsible for issuing the rules, if any.

I. Appeals. Appeals from this chapter shall be governed by MGL Chapter 40A.

§ 270-3. Road opening/curb cut permit.

A. Permit required. When the lot to be built on abuts a state highway or City street or requires a state curb cut permit for any reason, the application for a building permit shall be accompanied by approval in writing issued by either the State Department of Public Works or the City of Marlborough Department of Public Works, or both, as the specific application may require, for any driveway openings, road openings and any and all connections for water, sewer or surface water drainage. Such requirement shall be extended to all applications for a building permit, including such special permits or variances as are issued by the City Council or any other City agency as specified under the regulations of Chapter 650, Zoning.

B. Conformance to site plan. The location of any curb cut must conform to the approved site plan. The issuance of a curb cut permit prior to approval of a site plan shall not constrain the conditions that may be imposed at site plan approval.

C. Conditions of permit. In all cases, said curb cut permit shall automatically be limited to the project granted site plan approval. Any substantial change in use of the curb cut (see below) shall require modification of the permit or application for a new permit which may contain new restrictions. "Substantial change" shall mean an increase of 10% or more in vehicle trips caused by expansion of the project or by a change of use from one category to another as listed in the Table of Off-Street Parking Requirements in Chapter 650, Zoning, of the Code of the City of Marlborough, or by addition of a drive-through facility or a substantial impact on traffic caused by a change in the type, pattern or timing of such traffic.

§ 270-4. Building permit.

A. Permit required.

(1) Buildings.

(a) General. No building, structure or mobile home shall be erected, enlarged or altered by any person (except as noted below), unless a building permit therefor has been first granted by the Building Commissioner to such person. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) Exception. The only exception to the above shall be ordinary repairs, as defined by the State Building Code, and one-story accessory wooden buildings less than 65 square feet, provided that they meet the zoning yard requirements and are not for human occupancy.

(2) Site work not including building or structure. No work described under § 270-2A(2) and (3) governing applicability of site plans shall be undertaken by any person unless approval therefor has first been granted by the Building Commissioner to such person. The only exceptions to the above shall be as listed under § 270-2A(3)(b). Unpaved or gravel areas shall not be paved without receiving prior approval therefor. **[Amended 10-6-2014 by Ord. No.**

14-1005921A]

B. Applications. Any person seeking a building permit shall file an application for such permit with the Inspector on forms furnished by the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

C. Construction standards. The applicant for a building permit shall submit plans and specifications for such work or buildings as required by the State Building Code.

~~C.~~D. Resilience standards. The applicant should use the Resilient Massachusetts Action Team Climate Resilience Standards output to inform the design of new structures.

~~D.~~E. Review and approval. The plans and specifications in Subsection C above shall be submitted to the Building Commissioner and any other department or agency the Building Commissioner designates for examination, approval and filing. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

~~E.~~F. Effective date. Such application shall not be considered complete and shall not take effect until a final site plan, if applicable, has been approved under this chapter.

§ 270-5. Demolition permit.

A. Demolition permit required. Any person seeking to raze, demolish or remove a building or significant portions thereof shall first apply for a demolition permit from the Building Commissioner. No demolition permit shall be issued until after debris removal requirements have first been complied with. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

B. Debris removal requirements. Said person shall comply with the applicable provisions of § 540-23 of Chapter 540, Article III, Debris Removal, and applicable state and federal regulations regarding debris removal.

C. Extermination required.

(1) Requirement. Extermination may be required by the Board of Health before issuance of a permit to demolish. The building owner or his agent shall carry out effective measures for rodent extermination over the entire premises.

(2) Method of extermination. The method of extermination employed shall be in successful use locally and shall meet with the prior approval of the Board of Health. Upon completion of the extermination work, the building owner or his agent shall present a statement to the Board of Health that the extermination of rodents has been carried out by the use of acceptable methods. The Board of Health shall then review the methods used, inspect the premises, and, if the results are satisfactory to the Board, it will issue a letter to the Building Commissioner informing him of the satisfactory completion of the requirement. The Building Commissioner shall then issue the demolition permit if all other requirements of the application for the permit have been met. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

§ 270-6. Certificate of use and occupancy.

A. Certificate required. No person shall use or occupy any building of any type, mobile

home or portion thereof before a certificate of use and occupancy is issued for such use by the Building Department, in accordance with the provisions of the State

Building Code.

B. Applicability and application. The owner of any building being built, altered, remodeled or modified in use shall be responsible for arranging for inspections by the various departments listed on the application for occupancy and shall submit a completed application to the Building Department.

C. Conformance to site plan and Sign Ordinance. No certificate shall be granted by the Building Commissioner until the development, including buildings, site work, landscaping, signs and any associated off-site improvements, conforms to the approved final site plan and all conditions imposed on the final site plan have been complied with and until all signs are in conformity with the requirements of Chapter 526, Signs. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

D. Temporary certificate. Notwithstanding the above, a temporary certificate may be granted subject to conditions for completion of work.

§ 270-7. Certificate of completion. [Amended 10-6-2014 by Ord. No. 14-1005921A]

At the option of the Building Commissioner, prior to issuance of a certificate of use and occupancy, and upon satisfactory completion of a building or structure, or part thereof, the Building Commissioner may issue a certificate of completion for said project, such that it meets the terms of the approved building permit. The issuance of a certificate of completion shall not be authorization for use or occupancy.

§ 270-7.1. Plumbing and gas fitting permits. [Added 8-16-2004 by Ord. No. 04-100377C]

A. Plumbing and/or gas fitting shall not be installed, altered, removed, replaced or repaired until the Inspector of Plumbing has issued a permit therefor. Any application for such permit shall be made to the Inspector of Plumbing and shall contain a statement of the work performed, the location of the building, the name of the legal owner of said property and the names of the persons for and by whom the work is to be done. Each permit which is issued by the Inspector of Plumbing shall be subject to the express conditions set forth therein as to compliance with all provisions of the statutes, rules and regulations promulgated by the Commonwealth of Massachusetts and found in the Uniform Plumbing Code (248 CMR 10.00) which relate to plumbing. A separate permit shall be required for each building.

B. Permits to perform plumbing work shall be issued to licensed plumbers only. Permits to perform gas fitting work shall be issued to licensed plumbers or licensed gas fitters only.

C. All new plumbing and/or gas fitting work and such portions of existing systems as may be affected by new work or any changes shall be inspected to ensure compliance with all the requirements of 248 CMR and to ensure that the installation and construction of the plumbing system is in accordance with the approved plans.

D. Nothing contained herein shall restrict the Plumbing Inspector from enforcing the provisions of the State Plumbing Code.

E. No person shall aid or abet any plumber to violate the provisions of this section or

any provision of 248 CMR; connive at its violation; or employ an unlicensed person or permit his employment in the performance of any work, which is required by 248 CMR to be done by a plumber.

F. Any person violating this section or any section of the State Plumbing Code (248 CMR) shall be punished by a fine as established by the said Code or in the alternative by a noncriminal disposition as referred to in the Code of the City of Marlborough § 315-2B(25).

§ 270-8. Building Department permits, standards and enforcement. [Added 6-7-2004 by Ord. No. 04-100395B]

A. Permit application: It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a building or structure where such activities are regulated by 780 of the Code of Massachusetts Regulations (hereinafter referred to as the "State Building Code"), or to change the use or occupancy of a building or structure; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 of the Code of Massachusetts Regulations (hereinafter referred to as the "State Building Code") or by an ordinance of the City of Marlborough (hereinafter referred to as the "City Code"), without first filing a written application with the Building Commissioner (hereinafter referred to as ”Commissioner") and obtaining the required permit therefor.

B. Maintenance. All buildings and structures and all parts thereof, both existing and new, and all systems and equipment therein which are regulated by either the State Building Code or by City Code shall be maintained in a safe, operable and sanitary condition. All service equipment, means of egress, devices and safeguards that are required by the State Building Code or by City Code in a structure or building or which were required by a previous statute, Building Code or City Code in a building or structure when erected, altered or repaired shall be maintained in good working order.

C. Inspection of premises. The Commissioner shall have the right to enter upon the property of any person if he has reason to believe that any provision of the State Building Code or City Code is being violated. The Commissioner shall provide written notification to the owner of said property of the date and time of the proposed inspection. Any person who hinders or prevents or attempts to prevent the Commissioner or his agents from entering any building, structure or enclosure or part thereof in the performance of his duty in the enforcement of any provision of this section or any other provision of the City Code, the laws of the commonwealth and/or the State Building Code relating thereto shall be punished by a fine of $100 per offense. Each day during which the person shall be in violation of this section shall constitute a separate offense.

D. Unlawful continuance. Any person or any landowner who shall continue any work in or about the building or structure after having been served with a stop-work order pursuant to the State Building Code, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than $300 per offense. Each day during which a violation exists shall constitute a separate offense.

E. Violations. Whoever violates any provision of the State Building Code or of this section, except any provision contained within this section which provides for a specific penalty, shall be liable to a fine of not more than $300 per offense. Each day during which a violation exists shall constitute a separate offense.

F. Enforcement. Nothing contained within this section shall prohibit the Commissioner from proceeding against any individual for a violation of the State Building Code in any criminal court of jurisdiction or by seeking any other avenue of redress, thereunder, against any individual in law and/or equity.

§ 270-8.1. In-building Fire Department and Police Department radio coverage. [Added 5-5-2014 by Ord. No. 14-1005649B]

A. The Marlborough Fire Department requires that, in accordance with 780 CMR 916.1, et seq., of the Code of Massachusetts Regulations, as amended, all new buildings and new additions to existing buildings provide reliable radio communications for emergency responders within the building based upon the existing coverage levels of the Marlborough Fire Department and the Marlborough Police Department communication systems at the exterior of the building. This section shall not require improvement of existing public safety communication systems. **[Amended 1-7-2019 by Ord. No. 18/19-1007481B]**

B. The installation and operation of radio-based Fire Department communication systems must comply with the document entitled "Marlborough Fire Department Bi-Directional/Unidirectional Antenna Specifications For In-Building Fire Department Radio Coverage In Buildings," which document may be obtained at the Marlborough Fire Department and is incorporated herein by reference. The Marlborough Fire Department is authorized to promulgate and amend, from time to time, said regulations. No radio-based Fire Department communication systems shall be installed or operated without first filing with the Marlborough Fire Department a written application and obtaining a permit therefor. No occupancy permit shall be issued by the Building Department without said permit, or a written waiver therefrom by the Marlborough Fire Department.

C. Each permit issued by the Marlborough Fire Department under this section is subject to the fee for installation and maintenance of a Fire Department and Police Department communications system which is listed in § 328-2 of Chapter 328.

ARTICLE III
Fees

§ 270-9. Permit fees. [Amended 2-10-1997 by Ord. No. 96-6884B]

A. Construction costs for all new buildings and structures will be determined from values as listed in the Building Valuation Data Report published by Marshall and Swift Publication Company, Los Angeles, California (or current standard).

B. Note: Permit holder retains rights granted under the permit. No permits are transferable.

C. For all permits (building, plumbing, wiring and gas) there will be a charge of $50 for every reinspection necessitated by faulty or illegal installation or not in conformance with requirements of Massachusetts codes. Reinspection fee shall be paid before reinspection is made. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

D. Any work started before applying for and obtaining a permit will be charged two times the permit fee.~~e.~~

E. Fees. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

Type of Permit	**Fee**
New buildings	
Residential	$10 per $1,000; minimum $100
Residential, 3 or more units	$10 per $1,000; minimum $300
Commercial	$10 per $1,000; minimum $150
Accessory structure	$10 per $1,000
Additions and alterations	
Residential	$10 per $1,000; minimum $25
Commercial	$10 per $1,000; minimum $50
Miscellaneous fixed fees	
Demolition, residential	$150
Demolition, commercial	$250
Moving building	$250
Woodstoves	$25
Siding/reroofing	$20
Tents	$25
Pools, above ground	$25
Pools, inground	$40
Amusements	$100
Fences	$10
Fences, appeals hearing	$7 per Fence Viewer
Occupancy	

Type of Permit	Fee
Application to occupy existing space	$40
Occupancy permit, residential	$50
Occupancy permit, commercial	$50
Residential gas	
Single-family residence (new)	$100
Residential, 3 or more units	$65 per residential unit
Appliance replacement or addition (1-2 appliances)	$25 base and $5 per appliance
Commercial and industrial gas	
New building	$10 per $1,000 of cost; minimum $50
Change or addition	$50, plus $5 each fixture
Propane gas service installation	$50
Propane appliance replacement or addition	$15 each
Residential plumbing	
1- and 2-family residence	$100 per residential unit
3 or more units	$65 per residential unit
Alterations, residential	$20, plus $5 per fixture
Residential single unit replacement	$25
Single fixture alterations	$25
Trailer, water or sewer	$25
Commercial plumbing	
Commercial (new)	$50 plus $10 per $1,000 of cost
Commercial (alterations)	$50, plus $5 per fixture
Commercial single unit (replacement)	$25
Commercial backflow preventors	$25 each
Wiring	
New house	$100
New house with electric heat	$125
Each additional dwelling unit	$100
Service change, residential	$25
Oil or gas burner	$25
Appliances (up to 2-same inspection)	$25
0-10 outlets (switches, plugs, thermostat, lights, electric heaters, etc.)	$25

Each additional 10 outlets	$25

Type of Permit	Fee
Christmas lights, 0 to 10 lights	$25
Swimming pools	$35
Carnivals and amusement events	$100
Signs and billboards	$25
Temporary service	$50
Fire alarms/low-voltage wiring	$20
Commercial and industrial (any new or addition)	$50 plus $10 per $1,000 of contract cost
Industrial maintenance, annual	$100
Replacement equipment (refrigerator, water heater)	$25 each
New service (service change, new meter)	$50, per meter socket
Temporary service	$50

F. Site plan review fees shall be as follows (with an effective date of November 1, 2005 and a sunset clause of June 30, 2006). **[Added 10-24-2005 by Ord. No. 05-100881C]**

(1) Definitions. As used in this section, the following terms shall have the meanings indicated:

MINOR SITE PLAN — Any site plan containing less than 8,000 square feet of building gross floor area (with the exception of one- and two-family residences). Site plans for existing buildings shall be considered minor site plans for purposes of assigning fees.

MAJOR SITE PLAN — Any site plan containing more than 8,000 square feet of building gross floor area (with the exception of one- and two-family residences).

OTHER PLANS — Any site plan involving parking lots or landscaping only where no building is present and no utility changes are proposed.

(2) Fees.

(a) The fee for minor site plans, as defined above, shall be $1,000, plus $0.03 per square foot of gross floor area.

(b) The fee for major site plans, as defined above, shall be $2,000, plus $0.06 per square foot of gross floor area.

(c) The fee for modifications to any plan shall be $1,000, plus $0.03 per square foot of gross floor area.

(d) The fee for other plans, as defined above, shall be $750.

(e) The City Council may authorize the waiver of any fee in this section

where a hardship, in its judgment sufficient, is presented.

ARTICLE IV
Condominium Conversion
[Added 9-23-1985 by Ord. No. 85-556]

§ 270-10. Definitions.

As used in this article, the following words shall, unless the context clearly requires otherwise, have the following meanings:

CONDOMINIUM OR COOPERATIVE CONVERSION EVICTION — An eviction of a tenant for the purpose of removing such tenant from a housing accommodation in order to facilitate the initial sale and transfer of legal title to that housing accommodation as a condominium or cooperative unit to a prospective purchaser, or an eviction of a tenant by any other person who has purchased a housing accommodation as a condominium or cooperative unit when the tenant whose eviction is sought was a resident of the housing accommodation at the time the notice of intent to convert is given to convertthe building or buildings to the condominium or cooperative form of ownership pursuantto § 270-11; provided, however, that the eviction of a tenant for nonpayment of rent or other violation of a rental agreement shall in no event be deemed a condominium or cooperative conversion eviction.

CONDOMINIUM UNIT — A unit in a housing condominium as that term is defined in MGL Chapter 183A.

COOPERATIVE UNIT — A unit in a housing cooperative as set forth in MGL Chapter 157.

ELDERLY TENANT — A tenant who is a person or group of persons residing in the same housing accommodation, any of whom has reached the age of 62 years or over as of the date of the receipt of the notice provided for hereunder.

HANDICAPPED TENANT — A person entitled to occupy a housing accommodation who is physically handicapped as defined in MGL c. 22, § 13A, as of the date of receipt of the notice provided for hereunder.

HOUSING ACCOMMODATION — Any building, structure or part thereof or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property, but not including the following:

A. Housing accommodations which the United States or the commonwealth or any authority created under the law thereof either owns or operates.

B. Housing accommodations in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes or in any nursing or rest home for the aged.

C. Buildings containing fewer than four housing accommodations.

D. Housing accommodations in hotels, motels, inns, tourist homes, and roominghouses and boardinghouses which are occupied by transient guests staying for a period of fewer than 14 consecutive calendar days.

INTEREST SUBSIDY — Any payment made by the federal or state government to

reduce the effective interest rate payable by a mortgager.

LOW- OR MODERATE-INCOME TENANT — A tenant who is a person or group of persons residing in the same housing accommodation so long as the total income for all such tenants for the 12 months immediately preceding the date of the notice provided for hereunder is less than 80% of the median income for the area set forth in regulations promulgated from time to time by the Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437 et seq., and calculated pursuant to said regulations.

TENANT — A person or group of persons collectively entitled to occupy a housing accommodation pursuant to a rental agreement written or implied.

TENANT SUBSIDY — Any payment made by the federal or state government for or on behalf of any tenant to be applied toward the reduction of the tenant's rental payment.

§ 270-11. Procedures.

A. Notice.

(1) If a building submitted to the provisions of MGL Chapter 183A or 157 has been used in whole or in part for residential purposes within one year prior to the recording of a master deed creating a condominium or the filing of the articles of organization creating a housing cooperative, the owner thereof shall give each tenant of all housing accommodations in such building or buildings written notice of intent to convert the building or buildings to the condominium or cooperative form of ownership. Such written notice shall state in clear and conspicuous language the following:

(a) That the owner has filed or intends to file a master deed at a registry of deeds whose location is stated in the notice or has filed or intends to file articles of organization with the Secretary of the Commonwealth.

(b) That any tenant residing on the date the notice of intent is given in the building or buildings converted or to be converted to the condominium or cooperative forms of ownership shall have a period of time, which shall be stated in the notice, from the date of the receipt of such notice, as authorized by this article, before the tenant shall be required to vacate the housing accommodation occupied on the date the notice is received.

(c) That any tenant residing on the date the notice of intent was given in the building or buildings to be converted shall have a period of time, which shall be stated in the notice, from the date of receipt of such notice, as authorized by this article, to purchase the unit occupied by the tenant on the date the notice is received on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the six months next following the expiration of said tenant's right to purchase as may be required by Subsection B.

(2) All notices required under this subsection shall be deemed to have been given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom the notice is being given.

(3) Whenever an owner is required to give notice of intent provided for in this subsection, the period of notice shall not be less than the expiration of any written agreement between the owner and the tenant of the housing accommodation which governs the use and occupancy of said housing accommodation or three years from the date the tenant of such housing accommodation is given said notice of intent, whichever is greater; provided, however, that in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low- or moderate-income tenant, the period of notice shall not be less than five years from the date the tenant of such housing accommodation receives said notice of intent.

(4) No person shall bring any action seeking a condominium or cooperative eviction until the expiration of the periods of time for notice to tenantsspecified in this article.

(5) The burden of proving qualifications with respect to age, handicap and income shall rest with the tenant.

B. Any owner of residential property who converts such property to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive notice pursuant to this section the right to purchase the housing accommodation occupied by such tenant at the time such notice is delivered on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the six months next following the expiration of said tenant's right to purchase. Such tenant may exercise a right to purchase such housing accommodations by executing a purchase and sale agreement prior to the expiration of said six months next after the date of receiving a copy of the purchase and sale agreement properly executed by the person offering the housing accommodation for sale.

C. The owner of residential property converted to the condominium or cooperative form of ownership shall pay to any tenant who is entitled to receive a notice pursuant to this section and who does not purchase the housing accommodation which he occupies or another housing accommodation in the same building or buildings relocation benefits for the actual, documented costs of moving, not to exceed $750 per housing accommodation; provided, however, that if such housing accommodation is occupied in whole or in part by a handicapped tenant or is occupied by an elderly or low- or moderate-income tenant, the maximum relocation benefit shall not exceed $1,000 per housing accommodation. Such relocation benefits shall be payable within 10 days after the date on which the tenant vacates the housing accommodation occupied by him; provided, however, that no tenant shall be eligible for such relocation benefits unless all rent due and payable for said unit under the rental agreement or extension of such agreement, if any, has been paid by the tenant prior to the date on which the housing accommodation is vacated and only as long as the tenant voluntarily vacates the housing accommodation for which recovery of possession is sought on or before the expiration of the notice period.

D. Any owner of residential property converted to the condominium or cooperative form of ownership shall assist elderly, handicapped and low- or moderate-income tenants who qualified as such as of the date of receipt of the notice authorized

pursuant to this section in locating, within the period of the notice to such tenants, comparable rental housing within the same City or town in which such tenant resides which rents for a sum which is equal to or less than the sum which such tenant had been paying for the housing accommodation occupied at the time of receipt of the notice authorized by this section. The failure of the owner of such residential property to find such substitute housing accommodation shall extend theperiod of notice for up to an additional two years.

E. Any owner of residential property converted to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive a notice pursuant to this section an extension of the rental agreement at the expiration thereof. Such extension, where required, shall be for such periods of one year or such fraction thereof as shall equal the period of notice to which such tenant is entitled pursuant to the provisions of this section. The provisions of such rental agreement may not otherwise be modified by the property owner, except with respect to the amount of annual rent, any increase in which shall not exceed an amount equal to the sum which would result by multiplying said rent by the percentage increase in the consumer price index for all urban customers as published by the United States Department of Labor, Bureau of Labor Statistics, during the calendar year immediately preceding the date upon which such rental agreement is commenced, or 10%, whichever is less; provided, however, nothing herein shall limit the right of a property owner to any amounts which may be due under a valid tax escalation clause.

F. Notwithstanding any other provisions of this article, any tenant or tenants who have not received a notice of eviction for the purpose of a condominium or cooperative conversion shall be refunded their prepaid rent and security deposits, in accordance with MGL c. 186, § 15B.

§ 270-12. Number of conversions limited.

No more than 25% of the housing accommodations in any building, structure or part thereof may be converted in any one calendar year.

§ 270-13. Violations and penalties.

A. Any owner who converts residential property in violation of any provisions of this article shall be punished by a fine of not less than $1,000 or by imprisonment of not less than 60 days. Each unit converted in violation of this article constitutes a separate offense.

B. Any violation of this article by an owner of residential property shall not affect the validity of a conveyance of a condominium unit or an interest in a housing cooperative to a purchaser for value who has no knowledge of the violation.

C. The district and superior courts shall have jurisdiction over an action arising from any violation of this article and shall have jurisdiction in equity to restrain any such violation.

§ 270-14. Period of sufficient notice.

In the case of any housing accommodation for which sufficient notice, as hereinafter defined, was given subsequent to April 1, 1983, the period of notice required pursuant to § 270-11 shall be deemed to have commenced on the date such sufficient notice was received by the tenant. Provided that "sufficient notice" for purposes of this section shall be defined as written notice to the tenant informing him, in substance, that said housing accommodation was being or had been converted to a condominium or cooperative form of ownership and that the tenant would be required to vacate not earlier than one year from the date of receipt of such notice, sufficient notice given on or prior to April 1, 1983, shall be deemed to have been given on April 2, 1983.

§ 270-15. Applicability of regulations.

The provisions of this article shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which on the effective date of Chapter 527 of the Acts of 1983 a master deed has been recorded or articles of organization filed and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value, who intends to occupy such unit as a principal residence, recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located on or before October 15, 1983, or a purchase and sale agreement was entered into on or before October 15, 1983, with a bona fide purchaser for value who intends to occupy such unit as a principal residence. Proof of payment of a reasonable deposit or down payment shall be evidenced by a canceled check or its equivalent establishing said value.

§ 270-16. Waiver. [Added 7-25-2005 by Ord. No. 05-100821B]

A. The provisions of §§ 270-10 to 270-12, 270-14, 270-15, 270-17 and 270-18 shall be waived as to an owner which, prior to the filing of a master deed regarding said property, has obtained the following:

   (1) A certificate from the Mayor certifying that the owner has paid to the Marlborough Affordable Housing Fund or to such other fund for the benefit of affordable housing as may be directed by the City Council the sum of $1,250 for every residential unit to be created as the result of the filing of the master deed and that the total number of said units is no greater than 125.

   (2) A monitoring agreement signed by the owner and the Executive Director of the Community Development Authority, or such other person or entity as maybe designated by the City Council, and binding on the successors and assigns of the owner, which shall provide that:

      (a) The owner has agreed that at least 70% of the units sold will be sold to persons who intend to occupy the unit as their principal place of residence;

      (b) The owner has deposited with the Community Development Authority (CDA) or such other person or entity as may be designated by the City Council a bond, in a form suitable to the CDA or to such other person or entity, in an amount equal to $500 multiplied by the number of units in

the proposed condominium, the condition of the bond being that the amount thereof will be forfeited to the Affordable Housing Trust, or to such other fund for the benefit of affordable housing as may be directed by the City Council, unless the owner has demonstrated to the CDA, or such other person or entity, within three years of the date of the bond, that the owner has sold and transferred units in compliance with Subsection A(2)(a) above. Compliance shall be shown by providing to the CDA, or such other person or entity as may be designated by the City Council, a certified copy of the affidavit of intended owner-occupancy executed by the individual unit buyers at the time of closing on the unit buyer's purchase or, at the owner's request, through some other method acceptable to the CDA, or such other person or entity;

(c) The owner has agreed to pay to any tenant who would otherwise be entitled to an expense reimbursement pursuant to § 270-11C:

[1] The maximum amount that would have been due and payable thereunder on the day that the tenant vacates the unit, without any required proof of actual moving or other expenses; and

[2] A tenancy longevity bonus equal to $250 for every year or fraction of an uncompleted year greater than two years that the tenancy was in existence on the date of the filing of the master deed.

(d) The owner has paid to the CDA, in advance, or to such other person or entity as may be designated by the City Council, the sum of $10,000 as compensation for administering the monitoring agreement.

(e) The owner has provided to the CDA or such other person or entity as may be designated by the City Council, a copy of the condominium bylaws to be recorded, which bylaws shall provide that:

[1] Seventy percent of the units in the condominium shall be owner-occupied at all times;

[2] The bylaw section requiring said seventy-percent owner-occupancy provision may not be amended or deleted.

B. An owner of property which has received a waiver pursuant to this section shall continue to be required to comply with the provisions of state law, including but not limited to Chapter 527 of the Acts of 1983 regarding condominium conversion.

§ 270-17. Prior unit conversions.

The provisions of this article shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which, on or before the date of adoption of this article, a master deed has been recorded or articlesof organization filed and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value, who intends to occupy such unit as a principal residence, has been recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located.

§ 270-18. Prior building conversions.

The provisions of this article shall not be applicable to any building or buildings converted to the condominium or cooperative forms of ownership for which, on or prior to the effective date of this article, a master deed has been recorded or articles of organization filed prior to the adoption of such article or bylaw for not less than 1/3 of the units in such buildings, and either purchase and sale agreements were entered into, prior to October 15, 1983, with bona fide purchasers for value, who intend to occupy such units as principal residences, as evidenced by a canceled check or its equivalent establishing said value, or deeds or, in the case of cooperatives, proprietary leases, conveying units in such building or buildings to bona fide purchasers for value, who intend to occupy such units as principal residences, were recorded, in the case of such deed, in the registry of deeds for the county in which such building or buildings are located, on or before October 15, 1983.

ARTICLE V
Fences
[Added 12-16-1985 by Ord. No. 85-325A]

§ 270-19. Permit required.

A. No fence, barrier, wall, plant or hedge wall may be erected, repaired, modified or installed within the City of Marlborough without a permit issued through the Office of the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

B. Application for said permit shall be made with the Building Department on forms prepared and supplied by the Department.

C. The Building Commissioner will grant permits upon determination that the type of fence, its location and other specifications are in full compliance with all the provisions of this article and all other City ordinances. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

§ 270-20. Height limitations.

A. No fence or barrier shall exceed six feet in height, except in the case of manufacturing plants, truck and bus parking lots, school yards, electric transformer installations, commercial storage and auto salvage yards, aboveground storage tanks for volatile or hazardous materials, livestock pens and dog kennels, allmunicipal yards and facilities, road overpasses, ball fields and the like, where safetyand security considerations shall require a greater height.

B. Property side-line fences and/or barriers running from the street line or sidewalk line into a property shall not exceed three feet in height for a distance of 15 feet intosaid properties, except for the same safety and security needs indicated in Subsection A above. Within said fifteen-foot distance along the property side line, the Building Commissioner may further restrict or deny the erection of a fence when its height, added to a rise, embankment, wall or ridge along the same side line, would obstruct a clear view up and down the street from any proximate driveway, walkway or bicycle path entering the street, except, again, those situations where the safety and security requirements of Subsection A above shall override the traffic considerations of Subsection B. **[Amended 10-6-2014 by Ord.No. 14-1005921A]**

C. Fences and/or barriers running or erected within 15 feet of the front property line and/or parallel to the same shall be no more than three feet in height and, as with side-line fences within the same fifteen-foot distance, must permit the same field of vision along the street from proximate driveways, walkways and bicycle paths entering said street. Safety and security considerations of Subsection A may override traffic considerations of this Subsection C as in the case of side-line fences in Subsection B.

§ 270-21. Setback requirements.

All lot perimeter fences or barriers shall be set back from property lines a reasonable distance to allow their construction and maintenance without trespass on neighbors'

property, unless a fence is co-owned by all parties involved and application is made by the several parties collectively. These "party fences" may be erected along property lines as mutually agreed and described in the application form filed with the Building Department.

§ 270-22. Living fences.

All living (shrubs or bushes) fences or barriers or hedges shall conform to all height restrictions applicable to other fences in this article with regard to the fifteen-foot distance from street lines and side lines.

§ 270-23. Barbed wire and electric fences.

All barbed wire fences and electric fences shall be clearly marked with hunter orange blazes at intervals of 20 feet. Barbed wire and electric fences shall be permitted, and living fences with sharp thorns may be planted only on those properties in RR Zoned Districts where livestock numbering five or more are actually kept and raised. No type fence will be allowed in the City on which a person or domesticated animal could become impaled, torn, slashed, mutilated or otherwise grievously injured.

§ 270-24. Easements and rights-of-way.

A. On any lot subject to an easement, the owner or applicant shall procure a release in writing from the holder of the easement, and said release shall be attached to the application for a fence filed with the Building Department.

B. No fence shall be erected that will prevent the use of a right-of-way which has been established by adverse usage.

§ 270-25. Recreational facilities.

The foregoing restrictions on fence heights shall not apply to a fence erected to contain a recreational facility, such as baseball backstops, spectator bleachers, tennis courts, archery ranges, swimming pools and like installations.

§ 270-26. Time limit for compliance.

All fences and living fences existing at the time of this article's adoption shall be brought into compliance with this article at the time of their replacement, rebuilding or replanting, but no later than five years from the date this article became effective.

§ 270-27. Violations and penalties.

A fine of $10 per day shall be imposed for violators of this article, commencing with the 10th day following constructive delivery of a violation notice from the Building Department.

§ 270-28. Freestanding walls.

A. The height restrictions governing fences in this article shall be equally applicable to freestanding walls built in the City after the date this article came into effect.

B. Notwithstanding any other provisions of this article, no wall shall be built or maintained at any time where said wall is capped with broken glass, stone shards, metallic points or other jagged objects which could do bodily harm to a person or animal coming into contact with the same.

§ 270-29. Variances. [Amended 6-1-1987 by Ord. No. 87-1370B; 10-6-2014 by Ord. No. 14-1005921A]

The Fence Viewers of the City of Marlborough, upon appeal to them by an applicant who has been denied a fence permit by the Building Commissioner, after due noticeand open hearing, may waive or vary, in the particular case, specific requirement(s) of this article where, in their majority opinion, the enforcement thereof would do manifest injustice or cause undue hardship to an applicant for a permit, provided that the decision of the Fence Viewers shall not conflict with the spirit and safety concerns of this article. The burden of proof of the manifest hardship or injustice shall be the responsibility of the applicant.

§ 270-30. Fee for appeals hearing.

In addition to any fees to which they may be entitled under applicable Massachusetts General Laws, each Fence Viewer shall be paid the sum of $7 for each appeal hearing the Fence Viewer attends and participates in. The applicant shall be responsible for payment of said fees, payment to be made to the City of Marlborough, prior to said appeal hearing, in an amount equal to $7 times the number of Fence Viewers then holding said office. Seven dollars shall be abated to the applicant for each Fence Viewer not present and participating in said appeal hearing.

§ 270-31. Maintenance. [Added 10-19-1992 by Ord. No. 91-3938B]

Fences and walls shall be maintained in good repair and presentable appearance or replaced.

Chapter 271

STORMWATER MANAGEMENT

GENERAL REFERENCES

Building and site development — See Ch. 270.

Noncriminal disposition — See Ch. 315, Art. I.

Storm sewers — See Ch. 511.

Soil removal — See Ch. 534.

Wetlands — See Ch. 627.

Zoning — See Ch. 650.

Subdivision regulations — See Ch. A676.

§ 271-1. Purpose.

A. This chapter complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999, (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the United States Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

B. Regulation of discharges to the municipal storm drain system is necessary for the protection of Marlborough's water bodies, drinking water and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater.

C. This chapter establishes stormwater management standards for the temporary and final conditions that result from development and redevelopment projects. Those standards seek to minimize adverse impacts off site and downstream which would be borne by abutters, citizens and the general public. The harmful impacts of increased and contaminated stormwater runoff associated with developed land uses and the impacts of soil erosion and sedimentation include without limitation:

(1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;

(2) Contamination of drinking water supplies;

(3) Alteration or destruction of aquatic and wildlife habitat;

(4) Flooding;

(5) Erosion of stream channels; and

(6) Overloading or clogging of municipal catch basins and storm drainage

systems.

§ 271-2. Objectives.

The objectives of this chapter are:

A. Protect groundwater and surface water to prevent degradation of drinking water supply and waterways;

B. Require practices that minimize soil erosion and sedimentation ~~by adopting nature-based solutions~~ and that control the volume and rate of stormwater runoff resulting from land-disturbing activities by adopting nature-based solutions where feasible;

~~B.~~C. Consider future climate change related alterations ~~in the guidelines~~ to preserve natural resources:~~, as further detailed in the guidelines~~

~~C.~~D. Maintain the natural hydrologic characteristics of the land to the maximum extent practicable as determined by the City Engineer, in order both to reduce flooding, stream bank erosion, siltation, non-point source pollution and property damage, as well as to maintain the integrity of stream channels and aquatic habitats;

~~D.~~E. Promote the infiltration and the recharge of groundwater;

~~E.~~F. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process, and are implemented and maintained. In addition, the projected increase in storm frequency and storm intensity, resulting in higher stormwater runoff, should be considered in the site planning and design. ~~;~~

~~F.~~G. Require practices to control and properly dispose of waste and runoff ~~and proper disposal~~ at a construction site, such as discarded building materials, concrete truck washout, chemicals, litter and sanitary waste, ~~that~~ which may cause adverse impacts to water quality via stormwater runoff;

~~G.~~H. Prevent pollutants from entering the Marlborough municipal storm drainage system and to minimize discharge of pollutants from that drainage system to the receiving water body;

~~H.~~I. Ensure adequate long-term operation and maintenance of structural stormwater best management practices through a required Operations and Maintenance Plan so that stormwater structures work as designed. Designs shall include long-term climate change projections in order to accommodate increased volume of runoff;~~;~~

~~I.~~J. Comply with state and federal statutes and regulations relating to stormwater discharges;

~~J.~~K. Establish Marlborough's legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring, and enforcement; and

L. Encourage the use of environmentally sensitive design and low-impact development ~~techniques~~.

~~K.~~M. Encourage the use of nature-based solutions (such as green infrastructure) to store excess stormwater in order to reduce flooding and increase infiltration.~~.~~

§ 271-3. Definitions.

A. The following definitions shall apply in the interpretation and enforcement of this chapter.

CLEARING — Any activity that removes the vegetative surface cover.

DEVELOPMENT — The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

EROSION — The wearing away of the land surface by natural or ~~artificial~~ anthropogenic forces, such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

LAND-DISTURBING ACTIVITY — Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing of vegetative cover, clearing of trees, increasing impervious surfaces, grubbing, grading, filling and excavation.

MASSACHUSETTS STORMWATER HANDBOOKS — The Massachusetts Stormwater Handbooks (handbooks) that were produced by Massachusetts Department of Environmental Protection and the Massachusetts Office of Coastal Zone Management are to be used as guidance for controlling stormwater. The handbooks, all published in February 2008 and as amended from time to time, consist of three volumes: Volume 1: Overview of Massachusetts Stormwater Standards; Volume 2: Technical Guide for Compliance with the Massachusetts Stormwater Management Standards; and Volume 3: Documenting Compliance with the Massachusetts Stormwater Management Standards.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY — The policy issued by the Commonwealth of Massachusetts Department of Environmental Protection, as amended from time to time, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and Massachusetts Clean Waters Act, MGL c. 21, §§ 23 through 56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and to control the quantity of runoff from a site.

MUNICIPAL STORM DRAIN SYSTEM — A conveyance or a system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City.

RUNOFF — Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SITE — Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SOIL — Any earth, dirt, sand, rock, gravel, ~~clay~~clay, or similar material.

STORMWATER — Stormwater runoff, snowmelt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PERMIT — A permit issued by the City Engineer, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment or the City from the deleterious effects of uncontrolled and untreated stormwater runoff.

B. Additional terms that apply to issuance of a stormwater management permit established by this chapter shall be defined and included as part of the rules and regulations promulgated and, from time to time, amended under § 271-8B of this chapter, a copy of which is available at the Engineering Division of the Marlborough Department of Public Works and at the office of the City Clerk.

Terms not defined in said rules and regulations or pertinent statutes shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning.

§ 271-4. Statutory authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

§ 271-5. Applicability.

This chapter shall be applicable to the following activities. Compliance with all provisions of this chapter, to the maximum extent practicable as determined by the City Engineer, shall be a requirement for issuance of a stormwater management permit.

A. All subdivisions as defined in the Massachusetts Subdivision Control Law (MGL c. 41, §§ 81K through 81GG) requiring approval of a definitive subdivision plan.

B. ~~Minor residential projects and nonresidential and major residential projects,~~Single one- and two- family lot development and major site plan projects, as defined in the Building and Site Development Ordinance (Chapter 270, Article II, § 270-2), when a construction activity results in a land-disturbing activity that will disturb equal to or greater than 5,000 square feet of land that drains to the Marlborough municipal storm drain system, onto an adjacent property, into a municipal/private street, or into a wetland/stream.

C. Land-disturbing activity that:

(1) Is equal to or greater than 5,000 square feet occurring, at least in part, within the City of Marlborough;

(2) In the sole opinion of the City Engineer has caused or will cause stormwater-related pollution and/or flooding~~problems~~ within the City; ~~and~~

(3) Causes an increase in impervious surfaces or reduction in canopy by more than 10% of the existing landcover;

~~(2)~~(4) Occurs in an area that has a history of flooding; and

~~(3)~~(5) Does not otherwise require a permit or approval from the City.

§ 271-6. Exemptions.

The following are exempt activities:

A. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL c. 40A, § 3;

B. Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling;

C. Repair or replacement of an existing roof of a single-family dwelling;

D. The construction of any fence that will not alter existing terrain or drainage patterns;

E. Construction and/or maintenance of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns;

F. Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the City Engineer; and

G. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this chapter. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to redesign the project to comply with these requirements.)

§ 271-7. Coordination with other laws and permit requirements.

A. This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, statute, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

B. No order of conditions from the Marlborough Conservation Commission, building permit, special permit, variance or finding shall constitute compliance with this chapter. For a project or activity to which this chapter is applicable, no work may commence until the developer submits to the City Engineer the required documentation of compliance, the City Engineer issues a stormwater management permit, and the developer certifies that all land clearing, construction, and development will be done pursuant to the approved plans and stormwater management permit.

C. Review process done in conjunction with definitive subdivision review and/or site plan review.

(1) If a project or activity to which this chapter is applicable falls within the specific jurisdiction of the Planning Board for definitive subdivision review and/or the specific jurisdiction of the Site Plan Review Committee, then the stormwater management permit review and approval process may, but need not, occur in conjunction with the definitive subdivision plan review process and/or the Site Plan Review Committee approval process. The application submission requirements, public notices, and fee requirements of the above processes shall govern. Notwithstanding these requirements, such projects or activities are subject to the provisions of this chapter. Documentation of compliance with this chapter, as described in § 271-10 herein, shall accompany each application for definitive subdivision approval by the Planning Board and for approval by the Site Plan Review Committee.

(2) Applicants under this chapter should refer to the Subdivision Regulations (Chapter A676, Article III, § A676-10) for definitive plan application and submission requirements, and to site plan review and approval (Chapter 270, Article II, § 270-2) for site plan application and submission requirements.

(3) No work may commence without prior written approval of the City Engineer, confirming that the project or activity is in compliance with the Stormwater

Standards and Design Guidance in § 271-9 herein.

(a) The City Engineer's sign-off on the site plan review permit shall constitute approval of the stormwater management permit.

(b) Before a definitive subdivision plan is approved, the City Engineer will document, in his written statement to the Planning Board, actions taken regarding the stormwater management permit.

(c) The City Engineer shall state in writing reasons for disapproval or recommended modifications to the plan and shall rescind such disapproval if and when the plan has been amended to conform to the rules, regulations, and recommendations of the City Engineer.

§ 271-8. Administration.

A. Stormwater authority. The City Engineer is hereby designated as the stormwater authority. The City Engineer, or his/her agent, shall administer, implement and enforce this chapter. The City Engineer may delegate in writing another City department, commission or board to act as his/her authorized agent for site inspections and enforcement of this chapter.

B. Stormwater regulations. The City Engineer may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, procedures and administration of this chapter after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date. After public notice and public hearing, the City Engineer may promulgate rules and regulations to effectuate the purposes of this chapter. Failure of the City Engineer to promulgate such rules and regulations, or a legal declarationof their invalidity by a court, shall not act to suspend or invalidate the effect of thischapter.

C. Stormwater Management Handbooks. The City Engineer will utilize the Massachusetts Stormwater Management Policy and Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information, including specifications and standards for the execution of the provisions of this chapter. These include a list of acceptable stormwater treatment practices, with specific design criteria for each. Unless specifically made more stringent in this chapter and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Management Handbooks' design and sizing criteria shall be presumed by the City Engineer to be protective of Massachusetts water quality standards.

D. Actions by the stormwater authority. The City Engineer may take any of the following actions as a result of an application for a stormwater management permit as more specifically defined as part of the rules and regulations promulgated as part of this chapter: approval, approval with conditions, disapproval, or disapproval without prejudice.

E. Appeal of action by the stormwater authority. An action by the City Engineer,

acting in his or her capacity as the stormwater authority, shall be final. Further relief of an action by the City Engineer made under this chapter shall be reviewable in the Superior Court in a complaint filed within 60 days thereof, in accordance with MGL c. 249, § 4.

§ 271-9. Compliance with state standards; design guidance.

All projects shall meet the Massachusetts Stormwater Management Standards to the maximum extent practicable as determined by the City Engineer, as detailed in the Massachusetts Stormwater Handbook, as amended from time to time. Additional guidance on applying the Massachusetts Stormwater Management Standards to applicable projects is contained in the City of Marlborough rules and regulations for stormwater.

§ 271-10. Permit procedures; documentation of compliance.

A. Permit procedures and requirements, including permit submittals, right-of-entry, and the public hearing process, shall be defined and included as part of the rules and regulations promulgated under § 271-8B of this chapter.

B. All projects shall document compliance with the stormwater standards and design guidance criteria contained in this chapter in accordance with the Massachusetts Stormwater Handbook, as amended from time to time. Submittal requirements are further specified in the City of Marlborough rules and regulations for stormwater.

§ 271-11. Enforcement.

A. The City Engineer or his/her authorized agent shall enforce this chapter andresulting regulations, orders, violation notices, and enforcement orders, and may pursue all criminal and civil remedies, including injunctive relief and monetary damages and costs of litigation and attorney fees, for such violations and for abatement and mitigation and compliance actions taken by the City Engineer.

B. As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and § 315-2 of the Marlborough City Code. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer's agents, officers, and designees may enter upon privately owned property for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary to determine compliance with a permit issued under this chapter. Enforcement shall be further defined and included as part of the rules and regulations promulgated under § 271-8B of this chapter.

Chapter 510

SEWERS

GENERAL REFERENCES

Department of Public Works — See Ch. 7, Art. IV.

Building and site development — See Ch. 270.

Poles, wires and conduits — See Ch. 473.

Streets and sidewalks — See Ch. 551.

Zoning — See Ch. 650.

Subdivision of land — See Ch. A676.

§ 510-1. Definitions; abbreviations; word usage.

A. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ACT or THE ACT — The Federal Water Pollution Control Act, also known as the "Clean Water Act," as amended, 33 U.S.C. § 1251 et seq.

ADMINISTRATOR — The Administrator of the United States Environmental Protection Agency.

APPROVAL AUTHORITY — The Director in a National Pollutant Discharge Elimination System state with an approved state pretreatment program and the Administrator of the Environmental Protection Agency in a non-National Pollutant Discharge Elimination System state or National Pollutant Discharge Elimination System state without an approved state pretreatment program.

AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER —

(1) A principal executive officer of at least the level of vice president, if the industrial user is a corporation.

(2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively.

(3) A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

BIOCHEMICAL OXYGEN DEMAND — The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in milligrams per liter.

BOARD OF HEALTH — The Board of Health of the City of Marlborough.

BUILDING DRAIN — That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the wall of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

BUILDING SEWER — The extension from the building drain to the public sewer

or other place of disposal.

CATEGORICAL STANDARD — National Categorical Pretreatment Standards or "pretreatment standards."

CITY — The City of Marlborough, Massachusetts.

COMBINED SEWER — A sewer receiving both surface runoff and sewage.

COMMISSIONER — The Commissioner of Public Works of the City ~~or hi~~or ~~s~~ authorized deputy, agent or representative.

CONTROL AUTHORITY — Refers to the approval authority, defined hereinabove, or the Commissioner if the City has an approved pretreatment program under the provisions of 40 CFR 403.11.

COOLING WATER — The water discharged from any use, such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

DIRECT DISCHARGE — The discharge of treated or untreated wastewater directly to the waters of the Commonwealth of Massachusetts.

DOMESTIC WASTES — The liquid wastes generated by residential domestic activities containing fecal matter, urine and drainage from bathing and residential food preparation. Domestic wastes are also known as "sanitary sewage."

ENVIRONMENTAL PROTECTION AGENCY — The United States Environmental Protection Agency, or, where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of saidagency.

GARBAGE — Solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

GRAB SAMPLE — A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

HOLDING TANKS — Vessels, such as chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

HOLDING TANK WASTES — Any wastes from holding tanks.

INDIRECT DISCHARGE — The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. § 1317) into the publicly owned treatment works (including holding tank waste discharged into the system).

INDUSTRIAL USER — A source of indirect discharge which does not constitute a discharge of pollutants under regulations issued pursuant to Section 402 of the Act(33 U.S.C. § 1342).

INDUSTRIAL WASTE DISCHARGE PERMIT — As set forth in § 510-7 of this chapter.

INDUSTRIAL WASTES — The liquid wastes from industrial manufacturingprocesses, trade or business as distinct from domestic wastes.

INTERFERENCE — A discharge by an industrial user which, alone or in

conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II), more commonly referred to as "the "Resource Conservation and Recovery Act (RCRA)," and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substance Control Act and the Marine Protection Research and Sanctuaries Act.

NATIONAL CATEGORICAL PRETREATMENT STANDARD or PRETREATMENT STANDARD — Any regulation containing pollutant discharge limits promulgated by the Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1347) which applies to a specific category of industrial users.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM OR NPDES PERMIT — A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342).

NATIONAL PROHIBITED DISCHARGE STANDARD or PROHIBITED DISCHARGE STANDARD — Any regulation developed under the authority of Section 307(b) of the Act and 40 CFR 403.5.

NATURAL OUTLET — Any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

NEW SOURCE —

(1) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of the proposed pretreatment standards under Section 307(c) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that: a) the building, structure, facility or installation is constructed at a site at which no other source is located; or b) the building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or c) the production of wastewater-generatingprocesses of the building, structure, facility or installation are substantially independent of an existing source of the same site. In determining whether these are substantially independent factors, such as the extent to which the newfacility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation, meeting the criteria of this section, but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source as defined under this definition has commenced that the owner or operator has: a) begun or causes to begin, as part of a continuous on-site construction program: any placement, assembly or installation of facilities or equipment or significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or b) entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in this operation within a reasonable time. Options to purchase, or contracts which can be terminated or modified, without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this definition.

PASSTHROUGH — The discharge of pollutants through the POTW into navigable waters in quantities or concentrations which alone or in conjunction with discharges from other sources is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

PERSON — Any individual, partnership, copartnership, firm, company, corporation, association, joint-stock company, trust, estate, governmental entity or any other legal entity or their legal representative, agents or assigns. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

pH — The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

POLLUTANT — Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

POLLUTION — The man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

PRETREATMENT or TREATMENT — The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmfulstate prior to or in lieu of discharging or otherwise introducing such pollutantsinto a publicly owned treatment works. The reduction or alteration can be obtainedby physical, chemical or biological processes or process changes of other means, except as prohibited by 40 CFR 403.6(d).

PRETREATMENT REQUIREMENTS — Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard imposed on an industrial user.

PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

PUBLICLY OWNED TREATMENT WORKS — A treatment works as defined by Section 212 of the Act (33 U.S.C. § 1292), which is owned in this instance

by the City. This definition includes any sewers that convey wastewater to the sewage treatment plant but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, "Publicly owned treatment works" shall also include any sewers that convey wastewaters to the publicly owned treatment works from persons outside the City who are, by contract or agreement with the City, users of the City's publicly owned treatment works.

PUBLIC SEWER — A sewer in which all owners of abutting properties have equal rights and which is controlled by public authority.

SANITARY SEWER — A sewer which carries sewage and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

SEWAGE (WASTEWATER OR WASTE) — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present, which is contributed to or permitted to enter the publicly owned treatment works.

SEWAGE TREATMENT PLANT or WATER POLLUTION CONTROL PLANT — That portion of the publicly owned treatment works providing treatment to wastewater or sewage.

SEWAGE WORKS — All facilities for collecting, pumping, treating and disposing of sewage.

SEWER — A pipe or conduit for carrying sewage.

SIGNIFICANT USER — Any user of the City's wastewater disposal system who has a discharge flow of 5,000 gallons or more per average workday; has a flow greater than 5% of the flow in the City's wastewater treatment system; has in his or her wastes toxic pollutants as defined pursuant to Section 307 of the Act or the General Laws of the Commonwealth; or is found by the City, Department of EnvironmentalQuality Engineering or the United States Environmental Protection Agency (EPA) to have significant impact, either singly or in combination with other contributing users, on the wastewater treatment system, the quality of sludge, the system's effluent quality or air emissions generated by the system.

SLUG — Any discharge of a nonroutine, episodic nature, including, but not limited to, any accidental spill or noncustomary batch discharge which may cause interference to the POTW.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) — A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

STATE — The Commonwealth of Massachusetts.

STORM DRAIN (STORM SEWER) — A sewer which carries stormwaters and surface waters and drainage, but sewage and industrial wastes, other than unpolluted process and cooling water, are intended to be excluded.

STORMWATER — Any flow occurring during or following any form of natural precipitation and resulting therefrom.

SUSPENDED SOLIDS — Solids that either float on the surface or are in suspension in water, sewage or other liquids and which are removable by laboratoryfiltering.

TOXIC POLLUTANTS — Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of the Clean Water Act § 307(a) or other acts.

USER — Any person who contributes, causes or permits the contribution of wastewater into the City's publicly owned treatment works.

WASTEWATER — Sewage.

WATERCOURSE — A channel in which a flow of water occurs, either continuously or intermittently.

WATERS OF THE COMMONWEALTH — All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the commonwealth or any portion thereof.

B. Abbreviations. The following abbreviations shall have the designated meaning:

BOD	Biochemical oxygen demand
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	United States Environmental Protection Agency
L	Liter
Mg	Milligrams
mg/l	Milligrams per liter
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly owned treatment works
SIC	Standard Industrial Classification
SWDA	Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq., United States Code
TSS	Total suspended solids

C. Word usage. "Shall" is mandatory; "may" is permissive.

§ 510-2. Use of public sewers.

A. It shall be unlawful for any person to place, deposit or permit to be deposited in any manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage or other objectionable waste, except where an approved method of disposal is provided.

B. It shall be unlawful to discharge into any natural outlet within the City, or in any area under the jurisdiction of the City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent

provisions of this chapter and the requirements of the commonwealth.

C. Except as hereinafter provided, it shall be unlawful to continue or maintain in the City any privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

D. The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated with the City and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the City, are hereby required, at their expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so, provided that such public sewer is within 100 feet of the property line, unless prevented by topographical or other reasons.

E. The Commissioner shall annually establish equitable and just rental charges for the use of the sewerage facilities to be paid by every owner of an establishment whose building sewers connect directly or indirectly into public sewers. Such annual charges shall be in proportion to the quantity of water supplied to every such establishment, subject to any just equitable discounts and abatements in exceptional cases. The rental charges shall constitute a lien upon the real estate using such public sewers to be collected in the same manner as taxes upon real estate, or in anaction of contract in the name of the City.

§ 510-3. Conditional use of private system.

Where a public sanitary sewer is not available under the provisions of § 510-2, the building sewer shall be connected to a private sewage disposal system complying with the requirements of the Board of Health and applicable state statutes.

§ 510-4. Building sewer connections.

A. Extensions of sewers shall be subject to approval by the City Council and the Mayor, and such extensions shall be made under the supervision of the Commissioner, subject to the following provisions:

(1) Entrance fees for any service pipe connected into the public sewerage system shall be in accordance with the following schedule:

(a) Residential. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

[1] Single-family residence:

[a] Entrance fee: $3,000.

[b] The owner of any single-family residential dwelling that has an occupancy permit from the Building Department effective on or before December 31, 2003, will be allowed to pay theamount of $600 to connect to the municipal sewer system. **[Amended 7-25-2005 by Ord. No. 05-100841A; 8-29-2011 byOrd. No. 11-1002920B]**

[c] The owner of any single-family home that received an

occupancy permit from the Building Department which was effective after December 31, 2003, will pay the fee in effect at the time of connection. **[Amended 7-25-2005 by Ord. No. 05-100841A]**

(b) Multiple-family residence (including all structures containing more than one dwelling unit, such as duplexes, apartment houses, apartment complexes, hotels, motels, trailer parks, etc.): $10,000, plus $500 per living unit.

[1] Two-family residential: $6,000. **[Added 12-20-2004 by Ord. No. 04-100616A]**

[2] Three-family residential: $9,000. **[Added 12-20-2004 by Ord. No. 04-100616A]**

(c) Nonresidential.

[1] Entrance fee shall be based on the size of the water service pipe as follows: **[Amended 2-9-2004 by Ord. No. 04-9962C]**

Size (inches)	Fee
3/4	$4,000
1	$5,000
1 1/2	$6,000
2	$7,000
4	$8,000
6	$9,000
8	$10,000
10	$12,000
12	$15,000

[2] Sewerage entrance fee for any water service larger than 12 inches shall be as determined by the Commissioner of Public Works with the approval of the Mayor.

(2) The service for the buildings under this section shall be paid entirely by the owner and shall include all labor, material, inspection and other charges related to the installation.

(3) The entrance fee for a single-family residence shall be payable at the time of the service connection; except that, at the discretion of the Department of Public Works, this payment, plus a service charge of 10%, may be paid over a twenty-year period.

(4) Entrance fees for all other connections shall be payable at the time of application for connection.

(5) The unpaid balance of any entrance fee due the City shall constitute a municipal lien on the property of the applicant.

(6) Secondary or branch mains connected to City main and service pipes connected thereto are as follows: **[Amended 2-9-2004 by Ord. No. 04-9962C]**

(a) Single-family residential subdivision or development. The entrance fee shall be $5,000 for each connection of the secondary or branch main or mains to City mains, plus $1,000 for each lot served by the secondary or branch main.

(b) Multifamily residential subdivision or development. The entrance fee shall be $5,000 for each connection of the secondary or branch main or mains to City mains, plus $500 for each living unit served by the secondary or branch main.

(c) Commercial or industrial subdivision or development. The entrance fee shall be $5,000 for each connection of the secondary or branch main or mains to the City main, plus the nonresidential entrance fee listed in Subsection A(1)(c) for each service connected to the branch or secondary main.

(7) The service for the buildings under this section shall be paid entirely by the owner and shall include all labor, material, inspection and other charges related to the installation.

(8) All sewer extension and building sewer connection permits shall only be issued if in accordance with the flow allocations in the December 3, 2007, Certificate of the Secretary of Energy and Environmental Affairs on the October 2007 Phase IV Final Recommended Comprehensive Wastewater Management Plan/Final Environmental Impact Report (CWMP/EIR), as stipulated below. **[Added 9-9-2013 by Ord. No. 13-1005494B]**

(a) The City is divided into two sewer service areas, one tributary to the easterly wastewater treatment facility (WWTF) and the other tributary to the westerly WWTF, divided by a WWTF division line that runs north/south through the City, to the east of Route 495.

(b) A total of 4.15 million gallons per day (mgd) average daily flow is allocated in the CWMP/EIR Certificate to the westerly WWTF from the City of Marlborough and the Town of Northborough as described further in Subsection A(8)(b)[1] and [2] below. The actual allowable flow is dependent upon the permitted value in the facility's National Pollutant Discharge Elimination System (NPDES) permit. Sewer connection or extension permits shall only be approved if the resulting total flows to the westerly WWTF are within the permitted flow allocation in the NPDES permit and if the flows are consistent with the following allocations:

[1] Up to 2.9 mgd of the total permitted average daily flow is allocated in the CWMP/EIR certificate to originate from the western side of the City of Marlborough tributary to the westerly WWTF through

the year 2025.

[2] The remaining allocation between 2.9 mgd and the NPDES permitted average daily flow (up to 1.25 mgd) is allocated in the CWMP/EIR certificate to originate from the Town of Northborough tributary to the westerly WWTF through the year 2025. Note that the City of Marlborough is required via a January 1, 1990, intermunicipal agreement to provide the Town of Northborough with 0.80 mgd of sewer capacity; however, this agreement expired as of January 1, 2010.

(c) The flow limitation for the easterly WWTF in effect on the date of the December 3, 2007, certificate was 5.5 mgd on an average monthly basis, as permitted by the easterly WWTF's October 19, 2006, NPDES permit. Sewer connection or extension permits through the year 2025 shall only be approved if the total flows to the easterly WWTF are within this permitted flow allocation.

(d) All flow allocations in the CWMP/EIR certificate, as well as sewer connection or extension estimated flows, shall be based on averageannual values.

(e) Extensions tributary to the easterly WWTF originating from beyond the area bounded by the town boundaries to the north, south and east, and by the WWTF division line to the west require approval by the Mayor, the City Council, and, when applicable thresholds are exceeded, by MassDEP via a sewer extension permit. Similarly, sewer extensionstributary to the westerly WWTF beyond the area bounded by the WWTFdivision line to the east, the town boundaries to the north and south, and the neighborhoods identified for sewering in the CWMP/EIR in Northborough to the west require approval from the Mayor, City Council, and, as applicable, MassDEP. Flow from one side of the WWTF division line may be treated at the WWTF on the other side with prior City Council approval.

B. All work related to the installation, repair, extension or modification of building drains, building sewers and connections to public sewers shall be performed by persons licensed by the Commissioner. Work related to the installation of building sewers, sewer extensions and connections to public sewers shall be performed only under permit issued by the Commissioner. No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereto. Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the Commissioner at least 45 days prior to the proposed change or connection.

C. Building sewer connection permit.

(1) There shall be two classes of building sewer connection permits, one for residential and commercial service and the other for service to establishments producing industrial wastes. In either case, the owner or his or her agent shall make application on a special form furnished by the City. The permit

application

shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Commissioner.

(2) One copy of the permit shall be available for inspection at all times at the site of the work.

D. All costs and expense incidental to the installation, testing and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

E. The applicant for the building sewer permit shall notify the Commissioner at least 24 hours before beginning the work and also when the building sewer is ready for inspection, testing and connection to the public sewer. The testing and connection shall be made under the supervision of the Commissioner.

F. Notification of the completion of the work with certification that all conditions of this chapter have been complied with shall be filed in writing with the Commissioner within 24 hours after the completion of the work covered in each permit.

G. A separate and independent building sewer shall be provided for every building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building under permit issued by the Commissioner.

H. Old building sewers or portions thereof may be used in connection with new buildings only when they are found, on examination and test by the Commissioner, to meet all requirements of this chapter.

I. Where possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. Ejector pumps, where necessary, are the property of the owner and shall besupplied, installed and maintained by the homeowner.

J. The building drain system shall be so vented that under no circumstances will the seal of any appliance be subjected to a pressure differential in excess of one inch of water. All appliances connected directly or indirectly to the building drain shall have traps with a liquid seal not less than two inches in depth.

§ 510-5. Connection license requirements.

A. Contractors or individuals of established reputation and experience will be licensed by the Commissioner of Public Works to make connections to the public sewerage and/or drainage systems.

B. No connections shall be made or service pipes installed by any contractor or individual not so licensed.

C. All licensees shall be subject to compliance with the following requirements:

(1) Applicants for licenses are required to pay a filing fee of $50, payable to the City, all of which will be refunded to the applicant if his or her application is rejected.**[Amended by 2-9-2004 by Ord. No. 04-9962C]**

(2) All licenses issued will expire on December 31 of each year, after which they will be renewed upon payment to the City of a renewal fee of $50. **[Amended by 2-9-2004 by Ord. No. 04-9962C]**

(3) No licenses shall be transferable.

(4) If approved by the Commissioner, applicants for licenses shall file with the Commissioner proper and acceptable performance and guaranty bond in the amount of $1,000, which shall remain in full force and effect for at least one year from the date of original approval and each calendar year thereafter upon renewal.

(5) Applicants for licenses, after approval by the Commissioner, shall file with the Commissioner a certificate of insurance in the sums of $100,000/$200,000 to cover public liability and a certificate of insurance in the sum of $50,000 covering property damage. In addition, a certificate of insurance covering workmen's compensation shall be filed, all of which shall remain in full force and effect for a period of at least one year from the date of original approval and each calendar year thereafter upon renewal. Said insurance shall indemnify the Commissioner and the City against any and all claims, liability or action for damages incurred in, or in any way connected with, the performance of the work of the licensee and for, or by reason of, any acts or omission of said licensee in the performance of his or her work.

(6) Applicants for licenses will be approved or disapproved within a period of 31 days after filing the application.

(7) The licensee shall abide by all the conditions of this chapter, with particular reference to § 510-4.

(8) The licensee shall comply with all applicable City, state and federal codes, rules and regulations.

(9) The Commissioner reserves the right to revoke or suspend any license if any provision of said license is violated.

(10) All licensees are required to give personal attention to all installations and shall employ only competent and courteous workers.

(11) All licensees shall be required, if during the course of their work they should encounter any previous violations of this chapter, to give a full written report to the Commissioner within 24 hours of such violation.

(12) All licensees shall have all necessary equipment, tools and material to perform this work.

§ 510-6. Use of public sewers.

A. No stormwater, surface water, groundwater, roof runoff, subsurface drainage,

uncontaminated cooling water or unpolluted industrial process water shall be discharged or caused to be discharged to any sanitary sewer. No direct connection shall be made from a public water supply to a building drain discharging to any sanitary sewer.

B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Commissioner.

C. General discharge prohibition.

(1) No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW, whether or not the user is subject to National Categorical Pretreatment Standards or any other national, state or local pretreatment standards or requirements. A user may not contribute the following substances to any POTW:

(a) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system or at any point in the system, be more than 5%, nor any single reading over 10%, of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, fuel oil, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromate, carbides, hydrides and sulfides and any other substances which the City, the state or EPA has notified the user is a fire hazard or a hazard to the system.

[1] Waste streams with a closed-cup flash point of less than 140° F. shall not be discharged by a user to the POTW.

[2] Trucked or hauled pollutants to the POTW shall be delivered at discharge point designated by the City of Marlborough.

(b) Solids or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities, such as but not limited to: grease, garbage with particles greater than 1/2 inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshing, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone, gravel, or marble dust, plaster, cement, mortar, metal, glass, straw, sticks, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, paper dishes, cups, mil containers, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes.

(c) Waters or wastes having a pH lower than 6.0 or having any othercorrosive property capable of causing damage or hazard to structures,

equipment and personnel of the sewage works.

(d) Any water or wastes having a pH in excess of 9.0.

(e) Any wastewater containing toxic or poisonous pollutants, including any solids, liquids or gases, in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW or to exceed thelimitation set forth in a Categorical Pretreatment Standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.

(f) Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(g) Any substance which may cause the POTW's effluent or any otherproduct of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act, or withany criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act or state criteria applicable to the sludge management method being used.

(h) Any substance which will cause the POTW to violate the NPDES and/or state disposal system permit or the receiving water quality standards. Any wastewater with objectionable color not removed in the treatment process, such as but not limited to dye wastes and vegetable tanning solutions.

(i) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40° C. (104° F.).

(j) Any discharge of a nonroutine, episodic nature, including, but not limited to, any accidental spill or a noncustomary batch of discharge released at a flow rate and/or pollutant concentration which a user knows, or has reason to know, will cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period longer than 15 minutes more than five times the average twenty-four-hour concentration quantities of flow during normal operation.

(k) Radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the Commissioner in compliance with applicable state or federal regulations.

(l) Water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32° and 150° F. (0° and 65° C.).

(m) Waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions, whether neutralized or not.

(n) Materials which exert or cause unusual concentrations of inert suspended solids, such as but not limited to fuller's earth, lime slurries and lime residues, or of dissolved solids, such as but not limited to sodium chloride and sodium sulfate.

(o) Any wastewater which causes a hazard to human life can endanger public or private property or creates a public nuisance.

(p) Overflow by draining from cesspools or other receptacles storing organic wastes.

(q) Steam exhausts, boiler blowoffs, sediment traps or pipes carrying hot circulating water.

(r) Waters or wastes containing substances which are not amenable to treatment or reduction by the waste treatment process employed, or are amenable to treatment only to such degree that sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(2) When the Commissioner determines that a user(s) is discharging or proposing to discharge to the POTW any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the Commissioner shall advise the user(s) of the impact of the contribution on the POTW and develop effluent limitation(s) for such user to correct the interference with the POTW.

(3) All industrial users are required to give the City (POTW) notice of thedischarge of substances which would constitute hazardous waste if otherwise disposed of. Said notice shall be given to the City 14 days prior to discharge or immediately upon discovery of an unintended discharge.

D. Federal Categorical Pretreatment Standards.

(1) Upon the promulgation of the Federal Categorical Pretreatment Standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter. The Commissioner shall notify all affected users of the applicable reporting requirements under 40 CFR 403.12.

(2) Where the City's wastewater treatment system achieves consistent removal of pollutants limited by federal pretreatment standards, the City may apply to the approval authority for modification of specific limits in the federalpretreatment standards. "Consistent removal" shall mean reduction in the

amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or harmless state in the effluent which is achieved by the system in 95% of the samples taken when measured according to the procedures set forth in Section 403.7(c)(2) of Title 40 of the Code of Federal Regulations, Part 403, General Pretreatment Regulations for Existing and New Sources of Pollution, promulgated pursuant to the Act. The City may then modify pollutant discharge limits in the federal pretreatment standards if the requirement contained in 40 CFR 403.7 are fulfilled and prior approval from the approval authority is obtained.

(3) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or completesubstitute for adequate treatment to achieve compliance with the categorical pretreatment standard. Mass limitations may be imposed on users when determined by the authority to be appropriate.

E. Specific pollutant limitations. No person shall discharge to the public sewers wastewater containing in excess of: **[Amended 5-7-2007 by Ord. No. 06-1001387B]**

Pollutants of Concern	**Maximum Concentration (mg/l)**
Biochemical oxygen demand	350
Total suspended solids	350
Phosphorus	25
Ammonia	50
Arsenic	0.42
Beryllium	0.12
Cadmium	0.1
Chromium, total	0.77
Copper	0.3
Cyanide	0.45
Lead	0.1
Manganese	20
Mercury	0.0007
Nickel	0.6
Selenium	0.81
Silver	0.25
Thallium	0.93
Total toxic organics	2.13
Zinc	3.7

F. Action by Commissioner.

(1) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Subsections C and E of this section and which, in the judgment of the Commissioner, may have a deleterious effect upon the sewerage facilities, processes, equipment or receiving waters or which otherwise create a hazard to life or constitute a public nuisance, the Commissioner may do any or all of the following:

(a) Reject the wastes and require separate treatment.

(b) Require pretreatment to an acceptable condition for discharge to the public sewers.

(c) Require control over the quantities and rates of discharges.

(2) If the Commissioner permits the treatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Commissioner and subject to the requirements of all applicable code, ordinances and laws.

G. The City reserves the right to establish, by ordinance, more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives of this chapter.

H. Grease, oil and sand interceptors shall be provided when, in the opinion of the Commissioner, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Commissioner and shall be so located as to be readily and easily accessible for cleaning and inspection.

I. State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this chapter.

J. Where pretreatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

K. The owner of any property serviced by a building sewer carrying industrial wastes shall perform such monitoring of its discharges as may be required by the Commissioner, including the installation, use and maintenance of monitoring equipment. Records of the results of such monitoring shall be kept, and said results shall be reported to the Commissioner. The Commissioner shall make such records available upon request to state, federal or any other public agencies having jurisdiction over such discharges. In addition, the owner of any property serviced by a building sewer carrying industrial wastes shall, at the discretion of the Commissioner, install a suitable control manhole to facilitate monitoring of the wastes in the building sewer as may be required by the Commissioner. Such manhole shall be accessibly and safely located and shall be constructed in

accordance with plans approved by the Commissioner. The manhole shall be installed by the owner at his or her expense and shall be maintained by him so as to be safe and accessible to the Commissioner at all times.

L. Measurements, tests and analyses.

(1) Except as noted in this subsection, all measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, and shall be determined at the control manhole provided or upon suitable samples taken at such control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewerage facilities and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a twenty-four-hour composite of all outfalls of a property is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls, whereas pHs are determined from periodic grab samples.

(2) Measurements, tests and analyses of the characteristics of waters and wastes discharged by significant users shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR 136, as amended.

M. Accidental discharge.

(1) Each significant user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review and shall be approved by the City before construction of the facility. All existing significant users shall submit such a plan by October 1, 1985.

(2) No user who commences contribution to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the City. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. In the case of an accidental discharge, it is the responsibility of the users to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(3) The City of Marlborough (POTW) shall evaluate the significant industrial users (SIUs) every two years. Each user shall be required to comply with any plan the City considers necessary, pursuant to this section.

N. Written notice. Within five days following an accidental discharge, the user shall submit to the Commissioner a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this chapter or other applicable law.

O. Notice to employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

P. No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, provided that such agreements do not contravene any applicable state or federal regulations.

Q. No person shall discharge industrial wastes to the public sewers, except in accordance with the conditions set forth in an industrial waste discharge permit issued by the Commissioner to that person.

R. Within 30 days of being notified by the Commissioner, all persons discharging industrial wastes to the public sewers prior to the effective date of this revised ordinance shall apply to the Commissioner for an industrial waste discharge permit. The application shall be made on the forms furnished by the Commissioner.

S. All persons proposing to discharge industrial waste to the public sewers shall apply to the Commissioner for an industrial waste discharge permit. The application shall be made on the forms furnished by the Commissioner.

§ 510-7. Industrial waste discharge.

A. Permit application.

(1) All significant users are required to obtain an industrial waste dischargepermit. All significant users shall complete and file with the City an application in the form prescribed by the City and accompanied by an origination fee of $1,000. Each significant user will also be levied an annual assessment in proportion to each one's use of the sewer system. In support of the application, the significant user shall submit, in units and terms appropriatefor evaluation, the following information:

(a) The name, address and location (if different from the address).

(b) The SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.

(c) Wastewater constituents and characteristics, including but not limited to

those mentioned in § 510-6E of this chapter, as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA, pursuant to Section 304(g) of the Act and contained in 40 CFR 136, as amended.

(d) The time and duration of contribution.

(e) The average daily and three-minute peak wastewater flow rate, including daily, monthly and seasonal variations, if any.

(f) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, type, location and elevation.

(g) Descriptions of activities, facilities and plant processes on the premises, including all materials which are or could be discharged.

(h) Where known, the nature and concentration of any pollutants in the discharge which are limited by any City, state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.

(i) If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standards.

(j) Each product produced by type, amount, process or processes and rate of production.

(k) The type and amount of raw materials processed, the average and maximum per day.

(l) The number and type of employees and hours of operation of the plant and proposed or actual hours of operation of the pretreatment system.

(m) Any other information as may be deemed by the City to be necessary to evaluate the permit application.

(2) The City will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished,the City may issue an industrial waste discharge permit subject to terms and conditions provided herein.

B. Modification to industrial waste discharge permits. Within nine months of the promulgation of any National Categorical Pretreatment Standards, the industrial waste discharge permit of users subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards. Where a user subject to a National Categorical Pretreatment Standard has not

previously submitted an application for an industrial waste discharge permit, the user shall apply for an industrial waste discharge permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, the user with an existing industrial waste discharge permit shall submit to the Commissioner, within 180 days after the promulgation of an applicable Federal Categorical Pretreatment Standard, the information required by § 510-7A(1)(h) and (i) of this chapter.

C. Permit conditions. Industrial waste discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the City. Permits shall contain the following:

(1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer.

(2) Limits on the average and maximum wastewater constituents and characteristics.

(3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.

(4) Requirements for installation and maintenance of inspection and sampling facilities.

(5) Specifications for monitoring programs which may include samplinglocations, frequency of sampling, number, types and standards for test and reporting schedule.

(6) Compliance schedule with dates showing progressive steps for meeting Categorical Pretreatment Standards.

(7) Requirements for submission of technical reports or discharge reports and final compliance reports.

(8) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the City and affording City accessthereto.

(9) All industrial users must promptly notify the City (POTW) in advance of any substantial change in the volume or character of pollutants in their discharge, including wastes for which the user submitted initial notification, under 40 CFR 403.12(P). All users, not just significant industrial users, are required to give the City 14 days' notice of the intended discharge. The City has the authority to deny or condition new or increased contribution of pollutants or changes in the nature of pollutant.

(10) Notice of slug loading or any other potential problem or condition of violation. The industrial user must submit the following information within 24 hours of becoming aware of the violation (if this information is provided orally, a written submission must be provided within five days):

(a) A description of the discharge and cause of the violation.

(b) The period of the violation, including exact dates and times or, if not corrected, the anticipated time the violation is expected to continue.

(c) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the violation.

(11) Effluent limits based on applicable general pretreatment standards in categorical pretreatment standards, local limits and state and local [40 CFR 403.8 (1)(iii)(D)].

(12) A statement concerning self monitoring, sampling, reporting, notification, and recordkeeping requirements [40 CFR 403.8(f)(1)(iii)(D)].

(13) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule [40 CFR 403.8 (f)(1)(iii)(E)].

(14) Other conditions as deemed appropriate by the City to ensure compliance with this chapter.

D. Permit duration. Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 180 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the City during the term of the permit as limitations or requirements of this chapter are modified or other just cause exists. The user shall be informed of any proposed changes in his or her permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance. A statement of the duration shall be included in all permits.

E. Permit transfer. Industrial waste discharge permits are issued to a specific user for a specific operation at a specific location. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation without the approval of the City. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit. A statement of the transferability shall be included in all permits.

F. Compliance date report.

(1) Compliance schedule progress report. Not later than 14 days following each date in the compliance schedule for meeting categorical pretreatment standards and the final date for compliance, the industrial user shall submit a progress report to the Commissioner, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

(2) Compliance reports. Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source,

following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the Commissioner a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements, and the average and maximum daily flow for these process units in the user facility, which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified to be a qualified professional.

G. Periodic compliance reports.

(1) Any user, significant noncategorical and categorical industrial users subject to a pretreatment standard, after the compliance date of such pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Commissioner, during the months of June and December unless required more frequently in the pretreatment standard or by the Commissioner, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which, during the reporting period, exceeded the average daily flow reported in § 510-7A(1)(e) of this chapter. At the discretion of the Commissioner and in consideration of such factors as local high- or low-flow rates, holidays, budget cycles, etc., the Commissioner may agree to alter the months during which the above reports are to be submitted.

(2) The Commissioner may impose mass limitations on users that are usingdilution to meet applicable pretreatment standards or requirements or, in othercases, where the imposition of mass limitations are appropriate. In such cases,the report required by § 510-7G(1) shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration or production and mass, where requested by the Commissioner, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analyses shall be performed in accordance with procedures established by the Administrator pursuant to Section 304(g) of the Act and contained in 40 CFR 136, and amendments thereto, or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR 136 does not include a sampling or analytical technique for the pollutant in question sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication "Sampling and Analysis Procedures for Screening of Industrial Effluent for Priority Pollutants, April 1977," and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator.

(3) All reports submitted to the City must be signed by a responsible corporate officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, or a duly authorized representative of an individual.

(4) All records of monitoring activities and sample analysis shall be kept for a minimum of three years.

§ 510-8. Pretreatment.

A. Users shall provide necessary wastewater treatment or flow equalization as required to comply with this chapter and shall achieve compliance with all Federal Categorical Pretreatment Standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review and shall be approved by the City before construction of the facility. The approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an affluent acceptable to the City under the provisions of this chapter. Any subsequent charges in the pretreatment facilities or method of operation shall be reported to and be approved by the City prior to the user's initiation of the changes.

B. The City shall annually publish in a newspaper of local circulation a list of the users which were not in compliance with any pretreatment requirements or standards at least once during the 12 previous months. The notification shall also summarize any enforcement actions taken against the user(s) during the same 12 months.

§ 510-9. Confidential information.

A. Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public upon request or to other governmental agencies, unless the user specifies that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Information and data requested to be held in confidence shall be clearly identified and marked "confidential business information."

B. The portions of a report which might disclose trade secrets or secret processes and are marked "confidential business information" shall not be made available for inspection by the public but shall be made available upon request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

§ 510-10. Prohibited actions; penalty.

A. No person shall maliciously, willfully or negligently break, damage, destroy,

uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewerage facilities.

B. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct and shall be fined the amount of $50.

§ 510-11. Right of entry.

A. The Commissioner and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter into, upon or through all properties without advance notice for the purpose of inspection, observation, measurement and testing to have access to and copy any records, to inspect any monitoring equipment or method required in § 510-6K and to sample any discharge to the sewers or waterways or facilities for waste treatment in accordance with the provisions of the chapter. The right of entry shall include entry to prevent any discharge which may reasonably appear to present imminent endangerment to persons, as described in § 510-12A. The right of entry shall include the right to require the industrial user to install monitoring equipment.

B. While performing the necessary work on private properties referred to in Subsection A of this section, the Commissioner or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death to the City employees, and the City shall indemnify the company against loss or damage to itsproperty by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in § 510-4H.

C. The Commissioner and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage facilities lying within such easement. Entry to such easement shall be no more restrictive than entry to an industrial user's premises. All entry and subsequent work, if any, on such easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

§ 510-12. Violations and penalties.

The provisions of this chapter shall constitute a part of the contract with every person who connects to the City's sewerage system. Every person making such connection shall be considered as having expressed his or her consent to be bound hereby.

A. After informal notice is given, the City shall immediately halt or prevent the discharge of any pollutants which reasonably appear to present imminent endangerment to the health or welfare of persons. In addition, the City may suspend the wastewater treatment service and/or any industrial waste discharge permit when such suspension is necessary, in the opinion of the City, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial

endangerment to the environment, causes interference to the POTW or causes the City to violate any condition of its NPDES permit. Notice of suspension shall be sent to the user by certified mail, return receipt requested, and shall state the reason(s) for the suspension. Any person notified of a suspension of the wastewater treatment service and/or the industrial waste discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate shutoff of the City water service, to prevent or minimize damage to the POTW system or endangerment to any individuals. The City shall reinstate the industrial waste discharge permit and/or theCity water service upon proof of the elimination of the noncomplying discharge.A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shallbe submitted to the City within 15 days of the date of occurrence.

B. Any user who violates the following conditions of this chapter, or applicable state and federal regulations, is subject to having his or her permit revoked in accordance with the procedures of this chapter:

(1) Failure of a user to factually report the wastewater constituents and characteristics of his or her discharge.

(2) Failure of the user to report significant changes in operations or wastewater constituents and characteristics.

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.

(4) Violation of conditions of the permit.

C. Any person found to be violating any provision of this chapter, except § 510-9, shall be served by the Commissioner with written notice stating the nature of theviolation. Within 30 days of the notice, a plan for the satisfactory correction thereofshall be submitted to the City by the user.

D. Hearing.

(1) The City may order any user who causes or allows an unauthorized discharge to enter the POTW to show cause before the Commissioner why the proposed enforcement action should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the Commissioner regarding the violation, the reasons why the action is to be taken, the proposed enforcement action and directing the user to show cause before the Commissioner why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, at least 10 days before the hearing. Service may be made on any agent or officer of a corporation.

(2) The Commissioner may himself conduct the hearings and take the evidence or may designate the City Engineer or any officer or employee of the City of Marlborough to:

(a) Issue in the name of the Commissioner notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.

(b) Take the evidence.

(c) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Commissioner for action thereon.

(3) At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(4) After the Commissioner has reviewed the evidence, he may issue an order to the user responsible for this discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, devices or other related appurtenances and are properly operated. Further orders and directives as are necessary and appropriate may be issued.

E. Legal action. If any person discharges sewage, industrial waste or other wastes into the City's wastewater disposal system contrary to the provision of this chapter, federal or state pretreatment requirements or any order of the City, the City Solicitor may commence an action for appropriate legal and/or equitable relief in the court of this county.

F. Penalties.

(1) Any person or user found to have violated any provision of these rules and regulations shall be subject to the assessment of a civil penalty, not to exceed $5,000, for each day of violation of any such rule or regulation. In addition, any violation of this chapter shall be punishable by a fine of $50 per day. Each day in which any such violation shall continue shall be deemed a separate violation for purposes of both the civil penalty and the fine provisions of this section. Exceeding daily pretreatment standards will be deemed a separate violation as to each effluent characteristic listed in these regulations regulated by federal or state categorical pretreatment standards.

(2) Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.

G. Falsifying information. Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or industrial waste discharge permit, or who falsified, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter, shall, upon conviction, be punished by a fine not less than $50 nor more than $5,000.

§ 510-13. Validity.

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part of parts.

§ 510-14. Duties of Water Registrar.

A. The Water Registrar shall distribute monthly, in the case of large users, or quarterly to the persons charged therewith bills for sewer rental charges, conformable to the rates established by the Department of Public Works, and shall allow all discounts and abatements which the Department shall order.

B. The Water Registrar shall keep books and accounts in such forms as the Department of Public Works shall direct.

C. The Water Registrar shall annually, in the month of July, furnish the City Council a report on the preceding fiscal year concerning this chapter.

§ 510-15. When effective.

This chapter shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

§ 510-16. Installation of service pipes.

A. Any landowner desiring to connect to the public sewerage system should apply to the Water Registrar's office and fill out the necessary forms. The prescribed form must be signed by the owner or their~~his~~ authorized agent. This request must be accompanied in all cases, except a single-family house, by a plot plan showing the location of the proposed connection and appurtenances unless this requirement is waived by the Department of Public Works.

B. All service pipes and appurtenances are the property of the landowner and shall be supplied and maintained in proper order by him.

C. In the case of the construction of an individual single-family home, it will be the responsibility of the property owner to have the service pipe installed. The Department will, during the months of June, July and August only, agree to install services and bill the property owner for all materials, labor and equipment supplied.

D. Only those that can be accomplished during this period will be performed. The Department reserves the right to accept or reject any application for service installation. Services not installed by the Department must be installed by contractors licensed by the Department as stated hereinafter. Work performed by the Department will be in accordance with § 510-19.

E. All services, excluding individual single-family residences, shall be installed by the developer or property owner, and ~~he~~ they will furnish all materials, labor and whatever else is necessary to complete service. This work shall be done in accordance with
§ 510-19.

§ 510-17. Maintenance and repair responsibilities.

A. Maintenance and repair of service pipes shall be the responsibility of the property owner. The Department will, at the request of the owner of a single-family home and at no cost ~~to him~~to the owner, make minor repairs in accordance with the conditions of § 510-19.

B. Major repairs or relays, whether deemed necessary or requested, shall be the responsibility of the property owner.

C. Maintenance and repair of all service pipes, other than those serving single-family homes as described above, shall be the responsibility of the property owner. The Department will only make emergency repairs that it deems necessary at the time, and the property owner shall be billed accordingly.

§ 510-18. Trespassing.

No person shall trespass on any City lands or structures taken or held by the City for the purposes of its municipal sewerage system without the express written consent of the Commissioner of Public Works.

§ 510-19. Construction standards.

A. Work performed by the Department of Public Works. In the event that the Department of Public Works' Water and Sewer Division is involved either in the installation of a new service or relay to a single-family residence, or repairs to an existing service, the work shall be performed in accordance with the following rules and regulations:

(1) Trenches or areas of excavation, after completion of the installation or repairs, shall be rough graded and hand raked. Permanent repairs on the landowner's property (i.e., loaming, seeding, cold patching and hot topping of drives and walks, cement sidewalks, steps, etc.) shall be his or her responsibility.

(2) Fences or walls of any kind, if not removed by the landowner, will, if within the Department's means and capabilities, be removed and stacked on the landowner's property. Upon completion of the Department's work, re-erection or rebuilding shall be the responsibility of the landowner.

(3) Trees, bushes, shrubs, hedges, flowers, lawn ornaments, etc., if not removed by the landowner, will, if within the Department's means and capabilities, be removed and stacked on the landowner's property. Upon completion of the Department's work, replanting or replacement of these items shall be the responsibility of the landowner.

(4) In the event that the Department's work necessitates the cutting of roots of trees, bushes, shrubs, hedges, etc., the City will not be responsible for their continued life.

(5) The landowner shall be responsible for notifying the Department of any underground wiring, wells, septic system pipes, drainage pipes, etc., that may be in the line of construction. Unless the Department is notified in advance,

the City will assume no liability for resulting damages.

B. Work performed by developers and/or private contractors. In case of a sewer extension on or to a new development and on or to any private development, the owner of the property or the developer thereof shall construct and install the water mains and house connections in accordance with the following rules and regulations:

(1) There shall be submitted to the Commissioner of Public Works, in the case of a new development which has the approval of the Planning Board, a plotted plan which has been recorded in the Middlesex South District Registry of Deeds. Other private projects approved by appropriate City agencies shall also submit a plan of a proposed sewer system.

(2) Any and all plans for a sewer system in the City of Marlborough will show and/or specify the following: All gravity mains will be a minimum of eight inches in diameter; all laterals, interceptors, trunklines, etc., will be either ~~asbestos cement,~~ cast iron, reinforced concrete, or polyvinyl chloride (PVC). The ~~class~~ type of pipe ~~will~~ shall accommodate the field conditions. ~~, i.e., all asbestos cement sewer pipe up to twelve-foot bury can be Class 2400; 12 to 18 feet willbe Class 3300; 18 to 24 feet will be Class 4000; and anything over 24 feet willbe Class 5000.~~ No Class III concrete pipe shall be used for sewer construction.Class IV will be used up to a twenty-foot bury, and anything over 20 feet willbe Class V; PVC pipe shall meet or exceed the ASTM D-3034, SDR 35 requirements. PVC pipe shall not be used for pipes with diameters greater than15 inches unless expressly approved in writing by the Commissioner of PublicWorks. When the cover is five feet or less under a roadway, the class and type of pipe will be specified by the Department of Public Works. The stationing and slopes of all pipes will be shown on a plan and profile view with an appropriate scale. The distance between any two manholes shall never exceed 300 feet. Any two sewer lines entering a manhole or a structure with a difference in elevation greater than three feet zero inches, the pipe with the higher elevation will enter via an outside drop connection and will be shown as a drop manhole on the plans. All sizes of all pipe will have as their minimum slope that slope which yields the scouring velocity for the particular diameter pipe. A bench mark shall be provided every 500 feet. Any and all existing utilities within 30 feet of the proposed main will be shown and, if available, their elevations noted.

(3) Any contractor involved in sewer construction in the City of Marlborough will strictly adhere to the provisions as set forth in § 510-5. No equipment, tools or material will be rented or loaned from the Department of Public Works. All materials used must be of the same make and quality as set forth hereinafter.

(4) Costs. All labor and material costs to install a sewer system as specified herein will be borne by the owner, developer or contractor, whatever the case may be. Costs for taps into the public system and the restoration thereof of any public way will be borne by the owner, developer or contractor.

(5) Inspection will be provided by the City of Marlborough only on a limited or part-time basis. Before any backfilling is done, the Department of Public

Works' Water Division will be notified 24 hours in advance, and a ~~man~~ person will inspect the completed work. If the Department of Public Works feels that insufficient workmanship and care is being taken in the installation, a man will be assigned from the Department of Public Works on a full-time basis. The contractor or owner will bear the cost of this ~~man~~ person at ~~his~~ their hourly wage rate,Monday through Friday, from 7:30 a.m. to 4:30 p.m., or in the case of summerhours, 7:00 a.m. to 3:30 p.m. Any time spent on the site not within these limitsor Saturday, Sunday, holidays, etc., will be at twice the ~~man's~~ person's rate.

(6) Excavation in any public way will require a road opening permit from the Department of Public Works. Necessary forms may be obtained and filed with the Department of Public Works' Street Division. It will be the contractor's responsibility to notify utility companies, such as gas, telephone, electric, etc., if there is any possibility of their equipment or their property being jeopardized by excavation. It shall also be the contractor's responsibility to notify the Fire Department and Police Department of said work to be performed and, if necessary, to hire uniformed police for traffic control. In the event that the roadway cannot be restored to its normal surface immediately following the work, sufficient care will be taken to make the roadway smooth for traffic and, if necessary, to light with flashers as a warning to motor vehicles.

(7) Before any sewer mains, water mains or drain lines are installed in a new subdivision or development, the contractor will bring the entire site where these utilities are located to subgrade, such grade will be verified by grade stakes provided and set by a registered land surveyor or engineer employed bythe owner or contractor, so that the Engineering Division of the Department of Public Works may expedite its checking of such grades.

(8) All materials used shall be specified in Subsection B, Work performed by developers and/or private contractors. All sewer mains and sewer services will be set in a screened gravel bed, three-fourths to one-inch stone. The stone bed will always be on firm undisturbed earth. In the event of peat or wet clay at grade, the contractor will excavate enough material so that, when backfilled with stone, it will provide a sound bed. The determination of how much unsuitable material is to be excavated will be at the immediate discretion of the Inspector of the Department of Public Works. All concrete pipe shall be jointed by the use of a flat rubber gasket or the O-ring type. All cast iron for sewer shall be the same class for gravity and force main systems; all force main systems will be cast iron. Under normal conditions, all pipe will have a six-inch envelope of screened gravel aground it. In ledge, this envelope will go to eight inches. Select material will immediately follow the stone over the pipe and, as to the amount, will depend upon the depth and whatever the Inspector deems necessary, at which time normal backfilling may start, using already excavated material.

(9) Manholes may be poured in place, precast or, at the discretion of the Department of Public Works, be Barrel Block and plastered both sides. All manholes will have aluminum steps on a one-foot-zero-inch spacing. All precast sections will be made watertight by O-ring joints or an approved mastic. Connections to manholes may be Mortar Joint, Lock Joint Flexible

Manhole Sleeve, Press Wedge II, Kor N Seal and Res Seal. The exterior of all

manholes shall be completely covered with a bituminous waterproofing.

(10) Manhole rings/covers shall be of the same type as used by the Department of Public Works. Watertight bolted and gasketed manhole covers approved by the Department of Public works shall be required for flood-prone areas. Where required, the Department of Public Works may require raised manhole structures in conjunction with watertight bolted and gasketed manhole covers to address current or future impacts of stormwater flooding.

(11) Brick inverts. All sewer manholes will have a brick table constructed in their base to meet all incoming and outgoing pipes to that the flow is channeled smoothly from one point to another. All brick used for manholes inverts will be a hard-burned sewer brick to meet ASTH C32-69 Grade SS. Brickwork will also be used between the manhole structure and ring and ring cover to give the desired grade. However, the brickwork in this area will never exceed eight inches. This brickwork can be with a common brick.

(12) Thrust blocks will be used on any force main sections where called for by the Department of Public Works.

(13) Chimneys will be employed on the main wherever a service is needed when the depth of the main exceeds eight feet zero inches. This will meet exception when the elevation of the connection at the building does not allow the use of a chimney. All chimneys will be encased in a concrete envelope six inches thick.

(14) Y-branches and/or tees will be employed in the main for depths of eight feet zero inches or less. All Y-branches, tees, chimneys, etc., will be provided with proper end caps until the time that the completed tie-in is made.

(15) Tap to main. Main-to-main connections will only be made by the use of a manhole as specified in § 510-19B(2) or, in the case of a service, by use of a tapping saddle approved by the Department of Public Works.

(16) Building sewers.

(a) All building sewers will be either ~~asbestos cement,~~ cast iron or polyvinyl chloride (PVC) having a minimum diameter of five inches and shall conform to the following specifications: ~~Asbestos cement pipe ASTM C 428-67,~~ cast iron pipe ASTM A74-66 and PVC ASTM D-3034, SDR 35. Joints shall be tight and waterproof. Cast iron shall be used when passing under or through any wall or footing of a building. If installed in filled or unstable ground, the building sewer shall be laid on a suitable concrete bed or cradle or shall be cast iron or as approved by the Department of Public Works.

(b) The size and slope of the building sewer shall be subject to the approval of the Commissioner but in no event shall the diameter be less than five inches. The slope of such pipe shall not be less than 1/4 inch per foot. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with benched manholes or curved pipe and fitting, as approved by the Commissioner. A cleanout shall be located on the exterior side of the building service and

shall be in a place that is accessible for maintenance by the Department of Public Works or others.

(c) All parts of new building drains and sewers shall withstand, under test without observable leakage, a ten-foot head or water for a minimum period of 15 minutes at a temperature above the freezing point of water.

(d) The connection of the building sewer into the public sewer shall be made at the Y or T-branch or at bench level in a manhole if such branch tee or manhole is accessible.

(e) If no branch, tee or manhole is available, a connection may be made by tapping the existing sewer by an approved method.

(f) No person shall make connection of roof drains, downspouts, foundation drains, areaway drains, basement drains, sump pumps or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(17) Leakage tests for gravity sewers.

(a) The pipeline shall be made as nearly watertight as practicable, andleakage tests and measurements shall be made on sections of approved length.

(b) The contractor shall furnish suitable test plugs, water pumps and appurtenances and all labor required to properly conduct the leakage tests on the pipeline.

(c) Upon completion of a section of the sewer, the contractor shall dewater it and conduct a satisfactory test to measure the infiltration for at least 24 hours. The amount of infiltration, including manholes, Y-branches and connections, shall not exceed 300 gallons per inch of diameter per mile of sewer per 24 hours. The contractor shall be responsible for the satisfactory watertightness of the entire section of sewer and shall satisfactorily repair all joints or other locations that are not sufficiently watertight.

(d) For making the infiltration tests, underdrains, if used, shall be plugged, and other groundwater drainage shall be stopped to permit the groundwater to return to its normal level insofar as practicable.

(e) Where practicable, the leakage test shall be made at a time when the groundwater is at least one foot above the top of the pipe of the highest section of work being tested.

(f) Suitable bulkheads shall be installed, as required, to permit the test of the sewer.

(g) Where the groundwater level is less than one foot above the top of the pipe at its upper end, the sewers shall be subjected to an internal pressure by plugging the pipe at the lower end and then filling the pipelines and manholes with clean water to a height of two feet above the top of the sewer at its upper end. Where conditions between manholes may result in test pressures which would cause leakage at the stoppers in branches, provisions shall be made by suitable ties, braces and wedges to secure the

stoppers against leakage resulting from the test pressure.

(h) The rate of leakage from the sewers shall be determined by measuring the amount of water required to maintain the level two feet above the top of the pipe.

(i) Leakage from the sewers under test shall not exceed the requirements for leakage into sewers as hereinbefore specified.

(j) The sewers shall be tested before any connections are made to buildings.

(k) The contractor shall construct weirs or other means of measurement as may be required, shall furnish water and shall do all necessary pumping to enable the tests to be properly made.

(l) Should the sections under test fail to meet the requirements, the contractor shall do all work of locating and repairing leaks and retesting as the Engineer may require without additional compensation.

(m) If in the judgment of the Inspector or the Department of Public Works it is impracticable to follow the foregoing procedure exactly for any reason, modifications in the procedure shall be made as required and approved, but in any event, the contractor shall be responsible for the ultimate tightness of the line within the above test requirements.

(18) The contractor shall furnish to the City of Marlborough, Department of Public Works, upon completion of the job, a set of as-built plans which will indicate the following: invert elevations of all pipes at any structure or manhole; rim elevations of all structures or manholes; the correct slope on all pipe between structures or manholes in feet per foot; the exact location of chimneys and Y-branches on the main and, in the case of chimneys, the vertical height over the top of the pipe; the exact location of when the building sewer enters onto private property from any City street or easement. This location will be pinned down by at least two ties from permanent or fixed object. This same method will be used for locating cleanouts when the service connection is made to the building.

(19) Warning ribbons. If nonmetallic pipes are used in the installation of any sewer main or service pipe, a warning ribbon shall be used. Said ribbon shall be green in color and imprinted with the words "caution sewer line below," or words of similar intent, and shall be metallic to provide for future locating with inductive tape locators. Depth of burial shall be in accordance with the manufacturer's standards, except that burial shall not be at a depth less than 18 inches nor at a depth greater than 48 inches.

§ 510-20. Commissioner of Public Works.

The Commissioner shall make regulations and impose civil penalties and fines.

A. The Commissioner of Public Works is hereby authorized to establish regulations consistent with this chapter and in accordance with the federal and state statutes and Rules and Regulations of the United States Environmental Protection Agency,

Water Pollution Control Division.

B. The Commissioner of Public Works is hereby authorized to establish and enforce civil penalties and fines, in accordance with § 510-12 of this chapter.

Chapter 511

STORM SEWERS

GENERAL REFERENCES

Stormwater management — See Ch. 271.

Noncriminal disposition — See Ch. 315.

Sewers — See Ch. 510.

ARTICLE I
Illicit Discharges
[Adopted 11-23-2009 by Ord. No. 08/09-1002346E]

§ 511-1. Purpose.

A. This article complies with the requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) stormwater program promulgated on December 8, 1999, (and as may be subsequently amended) under the Federal Clean Water Act (CWA). Under the Phase II stormwater program, the United States Environmental Protection Agency (EPA) requires regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

B. Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

C. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the City of Marlborough's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

§ 511-2. Objectives.

The objectives of this article are:

A. To prevent pollutants from entering the City of Marlborough's municipal storm drain system;

B. To prohibit illicit connections and unauthorized discharges to the municipal storm drain system;

C. To require the removal of all such illicit connections;

D. To comply with state and federal statutes and regulations relating to stormwater discharges; and

E. To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring, and enforcement.

§ 511-3. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

CLEAN WATER ACT — The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended.

DISCHARGE OF POLLUTANTS — The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or commonwealth.

ENFORCEMENT AUTHORITY — The City Engineer shall be authorized to enforce this article.

GROUNDWATER — Water beneath the surface to the ground.

ILLICIT CONNECTION — A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this article.

ILLICIT DISCHARGE — Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in § 511-8 herein.

MUNICIPAL STORM DRAIN SYSTEM — The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Marlborough.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT — A permit issued by United States Environmental Protection Agency or jointly with the state that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE — Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON — An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

PHASE II MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) – The 1999 Phase II regulation requires small MS4s in the U.S. Census Bureau defined urbanized areas, as well as MS4s designated by the permitting authority, to obtain NPDES permit coverage for their stormwater discharges. Phase II also includes non-traditional MS4s such as public universities, departments of transportation, hospitals and prisons.

POLLUTANT — Any element or property of sewage, and any residential, municipal, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drainage system or waters of the commonwealth. Pollutants shall include, without limitation:

A. Paints, varnishes, degreasers, and solvents;

B. Oil, gasoline, grease, and other automotive fluids and petroleum products;

~~B.~~C. Fats, oils, and grease as a byproduct of cooking;

~~C.~~D. Non-hazardous liquid and solid wastes and yard wastes;

~~D.~~E. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;

~~E.~~F. Pesticides, herbicides, and fertilizers;

~~F.~~G. Toxic or hazardous material or waste; sewage, fecal coliform, and pathogens;

~~G.~~H. Dissolved and particulate metals;

~~H.~~I. Animal wastes;

~~I.~~J. Rock, sand, salt, soils;

~~J.~~K. Construction wastes and residues; and

~~K.~~L. Noxious or offensive matter of any kind.

POLLUTION — A stormwater condition caused by or involving a pollutant.

PROCESS WASTEWATER — Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

STORMWATER — Stormwater runoff, snowmelt runoff, and surface water runoff and drainage.

SURFACE WATER DISCHARGE PERMIT — A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL OR WASTE — Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WASTEWATER — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwaters, surface waters and stormwaters as may be present, which is contributed to or permitted to enter the publicly owned treatment works.

WATERCOURSE — A natural or man-made channel through which water flows, or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH — All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

§ 511-4. Authority.

This article is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

§ 511-5. Applicability.

This article shall apply to all discharges of pollutants entering the municipal storm drain system.

§ 511-6. Administration; enforcement.

The City Engineer shall administer, implement and enforce this article. Any powers granted to or duties imposed upon the City Engineer may be delegated in writing by the City Engineer to another City department, commission or board to act as his/her authorized agent.

§ 511-7. Prohibited activities.

A. Illicit discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge or wastewater into the municipal storm drain system, into a watercourse, or into the waters of the commonwealth.

B. Illicit connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

C. Obstruction of municipal storm drain system. No person shall obstruct or interfere with the flow of stormwater into or out of the municipal storm drain system without prior written approval from the City Engineer.

§ 511-8. Exemptions.

The following are exempt activities:

A. Discharge or flow resulting from fire-fighting activities.

B. The following non-stormwater discharges are exempt from the prohibitions of this article, provided that, in the opinion of the City Engineer, the source is not a significant contributor of a pollutant to the municipal storm drain system:

(1) Waterline flushing;

(2) Flow from potable water sources;

(3) Springs;

(4) Natural flow from riparian habitats and wetlands;

(5) Diverted stream flow;

(6) Rising groundwater;

(7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;

(8) Water from exterior foundation drains, footing drains, crawl space pumps, or air-conditioning condensation;

(9) Discharge from landscape irrigation or lawn watering;

(10) Water from individual residential car washing;

(11) Discharge from dechlorinated swimming pool water (less than 1.0 ppm

chlorine), provided that the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;

(12) Discharge from street sweeping;

(13) Dye testing, provided that verbal notification is given to the City Engineer prior to the time of the test;

(14) Non-stormwater discharge permitted under an NPDES permit or a surface water discharge permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and

(15) Discharge for which advanced written approval is received from the City Engineer as necessary to protect public health, safety, welfare or the environment.

§ 511-9. Emergency suspension of storm drainage system access.

The City Engineer may suspend municipal storm drain system access to any person or property without prior notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the enforcement authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

§ 511-10. Notification of spills.

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the commonwealth, that person shall immediately take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal Fire and Police Departments and the City Engineer. In the event of a release of nonhazardous material, the reporting person shall notify the City Engineer no later than the next business day. The reporting person shall provide to the City Engineer written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years following the date of discharge.

§ 511-11. Enforcement.

A. General. The City Engineer or his/her authorized agent shall enforce this article, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Civil relief. If the City Engineer finds that a person is in violation of the provisions of this article, or any permit, notice, or order issued thereunder, the City Engineer may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

C. Orders.

(1) In order to enforce the provisions of this article, the City Engineer or his/her agent may issue a written order to the person found by the City Engineer to be in violation of this article. Such order may include:

(a) Elimination of illicit connections or discharges to the municipal storm drain system;

(b) Performance of monitoring, analyses, and reporting;

(c) Cessation of unlawful discharges, practices, or operations; and

(d) Remediation of pollution in connection therewith.

(2) If the City Engineer determines that abatement or remediation of pollution is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the City of Marlborough may, at its option, undertake such work, and that the expenses thereof shall be charged to the violator.

(3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the City of Marlborough, including administrative costs. Within 30 days of receipt of the notification of the costs incurred by the City, the violator or property owner may file with the City Engineer a written protest objecting to the amount or basis of those costs. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the City Engineer affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in MGL c. 59, § 57 after the 31st day on which the costs first become due.

D. Criminal penalty. Any person who violates any provision of this article or any order issued hereunder shall be punished by a fine of $300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the City Engineer may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter 315 of the Code of the City of Marlborough. The penalty for the first violation shall be $100. The penalty for the second violation shall be $200. The penalty for the third and subsequent violationsshall be $300. Each day or part thereof that such violation occurs or continues shall

constitute a separate offense.

F. Entry to perform duties under this article. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the City Engineer and his/her agents may enter upon privately owned property for the purpose of performing their duties under this article, and may make or cause to be made such examinations, surveys or sampling as the City Engineer deems reasonably necessary.

G. Appeals. The decisions or orders of the City Engineer shall be final. Further relief shall be to a court of competent jurisdiction.

H. Remedies not exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

Chapter 608

WATER

GENERAL REFERENCES

Department of Public Works — See Ch. 7, Art. IV.

Building and site development — See Ch. 270.

Sewers — See Ch. 510.

Zoning — See Ch. 650.

ARTICLE I
General Regulations

§ 608-1. Power to establish regulations.

The Department of Public Works shall have power to establish regulations for the introduction and use of water.

§ 608-2. Prevention of water waste.

All persons taking the water supplied by the City shall prevent all waste of water, as well as conserve and reuse water when possible.

§ 608-3. Authorization for entering of premises.

The Commissioner of Public Works, or any of his agents or assistants, may enter the premises of any water taker to examine any water pipes and plumbing therein or thereon for the purpose of ascertaining whether there is any waste of water and for the purpose of determining the quantity of water used and the manner of use and for the further purpose of shutting off the water for nonpayment of rates or fines or for any alleged violation of the provisions of this chapter.

§ 608-4. Decision on waste of water; shutoff of supply.

The Department of Public Works shall have the power to decide what is waste or improper use of water and to restrict its use. If the water taker refuses or neglects to comply with any order of said Department after notice is given to him, the water shall be shut off and not let on except by payment of reasonable charges.

§ 608-5. Determination of water rates.

The Department of Public Works shall determine and assess the water rates.

§ 608-6. Rate abatement; appeals.

A. The Department of Public Works may make abatements in the water rates in all proper cases upon receipt, in writing, from the property owner of a request for abatement stating reasons for such request, together with all information necessary to evaluate its merits. Excessive usage caused by pipe leaks or leaking fixtures on the owner's property beyond the meter shall not be considered cause for abatement. Should the owner request the meter be removed and checked, this shall be done in accordance with § 608-16.

B. Any person aggrieved by the decision of the Department under this section, may, if the bill in question is in the amount of $100 or more, appeal said decision to the City Council. A two-thirds vote of the Council will be necessary to overturn said decision. Should this occur, the claim would then be settled under conditions put forth by the Council.

§ 608-7. Repairs, extensions and improvements of system.

A. The Department of Public Works may make repairs, extensions or improvements

on the waterworks, provide new main pipes and construct or repair hydrants established by the City.

B. The Department of Public Works does not guarantee constant pressure nor uninterrupted service, nor does it assure either a full volume of water or the required pressure per square inch necessary to effectively operate appliances of any kind, the same being subject to all the variable conditions which may occur in the use of water from the main pipe.

C. The City will not be responsible for damages caused by shutting off water for the purpose of doing repairs on pipes, gates, hydrants or other fixtures, or by any work on the main pipe system, or by breaks in the pipes, or by low pressure resulting from any cause. Reasonable notice shall be given, if possible, to all customers before the water is shut off, except in cases of emergency.

D. Any work done on the public water supply system by a private contractor or agent shall only be performed after procurement from the Department of all necessary permits and licenses as hereinafter described.

E. No plumber or other person not in the employ of the Department of Public Works' Water Division shall shut water off or turn on the water at any service pipe, except at the cellar wall. Whenever, by request of the owner or his representative, water is turned on or off at the curb stop for testing plumbing or other purposes, the charge for turning on or shutting off water shall be $10.

F. No person not in the employ of the Department of Public Works or a member of the Fire Department in the performance of his duties shall turn on any hydrant, public or private, without first obtaining permission from the Water Division.

§ 608-8. Powers and duties of Water Registrar.

A. The Water Registrar shall act as Clerk of the Department of Public Works' Water Division. This person shall perform such services as may be required and shall annually, in July, present to such Department detailed statements of receipts and expenditures in the Water Division for the year ending the 30th day of June, of the number of water takers, the number of services in use, the number and amount of abatements and give such other information as the Department may require.

B. The Water Registrar, under direction of such Water Division, shall exercise a constant supervision of the use of the water. This person shall, under the direction of the Commissioner of Public Works, make and deliver to water takers statements for metered water used. Such statements shall be delivered monthly, in the case of heavy users, or quarterly. Statements for charges for specific supplies or for fractional parts of a term shall be delivered when payable.

C. The Water Registrar shall keep, in suitable books, the names of all persons who take the water, the name and number of the street, the amount charged and amountsof abatements, which records shall be open to the inspection of the Department of Public Works, the Mayor or any committee of the City Council. The WaterRegistrar shall, at the end of each fiscal year, report to such Department the amounts respectively of bills delivered, abatements, uncollected bills and fees.

§ 608-9. Annual reports.

The Commissioner of Public Works shall annually, in July, present to the City Council a report of the condition of the waterworks and other property connected therewith, with an account of receipts and expenditures and a schedule of property in hand, together with any information or suggestions which he or she deems important. The report of the Water Registrar shall accompany this report.

§ 608-10. Extensions of mains.

Extensions of water mains shall be subject to approval by the City Council and the Mayor and shall be made under the supervision of the Department of Public Works. Planned extensions of water mains should be aligned with America's Water Infrastructure Act of 2018 (AWIA) report recommendations.

§ 608-11. Entrance fees.

A. Service pipes connected to City main. Entrance fees for any service pipe connected into the public water system shall be in accordance with the following schedule:

(1) Residential. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

(a) Single-family residence:

[1] Entrance fee: $2,000.

[2] The owner of any single-family residential dwelling that has an occupancy permit from the Building Department effective on or before December 31, 2003, will be allowed to pay the amount of $400 to connect to the municipal water system. **[Amended7-25-2005 by Ord. No. 05-100841-1A; 8-29-2011 by Ord. No. 11-1002920B]**

[3] The owner of any single-family home that received an occupancy permit from the Building Department which was effective after December 31, 2003, will pay the fee in effect at the time of connection. **[Amended 7-25-2005 by Ord. No. 05-100841-1A]**

(b) Multiple-family residence (including all structures containing more than one dwelling unit, such as duplexes, apartment houses, apartment complexes, hotels, motels, trailer parks, etc.): $3,000, plus $500 per living unit.

(2) Nonresidential.

(a) Entrance fee shall be based on size of service pipe as follows: **[Amended 2-9-2004 by Ord. No. 04-9962C]**

Size (inches)	Fee
3/4	$2,000
1	$2,500

1 1/2	$3,000

Size (inches)	Fee
2	$3,500
4	$4,000
6	$4,500
8	$5,000
10	$6,000
12	$8,000

(b) Entrance fee for any service larger than 12 inches shall be as determined by the Commissioner of Public Works with the approval of the Mayor.

B. Secondary or branch mains connected to City main and service pipes connected thereto. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

(1) Single-family residential subdivision or development. The entrance fee shall be $3,000 for each connection of the secondary or branch main or mains to City mains, plus $1,000 for each lot served by the secondary or branch main.

(2) Multifamily residential subdivision or development. The entrance fee shall be $3,000 for each connection of the secondary or branch main or mains to City mains, plus $500 for each living unit served by the secondary or branch main.

(3) Commercial or industrial subdivision or development. The entrance fee shall be $3,000 for each connection of the secondary or branch mains or mains to the City main, plus the nonresidential entrance fee listed in § 608-11A for each service connected to the branch or secondary main.

C. Fire protection.

(1) Any service pipe to be used for fire protection purposes (i.e., feeding hydrants, sprinkler systems, etc.) shall be a separate service from the main and subject to an entrance fee of $2,000 for any size eight inches or smaller and $3,000 forany size greater than eight inches. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

(2) Any residence now under extension contract will continue to benefit by additional connections into the extension until the life of that particular extension contract expires.

§ 608-12. Payment of entrance fees.

A. The entrance fee for a single-family residence shall be payable at the time of the service connection, except that, at the discretion of the Department of Public Works, this payment, plus a service charge of 10%, may be paid over a ten-year period.

B. Entrance fees for all other connections shall be payable at the time of application for connection.

C. The unpaid balance of any entrance fee due the City under this section shall constitute a municipal lien on the property of the applicant.

§ 608-13. Water rates.

A. The taker of water, in addition to such entrance fees as put forth in § 608-11, shall pay for the water used at the established rates of the Department of Public Works and shall also pay for all service work and materials on his property.

B. Water bills shall be issued monthly, in the case of heavy users, or quarterly and are due 30 days thereafter. Delinquent bills or accounts continually in arrears may, at the discretion of the Commissioner of Public Works, be assessed a penalty of 10% of the unpaid balance.

C. Should a taker of water desire, due to vacancy or prolonged nonuse, to have a water service shut off, ~~he~~ the person shall notify the Department in writing of ~~his~~ his or her request, and the Department will shut the service off at the curb stop. No bills will be issued while a service is shut off at the curb stop, however, a minimum bill, in accordance with theDepartment's water rate schedule, will be issued in all other cases. When it is desired to have water turned back on, taker should notify the Department, and service will be reactivated and a fee of $10 assessed.

D. In all cases, bills will be sent to and liability for payment will rest with the owner of the property.

§ 608-14. Service pipes and connections.

A. Any landowner desiring to connect to the public water supply system should apply to the Water Registrar's office and fill out the necessary forms. The prescribed form must be signed by the owner or ~~his~~ their authorized agent. This request must be accompanied in all cases, except a single-family home, by a plot plan showing the location of the proposed connection and appurtenances, unless this requirement is waived by the Department of Public Works.

B. All service pipes, valves, meters, etc., are the property of the landowner and shall be supplied and maintained in proper order by ~~him~~the landowner.

C. In the case of the construction of an individual single-family home, it will be the responsibility of the property owner to have the service pipe installed. The Department will, during the months of June, July and August only, agree to install services and bill the property owner for all materials, labor and equipment supplied. Only those that can be accomplished during this period will be performed. The Department reserves the right to accept or reject any application for service installation. Services not installed by the Department must be installed by contractors licensed by the Department as stated hereinafter. Licensed contractors shall undergo background checks to reduce chances of contamination or malevolent acts (as defined by the AWIA). Work performed by the Department will be in accordance with § 608-18.

D. All services, excluding individual single-family residences, shall be installed by the developer or property owner, and he will furnish all materials, labor and whatever else is necessary to complete service. This includes the furnishing and installing of

tapping sleeves and gates for larger services. This work shall be done in accordance with § 608-18.

§ 608-15. Maintenance and repair of service pipes. [Amended 11-15-2004 by Ord. No. 04-100400; 9-12-2005 by Ord. No. 05-100852A]

A. Maintenance and repair of service pipes shall be the responsibility of the property owner. The Department will, at the request of the owner of a single-family home and at no cost to him, repair minor leaks in accordance with the conditions of § 608-18.

B. Major repairs or relays, whether deemed necessary or requested, shall be the responsibility of the property owner.

C. Maintenance and repair of all service pipes, other than those serving single-family homes as described above, shall be the responsibility of the property owner. The Department will only make emergency repairs that it deems necessary at the time and the property owner will be billed accordingly.

§ 608-16. Meters.

A. All individual services from the public water supply shall be metered in a manner approved by the Department of Public Works.

B. Meters, as stated in § 608-14, are the property of the landowner and will be purchased and set by him. The Department will, in the case of an individual single-family residence, furnish and set the meter for the property owner at the owner's cost. All other meters shall be purchased and set by the property owner in conformance with Department requirements. All meters will be equipped with remote readers mounted on the outside of the building. The Department will, if it deems necessary, repair and/or replace damaged, faulty or old meters on single-family residential homes at no cost to the property owner. All other meters, if deemed by the Department to be in need of repair or replacement, shall be repaired or replaced by the property owner within 30 days of notification in writing from the Department.

C. The property owner shall provide access to the meter at all times.

D. If the property owner requests the Department to remove the meter and check its accuracy, there shall be, within each three-year period, a charge assessed to the owner if the meter is found to be running accurately (within 2%) as follows: first call, no charge; second call, $5; third call and each additional call, $10. Should the meter prove to be faulty, no charge will be made.

E. No meter shall be disconnected from the pipe, moved or disturbed without permission from the Department of Public Works, which will send a properly authorized person to attend to any change needed. The Department shall have the right to change, replace, inspect, repair or remove any meter at any time it deems necessary.

§ 608-17. Water system license requirements.

A. Contractors or individuals of established reputation and experience will be licensed by the Commissioner of Public Works to make connections to the public water supply.

B. No connections shall be made or service pipes installed by any contractor or individual not so licensed.

C. All licensees shall be subject to compliance with the following requirements: **[Amended 4-7-1980 by Ord. No. 20210; 2-9-2004 by Ord. No. 04-9962C]**

(1) Applicants for licenses are required to pay a filing fee of $50, payable to the City, all of which will be refunded to the applicant if his application is rejected.

(2) All licenses issued will expire on December 31 of each year, after which they will be renewed upon payment to the City of a renewal fee of $50.

D. No licenses shall be transferable.

E. If approved by the Commissioner, applicants for licenses shall file with the Commissioner proper and acceptable performance and guarantee bond in the amount of $1,000, which shall remain in full force and effect for at least one year from the date of original approval and each calendar year thereafter upon renewal.

F. Applicants for licenses, after approval by the Commissioner, shall file with the Commissioner a certificate of insurance in the sum of $50,000/100,00 to cover public liability and a certificate of insurance in the sum of $10,000 covering property damage. In addition, a certificate of insurance covering workmen's compensation shall be filed, all of which shall remain in full force and effect for a period of at least one year from the date of original approval and each calendar yearthereafter upon renewal. Said insurance shall indemnify the Commissioner and theCity against any and all claims, liability or action for damages incurred in or in anyway connected with the performance of the work of the licensee and for or by reason of any acts or omission of said licensee in the performance of his work.

G. Applicants for licenses will be approved or disapproved within a period of 15 days after filing the application; after 15 days, a license shall automatically be approved.

H. The licensee shall abide by all the conditions of this chapter with particularreference to § 608-18, Construction requirements.

I. The licensee shall comply with all applicable City, state and federal codes, rules and regulations.

J. The Commissioner reserves the right to revoke or suspend any license if any provision of said license is violated.

K. All licensees are required to give personal attention to all installations and shall employ only competent and courteous workers.

L. All licensees shall be required, if during the course of their work they should encounter any previous violations of this chapter, to give a full written report to the Commissioner within 24 hours of such violation.

M. All licensees shall have all necessary equipment, tools and material to perform this work.

§ 608-18. Construction requirements.

A. Work performed by the Department of Public Works. In the event that the Department of Public Works' Water and Sewer Division is involved either in the installation of a new service or relay to a single-family residence or repairs to an existing service, the work shall be performed in accordance with the following rules and regulations:

(1) Trenches or areas of excavation, after completion of the installation or repairs, shall be rough graded and hand raked. Permanent repairs on the landowner's property (i.e., loaming, seeding, cold patching and hot topping of drives and walks, cement sidewalks, steps, etc.) shall be his or her responsibility.

(2) Fences or walls of any kind, if not removed by the landowner, will, if within the Department's means and capabilities, be removed and stacked on the landowner's property. Upon completion of the Department's work, re-erection or rebuilding shall be the responsibility of the landowner.

(3) Trees, bushes, shrubs, hedges, flowers, lawn ornaments, etc., if not removed by the landowner, will, if within the Department's means and capabilities, be removed and stacked on the landowner's property. Upon completion of the Department's work, replanting or replacement of these items shall be the responsibility of the landowner. If possible, care should be taken to minimize the removal of vegetation, specifically mature large canopy trees.

(4) In the event that the Department's work necessitates the cutting of roots of trees, bushes, shrubs, hedges, etc., the City will not be responsible for their continued life. If possible, care should be taken to avoid cutting roots of trees, bushes, shrubs, hedges, etc.

(5) The landowner shall be responsible for notifying the Department of any underground wiring, wells, septic system pipes, drainage pipes, etc., that may be in the line of construction. Unless the Department is notified in advance, the City will assume no liability for resulting damages.

(6) All decisions pertaining to Subsections A(1) through (5) above will be subject to appeal to the Public Works Committee of the City Council.

B. Work performed by developers and/or private contractors. In the case of a water extension on or to a new development and on or to any private development, the owner of the property or the developer thereof shall construct and install the water mains and house connections in accordance with the following rules and regulations.

(1) There shall be submitted to the Commissioner of Public Works, in the case of a new development which has the approval of the Planning Board, a plotted plan which has been recorded in the Middlesex South District Registry of Deeds. Other private projects approved by appropriate City agencies shall also submit plans of proposed water systems.

(2) Any and all plans for a water system in the City of Marlborough will show and/or specify the following: all mains will be a minimum of eight-inch ductile iron pipe, Class 52, cement-lined mechanical joint or push-on joint in accordance with AWWA standards. All mains over eight inches in diameter will be cast iron or ductile iron, including nipple pieces. All hydrant branches

shall be six-inch cast iron. All intersections of mains will be gated in their

respective directions. No main will extend over 1,000 feet in length without the use of a gate valve. All hydrants will be within 500 feet of each other or so spaced at the discretion of the Department of Public Works or the Fire Chief. All hydrants will be gated. All taps to the existing public system will specify a tapping sleeve and gate valve. **[Amended 3-30-1987 by Ord. No. 87-1407A]**

(3) Any contractor involved in waterworks construction in the City of Marlborough will strictly adhere to the provisions as set forth in § 608-17. No equipment, tools or material will be rented or loaned from the Department of Public Works. All materials used must be of the same make and quality as set forth hereinafter.

(4) Costs. All labor and material costs to install a water system as specified herein will be borne by the owner, developer or contractor, whatever the case may be. Costs for taps into the public system and the restoration thereof of any public way will be borne by the owner, developer or contractor.

(5) Inspection will be provided by the City of Marlborough only on a limited or part-time basis. Before any backfilling is done, the Department of Public Works' Water Division will be notified 24 hours in advance, and a man will inspect the completed work. This method of operation will be used for hydrant installation, main taps, service taps, etc. If the Department of Public Works feels that insufficient workmanship and care is being taken in the installation, a man will be assigned from the Department of Public Works on a full-time basis. The contractor or owner will bear the cost of this man at his hourly wage rate, Monday through Friday from 7:30 a.m. to 4:30 p.m. or, in the case of summer hours, 7:00 a.m. to 3:30 p.m. Any time spent on the site not within these limits or Saturday, Sunday, holidays, etc. will be at twice the man's rate.

(6) Excavation in any public way will require a road opening permit from the Department of Public Works. Necessary forms may be obtained and filed with the Department of Public Works' Street Division. It will be the contractor's responsibility to notify utility companies, such as gas, telephone, electric, etc., if there is any possibility of their equipment or their property being jeopardized by excavation. It shall also be the contractor's responsibility to notify the Fire Department and Police Department of said work to be performed and, if necessary, to hire uniformed police for traffic control. In the event that the roadway cannot be restored to its normal surface immediately following the work, sufficient care will be taken to make the roadway smooth for traffic and, if necessary, to light with flashers as a warning to motor vehicles.

(7) Before any water mains, water services or hydrants are installed in a new subdivision or development, the contractor will bring the entire site where these utilities are located to subgrade, such grade will be verified by grade stakes provided and set by a registered land surveyor or engineer employed bythe owner or contractor so that the Engineering Division of the Department of Public Works may expedite its checking of such grades.

(8) Water mains. All water mains shall be ductile iron pipe Class 52, cement-lined mechanical joint or push-on joints in accordance with AWWA standards. Excavation will be to a depth that provides a minimum of five feet of cover

over the pipe. If excavation is in ledge, a minimum of eight-inch spacing around the pipe will be required to allow for selected backfill material. It will be at the discretion of the Department of Public Works as to the type of bedding used and will depend on field conditions. In any event, it will be either crushed bank gravel or three-fourths-inch stone. No stones larger than three inches in diameter may be used within the first foot of backfill over the pipe. Once the pipe has sufficient cover with a select material, normal backfilling may proceed with care. Jointing of push-on or tyton-joint cast iron will be with the use of a come-along or bar. If a bar is used, a block of wood will be used between it and the pipe; the same applies for having a backhoe-set larger diameter pipe, a block of wood will be inserted between the bucket and the pipe; in no event will there be a metal-to-metal driving force to set the pipe. If this is not strictly complied with, the length of pipe will be removed and a new one used in its place. **[Amended 3-30-1987 by Ord. No. 87-1407A]**

(9) Hydrants will be Mueller, meeting the AWWA improved-type standards; open right, five-and-one-half-foot bury, four-and-one-half-inch valve opening with bell and inlet for a six-inch pipe. All hydrants to be on and in the center of at least a two-foot diameter sump by one-foot deep, consisting of three-fourths-inch stone for drainage purposes. No hydrant shall be placed within 15 feet of a driveway or access road.

(10) Thrust blocks. All plugs, caps, tees, bends and hydrants shall be provided with a concrete thrust block to prevent movement.

(11) Main gate valves and boxes.

(a) Main gates valves shall be open right, iron body, bronze mounted, double disc, nonrising stem, as manufactured by Mueller Company, or approved equal.

(b) Main gate boxes shall be cast-iron, slide-type with at least six inches of adjustment and at least five feet long. The covers shall be flush, close-fitting with the letter "w" or the word "water" cast into the cover.

(12) Main line taps will always be done with the use of a tapping sleeve and gate valve. The tapping sleeve to be Mueller or approved equal. If the contractor is to make the tap himself, he must furnish evidence of his competence through previous work and have the necessary tools to perform the work satisfactorily.

(13) Connections.

(a) Service connections shall have a minimum size of three-fourths-inch diameter. All service pipes shall be Type K copper tubing. Any service pipe larger than two inches and less than eight inches in diameter shall be ductile iron pipe Class 52, cement-lined mechanical joint or push-on joint in accordance with AWWA standards. **[Amended 3-30-1987 by Ord. No. 87-1407A]**

(b) Plastic tubing will be copper tube size for use with standard stops and fittings with AWWA outlets or compression-type outlets with a minimum of 160 pounds per square inch.

(c) All connections to the main will be made by the use of a two-strap corporation saddle by either Smith-Blair or Mueller. A curb stop and box shall be installed at the property line on the owner's side for each service. The curb stop shall be copper-to-copper T head, open right, with drain, as manufactured by Farnum or Mueller. Any service one inch or greater shall employ an Oriseal curb with drip. Under no circumstances will any inverted key curbs be installed in any water system in the City of Marlborough. The curb box or service box shall be 4 1/2 to 5 1/2 feet, extension-type, three-fourths-inch rod, and cover to be with counter-sunk one-inch brass plug tapped for one-inch iron pipe. Minimum cover for services shall be five feet zero inches. A sand backfill material will be carefully placed around the service pipe to protect it from normal backfill and compaction. On the inside of the building there shall be a meter as manufactured by Badger Meter or its approval equal with a Read-o-matic outdoor meter register or its approved equal. All meters are to be set by the owner or developer, or as stated in § 608-16. Each meter will have a gate valve, before and after, and each valve will be within one foot zero inches of the meter. Where pressures are in excess of 80 pounds per square inch, a pressure-reducing valve will be employed in the line.

(14) Testing.

(a) The contractor shall furnish a water meter, pressure gauge, testing plugs, pumps, pipe connections and other required apparatus. The section of pipe to be tested will be completely filled with water and air blown off through a high point, such as a hydrant. The section under test will be maintained full and under pressure for a period of 24 hours. The line shallbe filled and tested within one to three days after filling.

(b) Any failure of the various pipelines, structures, valves, hydrants and related accessories that occurs before final acceptance of the work shall be replaced at the expense of the owner. A successful water pressure test is not to be interpreted as final acceptance.

(c) The pressure and leakage test shall consist of first raising the water pressures (based on the elevation of the lowest point of the section under test and correct to the gauge location) to a pressure in pounds per square inch numerically equal to the pressure rating of the pipe. While maintaining this pressure, the contractor shall make a leakage test by metering the flow of water into the pipe. If the average leakage during a two-hour period exceeds a rate of 10 gallons per inch of diameter per 24 hours per mile of pipeline, the section shall be considered as having failed the test.

(15) After testing. The completed pipeline is to be disinfected with a chlorine concentration of approximately 50 parts per million prior to being placed in service. The introduction of this chlorine shall be accomplished by pumping or siphoning a calcium hypochlorite solution into the main. The chlorinated water is to remain in the new pipeline for a period of 24 hours. During this period, proper precautions are to be taken to prevent this chlorinated water from flowing back into the existing system.

(16) As-built plans will be furnished to the Department in duplicate by the contractor or owner at the completion of the project. The plans in particular will depict exact distances between gate valves, ties to gate valves, both in the main and on hydrant branches, curb box location referenced to the house or building that it serves by at least two ties from permanent points.

(17) Warning ribbons. **[Added 5-14-1984 by Ord. No. 23925]**

(a) If nonmetallic pipes are used in the installation of any water main or service pipe, a warning ribbon shall be used. Said ribbon shall be blue in color and imprinted with the words "caution, waterline below," or words of similar intent, and shall be metallic to provide for future locating with inductive tape locators.

(b) Tape shall be spliced and securely tied around all gate boxes and/or curb boxes to facilitate conductive location.

(c) Depth of burial shall be in accordance with the manufacturer's standards, except that burial shall not be at a depth less than 18 inches nor at a depth greater than 48 inches.

§ 608-19. Construal of provisions.

The provisions of this chapter shall constitute a part of the contract with every person who takes City water. Every person taking City water shall be considered as having expressed his or her consent to be bound thereby.

§ 608-20. Violations and penalties.

Whenever any provision of this chapter is violated, the water shall be shut off and shall not be let on again, except on the payment of $10 and all chargeable rates. The Commissioner of Public Works may declare any payment made for the water by the persons committing a violation to be forfeited, and the same shall thereupon be forfeited.

ARTICLE II
City Water Supply and Reservoirs

§ 608-21. Pollution prohibited.

No fish, food or other matter tending to pollute the water shall be thrown into the waters of or left upon the shores of Lake Williams or Millham Reservoir.

§ 608-22. Building of fires prohibited.

No person shall build any fire upon the shores or the ice of Lake Williams or Millham Reservoir or any other land belonging to the water supply of the City.

§ 608-23. Camping, picnicking and fishing prohibited.

No person shall camp, picnic or fish on any lands or premises taken or held by the City for the purposes of its water supply.

§ 608-24. Trespassing.

No person shall trespass on any City lands or structures taken or held by the City for the purposes of its water supply without the express written consent of the Commissioner of Public Works.

§ 608-25. Tampering with property.

No person shall destroy, deface or remove any structure or other property belonging to the City in or upon any lands or premises taken or held by the City for the purposes of its water supply.

ARTICLE III
Private Fire Mains
[Added 4-14-1997 by Ord. No. 97-6895C]

§ 608-26. Responsibility for maintenance and repair.

A. The maintenance and repair of private fire mains shall be the responsibility of the property owner.

B. Preventive maintenance shall be performed according to standards set forth by the Commissioner and the Fire Chief.

C. Maintenance and repair shall be performed by contractors or individuals licensed by the Commissioner of Public Works per § 608-17.

D. Inspection, testing and maintenance of fire mains, hydrants and appurtenances shall be performed according to the current edition of the National Fire Protection Association (NFPA) Standard 25: Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems.

E. The property owner or his representative shall annually file an inspection report of the condition of the fire mains, hydrants and their appurtenances certifying good condition and operation with the Fire Department.

Chapter 627

WETLANDS

GENERAL REFERENCES

Building and site development — See Ch. 270. **Subdivision of land — See Ch. A676.**

Zoning — See Ch. 650.

§ 627-1. Rules and requirements for wetlands.

A. Must use, maintain and/or properly install erosion controls. Failure to do so carries the following penalty schedule: first offense, $25; second offense, $50; third and each consecutive offense, $100.

B. Order of conditions must be recorded at the Registry of Deeds. Failure to do so carries a penalty of $25

C. Must notify the Conservation Commission prior to beginning any work. Failure to do so results in a $25 penalty.

D. Must file a notice of intent or request for determination of applicability. Failure to do so results in a penalty of $100.

E. Must obtain certificate of compliance in a timely manner upon the completion of all work. Failure to do so carries the following penalty schedule: first offense, warning; second offense, $50.

F. Must comply with all the requirements of the order of conditions. Failure to do so carries a penalty of $25 per requirement.

G. Must comply with the enforcement order. Failure to do so carries a penalty of $100.

Chapter 650

ZONING

GENERAL REFERENCES

Planning Board — See Ch. 19, Art. I.

Building and site development — See Ch. 270.

Historic Districts — See Ch. 360.

Delinquent taxpayers and issuance of licenses and permits — See Ch. 398, Art. I.

Sewers — See Ch. 510.

Signs — See Ch. 526.

Soil removal — See Ch. 534.

Swimming pools — See Ch. 557.

Wetlands — See Ch. 627.

Subdivision of land — See Ch. A676.

ARTICLE I
Title and Purpose

§ 650-1. Title; authority.

This chapter shall be known and may be cited as the "Zoning Ordinance of the City of Marlborough, Massachusetts." It is enacted in accordance with MGL Chapter 40A, as amended, the Zoning Act.

§ 650-2. Purpose.

The purpose of this Zoning Ordinance is to promote and conserve the health and general welfare of the inhabitants of the City; to secure safety from fire, confusion or congestion; to facilitate the adequate provision of transportation, water, sewerage and other public services; to avoid undue concentrations of population; to encourage the most appropriate use of land; to help mitigate the impacts of flooding and heat and to increase the amenities of the City.

§ 650-3. (Reserved)

ARTICLE II
Definitions; Severability

§ 650-4. Severability.

The separate provisions of this chapter and the Zoning Map are adopted with the intent that each shall have force and effect separately and independently, except insofar as they express reference or necessary implication any one or any part thereof is made dependent upon another. The invalidity of any provision or part thereof shall not affect the validity of any other provisions. Wherever this chapter imposes greater restrictions upon the construction or use of buildings or land than other ordinances or existing provisions of law, regulations or permits or any restrictions, easements, covenants or agreements, the provisions of this chapter shall prevail.

§ 650-5. Definitions; word usage.

A. Words used in the present tense include the future; words in the plural number include the singular; the word "shall" is mandatory and not directory; the word "lot" includes the word "plot;" the word "land" includes the words "swamp" and "water."

B. For the purposes of this chapter, certain terms and words are defined as follows:

100-YEAR FLOOD: The extent of a flood that has a 1% annual chance of occurring or being exceeded.

~~B.~~ 500-YEAR FLOOD: The extent of a flood that has a 0.2% annual chance of occurring or being exceeded.

ACCESSORY BUILDING — A subordinate building located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of the land.

ACCESSORY USE — A use customarily incidental to that of the main building or to the use of the land, excluding the exterior storage of junk, dismantled or abandoned cars or any other storage detrimental to the health, safety or general welfare.

ADULT BOOKSTORE — An establishment having as a substantial or significant portion 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 as defined in MGL c. 272, § 31.

ADULT LIVE ENTERTAINMENT ESTABLISHMENT — Any establishment which displays live entertainment which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL c. 272, § 31.

ADULT MOTION-PICTURE THEATER — An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined by MGL c. 272, § 31.

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock, devices, objects, tools or toys which are distinguished or characterized by their association with sexual conduct or sexual

excitement as defined in MGL c. 272, § 31.

ADULT VIDEO STORE — An establishment having as a substantial or significant portion of its stock-in-trade videos, movies, or CD-ROMs or other film material which is distinguished or characterized by its emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, § 31.

AFFORDABLE HOUSING — Sale or rental housing meeting at least the minimum standards established by the Massachusetts Department of Housing and Community Development (DHCD) for household income, unit size, financing and resale controls applicable to low- and moderate-income households or elderly housing, pursuant to MGL Chapter 40B, including future amendments thereto, consistent with the requirements of the particular DHCD program used in conjunction with the applicable project. In no case shall the price of the affordable units be more than 80% of the market sales or rental price of comparable units located within the same project.

ALTERATION — A change in or addition to a building which modifies the location, plan, manner of construction or the kind of materials used or in any way varies the character of its use.

APPLICANT — The person or persons, including a corporation or other legal entity, who apply for issuance of any development approval or permit.

APPLICATION — Includes the accompanying materials required or submitted with an application.

ARTIST STUDIOS/LIVE/WORK GALLERY SPACE — The use of all or a portion of a structure for both habitation and work by persons engaged in the creation, manufacture or assemblage of commercial graphic arts; fine arts, including but not limited to painting, printmaking, sculpting, or ceramics; art and document restoration; the performing and visual arts, including but not limited to dance, choreography, photography or filmmaking, or the composition of music (butnot to include adult entertainment). Sales of artist-created work are also permitted in a portion of the space.**[Added 12-1-2014 by Ord. No. 14-1005947C]**

ASSISTED LIVING FACILITY — A managed residential community, operating under the provisions of MGL Chapter 19D and the regulations promulgated thereunder at 651 CMR 12.00, as may be amended from time to time. An assisted living facility may provide a special care residence, but shall not provide a (i) dementia special care unit, or (ii) any other full-time nursing care such as provided at a Long-Term Care Facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.**[Added 1-6-2003 by Ord. No. 03-9821B; amended 11-28-2016 by Ord. No. 16-1006631D]**

AUTOMOTIVE SERVICES — The sale or dispensing of vehicular fuels and for the servicing and repair of automobiles, including the sale and installation of lubricants, tires, batteries and similar vehicular accessories.**[Added 1-6-2003 by Ord. No. 03-9821B]**

AUTO SHOP/REPAIR — The business of maintaining, servicing, repairing or painting of vehicles, excluding the sale or dispensing of fuels, including the sale and installation of lubricants, tires, batteries and similar vehicular accessories.**[Added 1-6-2003 by Ord. No. 03-9821B]**

BASEMENT — That part of a building which is partly below and partly above grade and having at least 1/2 its height above grade.

BED-AND-BREAKFAST — An owner-occupied dwelling unit in which eight or fewer rooms without kitchen facilities are let, on an overnight basis, as a

temporary sleeping quarters for persons who have their residence elsewhere. Food and beverage service is limited to breakfast for registered, paying overnight guests at no additional cost. The length of occupancy by a registered guest does not exceed 14 days. Hotels, motels, boarding, lodging or rooming houses are not classified as bed-and-breakfast establishments. Extended stay may be permitted beyond 14 days with the approval of the Building Commissioner. Such approval shall be granted only when an occupant has a verifiable employment contract or agreement coincident with the length of stay requested.**[Added 12-1-2014 by Ord.No. 14-1005947C]**

BOARDER or LODGER — An individual, other than a member of a family occupying a dwelling unit, who occupies a boarding or lodging unit for living and sleeping but not for cooking and eating purposes and pays rent, which may include an allowance for meals, by prearrangement to an owner or operator to whom he/she is not related by blood, marriage or adoption.

BOARDINGHOUSE or LODGING HOUSE — A building or a portion thereof in which rooms or suites of rooms are let for fee as places of human habitation, either permanently or transiently, to four or more persons or which requires a license as required by MGL c. 140, § 22 et seq., as amended. The term "boardinghouse or lodging house" shall exclude convalescent homes, nursing homes, assisted living facilities, shelters, hotels and motels which are licensed as such pursuant to applicable state law.**[Amended 11-28-2016 by Ord. No. 16-1006631D]**

BOARDING OR LODGING UNIT — One or more rooms designed, occupied or intended for occupancy as separate living quarters for one or more boarders or lodgers, with sleeping facilities but no kitchen facilities, provided that common facilities for cooking may be made available. Cooking facilities shall not be deemed common if they can be reached only by passing through any part of the dwelling unit or boarding unit of another.

BREW PUB — A facility which is licensed by the United States Alcohol and Tobacco Tax Trade Bureau and the Commonwealth of Massachusetts, under the relevant statutes, including MGL c. 138, § 19D, to manufacture malt beverages and which is also authorized by the City and the Commonwealth of Massachusetts to serve alcoholic beverages. The facility may have a restaurant or serve food prepared on site, but shall comply with all applicable Board of Health requirements for kitchens and common victualler licenses; provided, however, that in such acase only beer, spirit or wine products manufactured by the facility, and noneby other manufacturers, may be sold, unless an on-premises pouring license has been obtained under MGL c. 138, § 12. Nothing contained herein shall prohibit thefacility from having a bring-your-own-food policy.**[Added 12-1-2014 by Ord. No.14-1005947C; amended 10-16-2017 by Ord. No. 17-1006980B]**

BUILDING — A structure or part thereof enclosed within exterior walls or fire walls built, erected and framed of component structural parts designed for the housing, shelter, enclosure and support of individuals, animals or property of any kind. Refer to definitions of "multifamily dwelling" and "dwelling."

BUILDING LINE — The line established by law beyond which a building shall not extend.

CELLAR — That part of a building which is partly or completely below grade and

having at least 1/2 its height below grade.

CHILD-CARE CENTER — Same as defined in MGL c. 40A, § 3.

CLIMATE ADAPTATION – Taking action to prepare for and adjust to both the current and projected impacts of climate change.

CLIMATE RESILIENCE – The capacity of a system to maintain function in the face of stresses imposed by climate change and to adapt the system to be better prepared for future climate impacts.

COFFEE ROASTERY — A facility in which green coffee beans are roasted into roasted coffee products; provided, however, that emissions from coffee roasting operations, if vented to the outdoor air, are to be i) vented at least 10 feet above any outdoor area, including but not limited to a sidewalk, street, alley or parking lot, which is adjacent to the building where the facility is located, and ii) directed away to the extent possible from uses within 50 feet of the vent; and provided further that, in all cases, the Building Commissioner shall determine, upon plans submitted to the Building Department, the appropriate measures required to be taken and maintained by the facility in order to significantly reduce potential odor emissions and airborne pollutants, and such measures may be required as conditions for the issuance of any permit. Nothing contained herein shall prohibit the facility from having a bring-your-own-food policy.**[Added 9-10-2018 by Ord.No. 18-1007311C]**

COMMERCIAL GREENHOUSE — A business located in a building or group of buildings for the propagation, display and sale of plant products and items associated with gardening and/or landscaping.**[Added 1-6-2003 by Ord. No. 03-9821B]**

COMMERCIAL KENNEL — Buildings and facilities for the lodging of five or more domestic animals.**[Added 1-6-2003 by Ord. No. 03-9821B]**

COMMUNICATIONS DEVICE — Any antenna, dish or panel mounted out of doors on an already existing building or structure, used by a commercial telecommunications carrier to provide telecommunications services. Interior- mounted antennas, dishes or panels are not subject to the provisions of this section.The term "communications device" does not include a tower.

COMPREHENSIVE DEVELOPMENT — A housing development including affordable housing meeting all requirements necessary to make said development eligible for application for a comprehensive permit as provided in MGL Chapter 40B, including future amendments thereto. (See definition of "affordable housing.")

CONTRACTOR'S YARD — Premises used for the storage of equipment and/or materials used for providing contracting services, including but not limitedto building construction, heating, plumbing, roofing, and excavation.**[Added 6-22-2020 by Ord. No. 20-1007947H]**

CONVALESCENT HOME/NURSING HOME — Any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for four or more persons admitted thereto for the purpose of convalescent or nursing care, as provided in MGL c. 111, § 71 and the regulations promulgated thereunder at 105 CMR, as may be amended from time to time.**[Added 1-6-2003 by Ord. No. 03-9821B; amended11-28-2016 by Ord. No. 16-1006631D]**

CONVERSION — Any changes, alterations or modifications to an existing building or

structure in order to accommodate a new principal use or determined by the Building Commissioner to substantially alter the nature of the existing principal use. In no instance shall new construction be deemed a conversion of a building

or structure.**[Amended 1-6-2003 by Ord. No. 03-9821B; 1-6-2003 by Ord. No. 03-9821-1B; 10-6-2014 by Ord. No. 14-1005921A]**

COOLING DEGREE DAYS – A measure of how hot the temperature was on a given day or during a period of days. A day with a mean temperature of 80°F has 15 CDD. If the next day has a mean temperature of 83°F, it has 18 CDD. The total CDD for the two days is 13 CDD.

CORNER LOT — A lot at the intersection of and abutting on two or more streets where the angle of intersection is not more than 135° or where the intersection is bounded by a curve having a radius of less than 100 feet.

COVERAGE — See "lot coverage."

CUSTOMARY HOME OCCUPATION — See "home occupation."

DATA STORAGE/TELECOMMUNICATIONS FACILITY — A building for the operation, monitoring, and maintenance of data storage computers, telecommunications equipment and ancillary equipment, including appurtenant office space.**[Added 3-11-2013 by Ord. No. 12/13-1005235B]**

DEMENTIA SPECIAL CARE UNIT — A facility licensed pursuant to 105 CMR 150.000, or a unit thereof, that uses any word, term, phrase, or image, or suggests, in any way, that it is capable of providing specialized care for residents with dementia, which must comply with 105 CMR 150.022 through 150.029. The purpose of a dementia special care unit is to care for its residents with dementia in the long term. A dementia special care unit may be a standalone use, or it may be part of another long-term care facility, as defined in 105 CMR 150.001, including but not limited to a convalescent home or nursing home, as defined in this Zoning Ordinance.**[Added 11-28-2016 by Ord. No. 16-1006631D]**

DENTAL CLINIC — Buildings or portions thereof used by licensed dentists to provide dental care services on less than a twenty-four-hour basis, and at which are employed not more than three dentists practicing daily at the clinic with the necessary support staff.**[Added 2-10-2014 by Ord. No. 13/14-1005578C]**

DESIGN FLOOD ELEVATION – The elevation of the highest flood (generally the base flood elevation plus freeboard) that a retrofitting method is designed to protect against.

DEVELOPMENT — One or more structures or buildings or any improvements, expansions, alterations or changes in use to buildings or premises, including site preparation, landscaping, parking and underground improvements, on the same lot or contiguous lots.

DEVELOPMENT LOT — The land depicted on a plan accompanying the application for a building permit for a shopping mall and encompassing the individual lots on which the shopping mall will be constructed and operated.

DNA — Deoxyribonucleic acid.

DRIVE-THRU FACILITIES — The use of land, buildings or structures, or parts thereof, to provide or dispense products or services, either wholly or in part, through an attendant or window or automated machine, to persons remaining in motorized vehicles that are in a designated stacking lane. A drive-thru facility does not include a vehicle washing facility, a vacuum cleaning station accessory to a vehicle washing facility, or an automobile/gasoline service station.**[Added 12-1-2014 by Ord. No.**

14-1005947C]

DWELLING UNIT — A building or portion thereof which is designed for or occupied as a place of abode by one or more persons, either permanently or transiently, with cooking, sleeping and sanitary facilities provided within the dwelling unit.

EROSION – The wearing away of the land surface by natural or anthropogenic forces, such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

EROSION CONTROL – Prevention and reduction of movement of eroded soil sediment.

EVAPOTRANSPIRATION – Water loss to the atmosphere through both evaporation and transpiration (through plant leaves).

FAMILY — One or more persons, but not more than five persons unrelated by

blood or marriage, occupying a single-family dwelling unit.

FARM — A piece of land containing a minimum of three acres devoted to raising crops or livestock, or devoted to any specific agricultural project, as a dairy farm, such crops or livestock or portion thereof to be offered for sale.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – FEMA manages the federal government's response to natural and manmade disasters. FEMA also manages the National Flood Insurance Program (NFIP) and produces Flood Insurance Rate Maps (FIRM).

FIRST STORY — See definition of "story, first."

FLOOR AREA — The gross horizontal area of the several floors of building, excluding areas used for accessory garage purposes and basement areas. All horizontal dimensions shall be taken from the exterior faces of walls, including walls or other enclosures.

FLOOD CONTROL – The prevention or reduction of flooding and flood damage.

FLOODPLAIN – Any land area susceptible to being inundated by floodwaters from any source.

FLOOD STORAGE – Floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

FRONTAGE — The distance along a continuous portion of a street right-of-way line between intersections with lot side lines, provided that, for lots abutting more than one street, frontage shall be required and measured along one street only, but the front yard required by Article VII hereof shall be provided along each street the lot abuts, and that for corner lots frontage shall be measured to the intersection of street right-of-way lines or to the middle of the corner-rounding curve connecting such street rights-of-way.

GREEN INFRASTRUCTURE – A sustainable, ecosystem-based approach to replicate a site's pre-development conditions for stormwater management and natural landscape preservation and additional landscape features. i.e. green roofs and drainage swales.~~.~~

GROSS LEASABLE AREA — The total floor area of building or buildings designed for the exclusive occupancy of tenants and portable structures.

HALF STORY — See definition of "story, half."

HEIGHT — The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck of a mansard roof; and to the average height between plate and ridge of a gable, hip or gambrel roof.

HELIPORT — Any area of land, water or building other than an airport which is made available for landings and takeoffs of helicopters.**[Added 1-6-2003 by Ord. No. 03-9821B]**

HIGH DENSITY VEGETATION – Varieties of vegetation that slow stormwater runoff, reduce sheet erosion, and anchor and reinforce soil.

HOME OFFICE/HOME OCCUPATION — An occupation customarily conducted in the place of residence of the operator or of a professional person, or in a building

accessory thereto, such as dressmaking, millinery, home cooking, handcraft, specialized cultivation and propagation of houseplants, insects, fish, birds and animals, limited to one litter at a time, or the offices of a physician, surgeon, dentist, real estate agent, teacher, clergyman, artist, lawyer, architect, musician, landscape architect, land surveyor, city planner, broker, engineer, beautician or member of any other recognized profession, including an office for an off-premises business, provided that not more than three persons are engaged in the activity on the premises at any one time.**[Amended 10-28-2019 by Ord. No. 19-1007756D]**

HOME OCCUPATION — See definition of "home office/home occupation."**[Added 10-28-2019 by Ord. No. 19-1007756D]**

HOSPICE FACILITY — A building or part of a building for the provision of services to the terminally ill. Hospice care provided on an as-needed basis shall be construed as a permitted accessory use in all districts.**[Added 1-6-2003 by Ord. No. 03-9821B]**

HOSPITAL/SANITARIUM — A licensed facility for short- and long-term medical treatment of illness and injury, including mental illnesses and hospice

services.**[Added 1-6-2003 by Ord. No. 03-9821B]**

HOTEL — An establishment providing lodging for guests on a short-term basis; dining rooms, function rooms and other support services may be included. Access to the individual sleeping rooms is through the lobby and interior corridors. This definition does not include boarding, lodging or rooming houses.**[Added 12-1-2014 by Ord. No. 14-1005947C]**

HYDRAULIC AND HYDROLOGIC MODEL – Simulation of rainfall runoff flows to estimate flooding and assess strategies to reduce flooding.

LANDSCAPE CONTRACTOR'S YARD — Premises used for the storage of equipment and/or materials used by a business principally engaged in the decorative and functional alteration, planting, and maintenance of grounds, including the installation of hardscape, such as stonework, patios, decks, arbors, and other decorative elements of the landscape. Such a business may engage in the installation and construction of underground improvements, but only to the extent that such improvements (e.g., irrigation or drainage facilities) are accessory tothe principal business and are necessary to support or sustain the landscapedsurface of the grounds being otherwise ~~landscaped.~~**[**landscaped. **[Added 6-22-2020 by Ord. No. 20-1007947H]**

LANDSCAPED AREA — An area with vegetative cover including lawn, shrubs, meadowland, forest, wetlands, tree canopy cover, green infrastructure, and stormwater ponds. Which space is open to the sky and is free of all vehicular traffic, parking loading and outdoor storage.

LANDSCAPING OPERATIONS — Storage of vehicles, equipment and bulk materials related to off-premises landscaping business activity, excluding retail or wholesale sale on the ~~premises.~~**[**premises. **[Added 1-6-2003 by Ord. No. 03-9821B]**

LARGE TRACT DEVELOPMENT — A development on a large tract development lot of one or more buildings of up to 85 feet in height containingnot less than 200,000 square feet of gross floor area for the purposes set forth in § 650-18A(35).

LARGE TRACT DEVELOPMENT LOT — A parcel of land including 90 or more acres under common ownership.

LAND SUBJECT TO FLOODING ~~–~~ Land that falls within a FEMA flood zone- per the latest National Flood Insurance Program rate maps.

LIGHT MANUFACTURING — Fabrication, assembly, processing, finishing work or packaging in such a manner that noise, dust, vibration or similar objectionable features are confined to the premises.**[Added 1-6-2003 by Ord. No. 03-9821B]**

LOT — A single tract of land in identical ownership throughout with definite boundaries ascertainable through a recorded plan or deed.

LOT COVERAGE — The area of a lot covered by all structures, areas used by vehicular traffic and parking, including driveways, loading bays and maneuvering aisles, whether paved, unpaved or graveled, and of all impermeable areas such as paved walkways or outdoor storage areas, but not including gravel walkways or pedestrian areas not adjacent to parking lots or buildings. Areas not included in lot coverage shall be landscaped areas. For purpose of lots exclusively in residential

use, lot coverage shall not include any outdoor recreational facility for the tenants, such as but not limited to a swimming pool, tennis court, garden shed, patio or similar facility.

LOT LINE — The established division line between lots or between a lot and a street.

LOT LINE, FRONT — All dividing lines between a street and the lot shall be considered "front lot lines".

LOT LINE, REAR — The line or lines bounding a lot at the rear and approximately parallel to and at the maximum distance from the front lot line.

LOT LINE, SIDE — The line or lines bounding a lot which extend from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots or through lots, all lines extending from streets shall be considered "side lot lines".

MANUFACTURING — The use of land or buildings for fabrication or assembly requiring chemical reduction, metal stamping and similar activities as primary uses.[2] **[Added 1-6-2003 by Ord. No. 03-9821B]**

MEDICAL OFFICE/CLINIC — Buildings or portions thereof used by or for licensed physicians and other licensed healthcare practitioners, with the necessary support staff, which is designed, intended or used for providing, on a less than twenty-four-hour basis, medical services, including but not limited to urgent care for the treatment of injuries or illness, laboratory testing, x-rays, mental health services and occupational health services, but, however, not including internal surgical care, dental clinics, narcotic detoxification and/or maintenance facilities, and medical marijuana treatment centers. For any such use exceeding 5,000 square feet of space, a special permit shall be required in any district where such use is not prohibited.**[Amended 2-10-2014 by Ord. No. 13/14-1005578C; 4-28-2014 by Ord. No. 14-1005693C]**

MIXED USE — **[Added 1-6-2003 by Ord. No. 03-9821B; amended 12-1-2014 by Ord. No. 14-1005947C]**

(1) A combination of permitted (Y) or special permit (SP) residential/business uses as listed in § 650-17, Table of Use Regulations, for a particular zoning district, located on the same lot and arranged vertically in multiple stories of astructure or horizontally adjacent to one another in one or more buildings.

(2) The mix of uses shall be balanced and compatible and shall contribute to a vibrant downtown atmosphere, including a combination of ground floor street front uses, such as retail or restaurant.

(3) Ground floors of buildings fronting streets or public accessways shall be reserved for nonresidential uses, except as specified below. Dwelling units shall be allowed on ground floors of buildings if:

(a) The building is set behind another building that has commercial uses on the ground floor; or

(b) The residential portion of the ground floor of a building is set behind

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2. Editor's Note: The definition of "medical marijuana treatment center" added 6-17-2013 by Ord. No. 13-1005247D, which immediately followed this definition, expired 6-30-2014 and was removed from the Code. For current provisions, see § 650-32, Medical marijuana treatment centers. In addition, the definitions of "marijuana accessories" and "marijuana establishment," added 3-19-2018 by Ord. No. 18-1007177B, expired 12-31-2018 and were removed from the Code. For current provisions, see § 650-32, Medical marijuana treatment center; adult use marijuana retail; marijuana accessories retail; and medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter.

street front nonresidential uses within the same building.

MOBILE HOME — Any vehicle or object, whether resting on wheels, jacks or other foundation and having no motive power of its own, but which is drawn by orused in connection with a motor vehicle and which is so designed and constructed as a dwelling unit which permits its transportation and relocation as a completeunit on its own wheels. It shall contain complete electrical, plumbing and sanitary facilities and shall be installed on a permanent foundation for permanent living quarters. This shall not include the type of vehicle known as a "travel trailer" or "travel coach," nor shall it include any other prefabricated dwelling unit which contains detachable parts equal to or greater than 50% of the floor area of the total dwelling unit.

MOBILE HOME PARK — A lot under single ownership which has been planned and improved for the placement of mobile homes for nontransient use.

MOTEL — An establishment providing lodging for guests on a short-term basis; dining rooms, function rooms and other support services may be included. Access to the individual sleeping rooms is directly from parking spaces or by an exterior walkway.**[Added 12-1-2014 by Ord. No. 14-1005947C]**

MOTOR VEHICLE TRIP — Use of one motor vehicle by one or more persons which either begins or ends (regardless of the duration of parking or standing) on a lot or at a use or establishment.

MULTIFAMILY DWELLING — A dwelling, including single-family attached units, designed for or occupied by three or more families.

NARCOTIC DETOXIFICATION AND/OR MAINTENANCE FACILITY — A nonresidential drug treatment program that assists individuals addicted to drugs by administration of a substitute drug. Any facility that dispenses, prescribes, administers, allocates, delivers, hands out, or uses in any way a substitute drug, with or without providing other treatment services, shall be deemed a "narcotic detoxification and/or maintenance facility" and subject to the regulations under § 650-31 of this chapter.**[Added 11-23-2009 by Ord. No. 09-1002277F]**

NATIONAL FLOOD INSURANCE PROGRAM – A program managed by the Federal Emergency Management Agency (FEMA) to provide flood insurance to property owners, renters, and businesses via a network of more than 50 insruance companies.

NATURE-BASED SOLUTIONS – Adaptation measures focused on the protection, restoration, and/or management of ecological systems to safeguard public health, provide clean air and water, increase natural hazard resilience, and sequester carbon.

NIH GUIDELINES — The following: Guidelines for Research Involving Recombinant DNA Molecules promulgated by the National Institutes of Health (NIH) of the United States Department of Health and Human Services and published in the Federal Register, Vol. 51, No. 88, on May 7, 1986, as may be amended by the NIH.

NONCONFORMING USE — The use of any building or land lawfully occupied at the time of the passage of this chapter which does not conform to the regulations of the district in which it is located.

OFFICES AND PROFESSIONAL OFFICES — A building or portion thereof wherein services performed are predominantly administrative, professional or clerical operations.**[Added 1-6-2003 by Ord. No. 03-9821B]**

OPEN SPACE – **Any open piece of land that is undeveloped (has no building or other built structures) and is accessible to the public. Open space can include green space (parks, community gardens, and cemeteries), schoolyards, playgrounds, public seating areas, public plazas, and vacant lots.**

OPEN SPACE DEVELOPMENT — A development permitted under the section of the Zoning Ordinance entitled "open space developments," § 650-28, and consisting of residential lots in which the houses are in one or more groups on the site, separated from each other and from adjacent properties by permanently protected open space.

OPEN STORAGE — The storage in the open for use or sale of bulky items such as lumber, stone, gravel, cement and similar merchandise including contractor's equipment.**[Added 1-6-2003 by Ord. No. 03-9821B]**

OUTDOOR STORAGE — The storage in the open of any material that is incidental to the primary use on the premises, excluding any activities related to resale. Outdoor storage shall not include either a contractor's yard or a landscape contractor's yard.**[Added 1-6-2003 by Ord. No. 03-9821B; amended 6-22-2020 by Ord. No. 20-1007947H]**

PERVIOUS SURFACE – A porous or permeable surface that allows water to flow through rather than runoff.

PLANTING AREA — The part or parts of a lot developed and permanently maintained in plant materials, which space is open to the sky and is free of all vehicular traffic, parking, loading and outdoor storage.

POULTRY FARM — A farm with a flock of more than 50 birds.

PRINCIPAL BUILDING — A building in which the primary use of the lot on which the building is located in conducted.**[Added 1-6-2003 by Ord. No. 03-9821B]**

PRINCIPAL USE — The main use of land or structures on a lot, as determined by the Building Commissioner.**[Added 1-6-2003 by Ord. No. 03-9821B; amended 10-6-2014 by Ord. No. 14-1005921A]**

PRIVATE CLUB, NONPROFIT — Buildings or facilities owned or operated by a corporation, association or persons for a social, educational or recreational purpose but not for profit; excludes synagogues, churches, mosques or other houses of worship.**[Added 1-6-2003 by Ord. No. 03-9821B]**

PRIVATE INDOOR RECREATION — Sports or leisure-time activities or facilities which are operated by a private entity and which occur within a building.**[Added 1-6-2003 by Ord. No. 03-9821B]**

PRIVATE OUTDOOR RECREATION — Sports or leisure time activities or facilities which are operated by a private entity and which occur principally outside of a building.**[Added 1-6-2003 by Ord. No. 03-9821B]**

PROJECT — Same as "development."

PUBLIC INDOOR RECREATION — Sports or leisure time activities or facilities which are operated by a public agency and which occur within a building.**[Added 1-6-2003 by Ord. No. 03-9821B]**

PUBLIC OUTDOOR RECREATION — Sports or leisure-time activities or facilities which are operated by a public agency and which occur principally outside of a building.**[Added 1-6-2003 by Ord. No. 03-9821B]**

RDNA — See "DNA" and "Recombinant DNA."

RECOMBINANT DNA, RDNA, RECOMBINANT DNA MOLECULES — Either:

(1) Molecules which are constructed outside living cells by joining natural or synthetic DNA segments to DNA molecules that can replicate in a living cell; or

(2) DNA molecules which result from the replication of a molecule described in

Subsection (1) above.

RECORDING STUDIO/LIVE/WORK SPACE — The use of all or a portion of a structure for both habitation and work by persons engaged in sound recording and mixing, which studio may be used to record musicians, voice-over artists for advertisements or dialogue replacement in film, television or animation, or to record their accompanying musical soundtracks, to be stored on tapes, records, compact discs, computers or other storage devices.[3]

RESILIENCE – The ability of a system to prepare for, withstand, and recover quickly from a disaster.

RESILIENT MASSACHUSETTS ACTION TEAM (RMAT) – An inter-agency team that has developed the Climate Resilience Design Standards Tool to implement priority actions from the State Hazard Mitigation and Climate Adaptation Plan.

RETAIL LOT — A parcel of land comprising a single lot or contiguous lots not separated by a public way, which parcel is adjacent to a development lot on which a shopping mall is located. All of such parcel shall be within 3,000 feet of the development lot on which such shopping mall is located.

RETAIL SALES AND SERVICES — Establishments offering goods and services, not specifically listed in the Table of Uses, to the public. Sales of a wide varietyof goods and services include, but are not limited to: antiques, apparel, books,food, drugstore, sporting goods, and similar; custom services such as tailoring, photography, framing and similar; and services such as insurance, optometry,banks; dry-cleaning and laundry dropoff stations; hairdressers and barbers; health clubs, gyms, dance or yoga studios; repair services for appliances, shoes, etc.; catering and similar. Retail sales and services do not include adult entertainment, check-cashing services, pawn shops, gold exchange shops, medical marijuanafacilities or drug treatment facilities.**[Added 1-6-2003 by Ord. No. 03-9821B; amended 12-1-2014 by Ord. No. 14-1005947C]**

RETIREMENT COMMUNITY - DETACHED AND TOWNHOMES — A community consisting of detached or attached (only alongside walls in so-called "townhouse" style) structures, constructed expressly for use as housing for persons aged 55 or over, on one parcel or on contiguous parcels of land, subject to the provisions of MGL c. 151B, § 4, as amended.**[Added 4-8-2019 by Ord. No. 18/19-1007452G[4]]**

RETIREMENT COMMUNITY - MULTIFAMILY — A community consisting of a single multiple-unit structure constructed expressly for use as housing for persons aged 55 or over, on one parcel or on contiguous parcels of land, subject to the provisions of MGL c. 151B, § 4, as amended.**[Added 4-8-2019 by Ord. No. 18/19-1007452G]**

ROOMING HOUSE — See "boardinghouse or lodging house."

ROOMING UNIT — See "boarding or lodging unit."

SALESROOM — A building or part of a building for retail or wholesale display and/or sale.**[Added 1-6-2003 by Ord. No. 03-9821B]**

SELF-SERVICE STORAGE FACILITY — A building, group of buildings or other structure, whether permanent or temporary, having compartments, rooms,

3. **Editor's Note: The definition of "recreational marijuana," added 3-19-2018 by Ord. No. 18-1007177B and which immediately followed this definition, expired 12-31-2018 and was removed from the Code. For current provisions, see § 650-32, Medical marijuana treatment center; adult use marijuana retail; marijuana accessories retail; and medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter.**
4. **Editor's Note: This ordinance also repealed the definition of "retirement community, as amended 1-6-2003 by Ord. Nos. 03-9821B, 03-9821-1B and 03-9821-2B.**

spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for by customers for the storage of personal or business goods or property, and where the facility owner/operator has limited access to the units. A self-service storage facility shall be considered synonymous with a self-storage facility, self-storage warehouse, mini-warehouse and mini-storage.**[Added 1-6-2003 by Ord. No. 03-9821B; amended 11-27-2017 by Ord. No. 17-1007002C]**

SEMIDETACHED DWELLING — A building that has two single-family dwelling units placed side by side and separated by a solid party wall from basement floor to roof boards.

SETBACK — The minimum horizontal distance between the street or way line and the line of the building.

SHOPPING MALL — A concentration of retail stores and service establishments, including, without limitation, one or more restaurants, movie theaters, and such other uses customarily found in a regional shopping mall, within an enclosed structure (which may consist of several buildings) containing not less than 250,000 square feet of gross floor area and located on a development lot of no less than 20 acres, with a unified approach to ingress and egress, parking, truck loading, vehicular entrances and exits, drainage and utilities. Utility buildings and structures serving the shopping mall may be located outside of the enclosed structure.

SINGLE-FAMILY DWELLING — A detached dwelling unit, other than a mobile home, designed for or occupied by not more than one family.

SINGLE-FAMILY ZERO-LOT-LINE DWELLING — A single-family dwelling where a side yard need not be provided on that side of the dwelling that shares a party wall or double wall with an adjacent dwelling.

SOLAR REFLECTANCE INDEX (SRI) – A measure from 0 to 100 of a surface's ability to reflect solar energy where a black surface is 0 and a white surface is 100.

SPECIAL CARE RESIDENCE — A separate and distinct section within an assisted living facility, and comprising no more than 30% of its residence units, thatprovides an enhanced level of supports and services for one or more of its residentsto address their specialized needs due to cognitive or other impairments.**[Added 11-28-2016 by Ord. No. 16-1006631D]**

SPECIAL FLOOD HAZARD AREA - The area of land in the flood plain that is subject to a 1% chance of flooding in any given year as determined by the best available information, including, but not limited to, the currently effective or preliminary Federal Emergency Management Agency (FEMA) Flood Insurance Study or Rate Map (except for any portion of a preliminary map that is the subject of an appeal to FEMA) for Land Subject to Coastal Storm Flowage, the Velocity Zone as defined in 310 CMR 10.04, and the Flood Insurance Study for Bordering Land Subject to Flooding as defined in 310 CMR 10.57.

STORM DAMAGE PREVENTION – Prevention of damage to vegetation, property, and/or infrastructure caused by water, flooding, water-borne debris, and/or water-borne ice from storms.

STORY — That part of a building between any floor and the floor or roof next above. In the case of the top floor, the area may meet the definition of a "half story" as indicated in this section. In the case where a building is not divided into stories,

a "story" shall be considered 15 feet in height. Steeples, cupolas, stage lofts, mechanical equipment, etc., shall not be considered as additional "stories."A basement or cellar, the ceiling of which extends more than six feet above the adjacent average finished grade, shall be considered a "story" within the meaning of this chapter.

STORY, FIRST — The lowest story, the ceiling of which is six feet or more above the level of the adjacent average finished grade. In determining the height of any building by stories, the stories thereof beginning with such first story shall be numbered upward.

STORY, HALF — That part of a building under a sloping roof in which the intersection of the bottom of the rafters with the interior faces of the outside walls is six feet or less on average above the floor level.

STRUCTURE — Anything constructed or erected which requires location on the ground, or is attached to something having location on the ground, including signs and billboards over 12 square feet in area, but not including fences.

TASTING ROOM — A room attached to either a winery, brewery, or distillery, and permitted as an accessory use thereto, that allows patrons to sample or consumewine, beer, and other alcoholic beverages that are produced on the premises in accordance with MGL c. 138. A tasting room is not to exceed 25% of the gross square footage of the winery, brewery, or distillery.**[Added 10-16-2017 by Ord. No. 17-1006980B]**

TATTOO AND BODY PIERCING PARLORS/SHOPS — Any establishment, place of business which has or does for commercial or business purposes cause to have any part of the human body pierced, marked, tattooed except for earlobes for the insertion of earrings.

TOURIST HOME — Home providing "bed-and-breakfast" as commonly used in the tourist industry.

TOWER — Any equipment-mounting structure that is used primarily to support reception or transmission equipment and that measures 12 feet or more in its longest vertical dimension. The term "tower" includes, but is not limited to, monopole and lattice towers.

TWO-FAMILY HOUSE — A dwelling designed for or occupied by two families with two, but not more than two, separate housekeeping units.

VETERINARY HOSPITAL — A building for the care and treatment of animals, including facilities for testing, surgical and extended care.**[Added 1-6-2003 by Ord. No. 03-9821B]**

URBAN HEAT ISLAND – Urban areas with higher temperatures than surrounding ~~rural~~ areas.

WAREHOUSE — A building used primarily for the storage of goods and material.**[Added 1-6-2003 by Ord. No. 03-9821B]**

WATERSHED – The surface area that contributes runoff to a point of interest.

WHOLESALE SALE — The sale of goods in large quantities.**[Added 1-6-2003 by Ord. No. 03-9821B]**

WINERY, BREWERY, OR DISTILLERY WITH TASTING ROOM — A facility licensed under, respectively, MGL c. 138, §§ 19B, 19C and 19E, and which is located in a building where the primary use is for the production and distribution of vinous, malt, or spirituous beverages, with the option of a tasting room. Any such facility may provide, either for a fee or at no charge and limited in size asset forth in MGL c. 138, samples of beverages it manufactures on its premisesand for this purpose shall have a Commonwealth of Massachusetts issued Farmer Series Pouring Permit. The facility may host marketing events, special events, and/or factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the winery, brewery, or distillery. The facility may sell permitted beverages to consumers for consumption off premises. The facility may have a restaurant or serve food prepared on site, but shall comply with all applicable Board of Health requirements for kitchens and common victualler licenses; provided, however, that in such a case only beer, spirit or wine products manufactured by

the facility, and none by other manufacturers, may be sold, unless an on-premises pouring license has been obtained under MGL c. 138, § 12. Nothing contained herein shall prohibit the facility from having a bring-your-own-food policy.**[Added**

10-16-2017 by Ord. No. 17-1006980B]

WIRELESS COMMUNICATION FACILITIES — Any and all materials, equipment, storage structures, towers, dishes and antennas, other than customer premises equipment, used by a commercial telecommunications carrier to provide telecommunications services. This definition does not include facilities used by a federally licensed amateur radio operator or facilities which are accessory to the use of a business or building and are for the exclusive use of the owner of the building or the tenant.

YARD — An unoccupied space, open to the sky, on the same lot with the building, ~~or~~ structure~~.~~, or use.

YARD, FRONT — A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building, ~~or~~ structure~~.~~, or use.

YARD, REAR — A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the principal building, ~~or~~ structure~~.~~, or use.

YARD, SIDE — A yard extending between the side lot line of the lot and the nearest line of the principal building, ~~or~~ structure, or use, and then extending from the front yard to the rear yard or, in the absence of either of such yards, to the front or rear lot lines.

§ 650-6. (Reserved)

ARTICLE III
Establishment of Districts

§ 650-7. Districts enumerated. [Amended 12-1-2014 by Ord. No. 14-1005947C; 11-19-2018 by Ord. No. 18-1007337E; 12-16-2019 by Ord. No. 19-1007716E]

The City of Marlborough is hereby divided into 14 types of districts to be known as:

Rural Residence Districts	RR
Residence A-1 Districts	A-1
Residence A-2 Districts	A-2
Residence A-3 Districts	A-3
Residence B Districts	RB
Residence C Districts	RC
Retirement Community Residence Districts	RCR
Business Districts	B
Commercial and Automotive Districts	CA
Limited Industrial Districts	LI
Industrial Districts	I
Marlborough Village District	MV
Neighborhood Business District	NB
Wayside Zoning District	Wayside

§ 650-8. Boundaries established; Zoning Map.

The boundaries of each of said districts are hereby established as shown, defined and bounded on the map accompanying this chapter and on file with the Clerk of the City of Marlborough, Massachusetts, entitled "Zoning District Map of the City of Marlborough, Massachusetts, January, 1969," as amended, and on the Assessor's maps in the office of the City Engineer. All explanatory matter thereon is hereby made a part of this chapter.

§ 650-9. Explanation of boundaries.

A. District boundary lines on ways. Where the boundary lines are shown upon said map within the street lines of public and private ways, railroads or utility lines, the center lines of such ways, railroads or utility lines shall be the boundary lines.

B. District boundary lines on lot lines. Where the district boundary lines are shown approximately on the location of property or lot lines and the exact location of property, lot or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines shall be the zoning district boundary lines.

C. District boundary lines outside of street lines. Boundary lines located outside of such street lines, railroad or utility lines and shown approximately parallel thereto shall be regarded as parallel to such lines, and dimensions shown in figures placed upon said map between such boundary lines and street, railroad and utility lines are

the distances in feet of such boundary lines from such street, railroad or utility lines, such distances being measured at right angles to such street, railroad or utility lines unless otherwise indicated.

D. Lots extending across the City boundary line.

(1) Where a lot as existing at the time this chapter takes effect extends across the boundaries of the City of Marlborough, that portion of the lot lying within the City of Marlborough and with frontage in the City of Marlborough shall comply with the requirements of this chapter for the district in which said portion of the lot is located. Notwithstanding the foregoing, where a development lot extends across the City boundary line, the portions of the development lot both within and without the City shall comply with the requirements of this chapter for the district in which the development lot is located in the City; in addition to the portion of the development lot within the City, the areas without the City but within the development lot shall be computed for purposes of determining such compliance.

(2) Notwithstanding the first sentence of Subsection D(1), where a retail lot extends across the City boundary line the portions of the lot both within and without the City shall comply with the requirements of this chapter for the district in which the lot is located in the City; in addition to the portion of the lot within the City, the areas without the City may be computed for purposes of determining that the lot shall comply with the requirements of this chapter for the district in which the lot is located in the City.

E. District boundary lines following natural features. Where the district boundary line follows a stream, lake or other body of water, said boundary line shall be construed to be at the thread of the channel of the stream unless otherwise indicated.

~~E.~~F. District boundary lines following the extent of projected flooding, as defined by the FEMA 100-year flood zone using the most recently published FEMA FIRM Panels for Marlborough, MA. -.

~~F.~~G. District boundary lines dividing a lot. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for the less restricted portions of such lot shall extend no more than 100 feet into the more restricted portion of such lot, provided that the lot has frontage on a street in the less restricted district.

~~G.~~H. Automatic classification of district line. Where property has not been specifically included within a district, it shall automatically be classified as lying in the most restricted district which abuts it.

~~H.~~I. District boundary lines determined by identifications on the maps. In all cases which are not covered by other provisions of this article, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said maps by the use of identifications as shown on the maps or by the scale of the maps.

~~I.~~J. Determination of uncertain boundary lines. Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Building Commissioner; provided, however, that any person aggrieved by his decision may appeal to the Board of Appeals. **[Amended 10-6-2014 by Ord.**

No. 14-1005921A]

~~J.~~K. All areas in each zoning district, including streets or other public lands, are subject

to the Zoning Ordinance regulations for the district in which the streets and other areas are located.

§ 650-10. (Reserved)

ARTICLE IV
Existing and Nonconforming Uses

§ 650-11. Effect on existing conditions.

Any lawful building or structure or lawful use of a building, structure or land or part thereof existing at the time of the adoption of this chapter is not affected by this chapter to the extent of the use existing at the time of adoption.

§ 650-12. Nonconforming uses.

A. No building or other structure nor any land shall be used nor shall any building or other structure or part thereof be erected or altered except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located; provided, however, that this chapter shall not apply to the existing use of any building or structure or of land to the extent to which it was lawfully used at the time of the adoption of this chapter.

B. This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent. Preexisting nonconforming structures or uses may be extended or altered, provided that the City Council determines, by the grant of a special permit, that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood, including due to climate impacts being intensified, than the existing nonconforming use, except that an alteration, reconstruction, extension or structural change of or to a lawful preexisting nonconforming single-family dwelling or two-family house shall be governed by § 650-58B(3), and subject, however, to the following provisions: **[Amended 3-18-2019 by Ord. No. 18/19-1007460C; 10-28-2019 by Ord. No. 19-1007673E]**

(1) Any nonconforming use or structure which has been abandoned or not used for a period of two years or more shall lose its protected status and be subject to this chapter, except in the case of land used for agriculture, horticulture or floriculture, or lands used for flood mitigation purposes such as wetland restoration, green infrastructure, or flood storage, for a period of less than five years.

(2) Such use is not enlarged to more than 25% of the floor and ground areas of use existing at the time of adoption of the original Zoning Ordinance, or any amendments thereto, except than any nonconforming farm may be enlarged up to the total area owned by the nonconforming farmer at the time of adoption of this chapter, and there shall be no limit as to the expansion of farmbuildings.

(3) In case the use is destroyed or damaged by fire, explosion or other catastrophe, natural or man-made, ~~such as a climate-related event~~ to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously,

provided that:

(a) The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under Subsection B(3)(b) of this section.

(b) The restoration or rebuilding shall conform to this chapter so far as practicable and shall be completed within two years of the catastrophe, unless approved by the City Council in writing in accordance with Article VIII.

~~(b)~~(c) Demonstrate practicable commitment to flood adaptation and mitigation measures, if applicable, to protect the structure from future damages.

(4) The building or structure is completed if a permit for construction was granted prior to the adoption of this chapter and construction is accomplished within two years after the date of adoption of this chapter.

(5) The provisions of the above Subsection B(1), (2) and (3) shall not apply to a single-family dwelling.

§ 650-13. (Reserved)

ARTICLE V
Permitted Uses

§ 650-14. Use regulations applicable in all districts.

A. All permitted uses are subject to the appropriate provisions of Article VI.

B. For the purposes of this Zoning Ordinance, the following uses of a building, structures and land are permitted in all portions of the City, as hereafter provided:

(1) Any building or structure which conforms to the provisions of this chapter and in compliance with the Building Code of the City of Marlborough.

(2) Window or drive-in or drive-through service provided for any type use in all sections of the Zoning Ordinance of the City of Marlborough shall be allowed only by grant of a special permit by the City Council, in accordance with Article VIII, Chapter 650, § 650-59 of the Zoning Ordinance.

§ 650-15. Use regulations applicable in Business B, Commercial Automotive CA, Limited Industrial LI and Industrial I Districts.

A. Permitted uses in the Business District B and Commercial Automotive District CA shall be conducted in enclosed buildings except for the following: required off-street parking spaces; outdoor storage; parking lots; open air markets; outdoor dining; outdoor recreation; places of amusement and places of assembly.

B. Permitted uses in the Limited Industrial Districts shall be conducted in enclosed structures or buildings except for the following: outdoor parking and loading areas; accessory uses completely hidden from abutting streets, lots or tracts by appropriate screening and fencing; uses necessary in connection with scientific research, development or related production; recreation and athletic facilities related to residential conference and training centers; other outdoor recreation facility or use; and outdoor dining areas. No structures housing hazardous materials should be located within the 100-year floodplain as defined by FEMA.

C. In Commercial Automotive CA, Limited Industrial LI and Industrial I Districts, any use similar in character and similar in effect on adjacent property to those uses allowed in the district (either by right or by special permit) may be allowed by special permit from the City Council.

§ 650-16. Table of Uses, general.

A. The terms listed below are used to denote permitted uses, uses permitted by special permit from the City Council in accordance with Article VIII, § 650-59, and uses not permitted for the Table of Uses in § 650-17. See § 650-7, Districts Enumerated, for the full names of the zoning districts.

(1) All uses noted with "Y" are allowed as of right, subject to any referenced conditions.

(2) All uses noted with "SP" are allowed by special permit, subject to any referenced conditions.

(3) All uses noted with "N" are not permitted.

B. All uses not noted in § 650-17, entitled "Table of Uses," shall be deemed prohibited, except where so to deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation or permit. **[Added 11-19-2007 by Ord. No. 07-1001677B]**

§ 650-17. Table of Uses.

(The Table of Uses is included at the end of this chapter.)

§ 650-18. Conditions for uses.

A. Conditions for use as noted in the Table of Uses.

(1) Single-family zero lot line:

(a) Located within an open space development in accordance with the requirements of § 650-28E(3).

(b) Have the appearance and character of single-family dwellings.

(c) Are affordable, as defined in § 650-5.

(2) Conversion of a single-family house to a two-family house. Conversion of a single-family house existing at the time of the passage of the original Zoning Ordinance in 1956 to accommodate two families, provided that:

(a) The house contains at least 1,800 square feet of gross floor area, not including basement rooms or open attic space.

(b) The lot contains at least 15,000 square feet in Rural Residence Districts and 10,000 square feet in Residence A-1, Residence A-2 and Residence A-3 Districts.

(c) The appearance and character of a single-family house is preserved.

(d) Stairways, unless on the rear of the building, shall be located within the walls of the building and, on corner lots, shall be within the walls of the building.

(3) Conversion of a two-family to a three-family. The conversion of a one- or two-family residence building to accommodate not more than three dwelling units, provided that:

(a) The exterior one- or two-family character of the building is not altered and no major structural change is made in the exterior other than is necessary to provide means of egress from each unit as required by the Building Code. Stairways, unless in the rear of the building, shall be located within the walls of the building and, on corner lots, shall be within the walls of the building.

(b) There is at least 600 square feet of floor area for each dwelling unit, and provided further that each dwelling unit has separate toilet and cooking facilities.

~~(b)~~ The building is not in a Special Flood Hazard Area as defined by FEMA,

or a 500-year floodplain.

(4) Multifamily dwelling. One structure or multiple structures consisting of a multifamily dwelling containing three or more dwelling units on a single lot, provided that the lot meets all the requirements of Article VII and, in addition, has a landscaped area meeting all the requirements of § 650-18A(9)(e), and the building is not in a Special Flood Hazard Area as defined by FEMA~~...~~ The above provision shall not apply to mixed use or multifamily developments within the Marlborough Village District. **[Amended 12-1-2014 by Ord. No. 14-1005947C; 12-16-2019 by Ord. No. 19-1007716E]**

(5) Trailer; mobile homes.

(a) Trailer coaches; mobile homes. No trailer coach or mobile home may be occupied except in a trailer park operating under a license from the Board of Health and by special permit of the City Council.

(b) Trailer offices and storage trailers are permitted on site only within the locus of construction activity and only during the period of active construction which is carried on continuously in good faith pursuant to a valid building permit.

(c) Trailer showrooms are prohibited.

~~(c)~~(d) No trailers may be located within a Special Flood Hazard Area as defined by FEMA

(6) Accessory uses, residential.

(a) For residences such uses are limited to:

[1] A toolshed, playhouse, tennis court, boathouse or other building or structure for domestic use, such as storage of boats and boat trailers or private garage for motor vehicles, but not including more than one vehicle owned by a nonresident of the premises.

[2] The taking of no more than three lodgers or boarders by a resident family in a dwelling, except in Residence C Districts, and not within the 500-year floodplain, provided that no dwelling so used shall be enlarged but may be remodeled for the same or like purpose, and stairways, unless in the rear of the building, shall be located within the walls of the building and, on corner lots, shall be within the walls of the building, and further provided that the requirements of Article VII, including but not limited to off-street parking, lot coverage and landscaping and screening, are met in full.

(b) For farms such accessory uses are limited to:

[1] The uses of Subsection A(6)(a)[1] without a limitation as to number.

[2] Garages for farm vehicles and equipment, barns, greenhouses, silos, storages or other buildings for temporary or permanent farm use. No hazardous waste or pollutants associated with farm use should be located within the 100-year floodplain or greater.

[3] Stand for the sale of produce raised on the premises only.

(7) Customary home occupations. Customary home occupations are permitted, provided that:

(a) No more than 25% of the floor area of the residence is used for the purpose of the home occupation or the professional use or, if an accessory

building is used, no more than 30% of the floor area of the accessory building and residence combined.

(b) There is no external evidence of the home occupation or the profession, and no major structural change shall be made in the exterior so as to alter the appearance and character of the residence.

(c) There are not more than two nonresidents employed on the premises.

(8) Customary yard sales, charitable sales, bazaars. Customary residential yard sales, charitable sales or bazaars are permitted, provided that:

(a) The sales are not conducted for business purposes. See § 650-18A(30) for regulations pertaining to open air markets conducted primarily for business purposes.

(b) The residential yard sales are primarily intended to dispose of personal property belonging to residents living on or near the premises. As used herein, personal property shall not include property purchased or otherwise obtained for the purpose of resale.

(c) No permanent change in the site or structure shall be made so as to alter the appearance or character of the lot.

(9) Two residential structures on a lot less than 80,000 square feet. Two or more structures consisting of single-family, two-family or multifamily dwellings or any combination thereof on a single lot of not less than 80,000 square feet and subject to the following conditions:

(a) Each building shall face either upon an existing street and shall have a minimum front yard of 60 feet or face upon an open space which, in its least dimension, shall not be less than 60 feet. Each building, whether principal or accessory, shall be at least 60 feet distant from any other building in the group by air line distance between the nearest points of the buildings.

(b) No dwelling unit shall contain less than three rooms, exclusive of halls and bathrooms. There shall be a minimum of 600 square feet of floor space, exclusive of halls and stairs, for each three-room dwelling unit, and for each additional room, the floor space shall be increased by at least120 square feet.

(c) There shall be at least 5,000 square feet of lot area for each family on the lot.

(d) No part of any principal building shall be within 20 feet of any lot line.

~~(d)~~(e) New buildings should be built to the Design Flood Elevation for the 100-year floodplain. Design Flood Elevation can be calculated using the Base Flood Elevation which is indicated on the FEMA FIRM plus 1' of freeboard.

~~(e)~~(f) There shall be landscaped area provided equal to the greatest single floorarea of the building or equal to the sum total of the greatest single floor areas of all the principal buildings. The landscaped area shall meet

the following requirements:

[1] At least 75% of the landscaped area has a grade of less than 8%.

[2] The width of such landscaped area shall average at least 40 feet and in no case shall be less than 30 feet.

[3] The landscaped area shall be designed for recreational use by residents. The landscaped area should have a mix of high density vegetation (not grass lawn only) but denser and larger species such as trees and shrubs that will help mitigate heat impacts.

(10) Agriculture, horticulture or floriculture, on lots of more than five acres. Agriculture, horticulture or floriculture or the expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture, except that all such activities shall be limited to parcels of more than five acres which are not zoned for agriculture, horticulture or floriculture.

(11) Forests, woodlots, woodworking mills and machinery. Forests, woodlots, portable woodworking mills and machinery are permitted, providing that:

(a) They are operated by the owner of the property.

(b) There shall be no storage within 50 feet of any property line and 100 feet of any street line.

(12) Livestock farms. The raising of or keeping of a small flock of poultry (other than chicken hens), less than 10, or of saddle horses, private kennel, livestock, or other farm animals for use only by residents of the premises, provided further, that adequate open space is available for their care. **[Amended 5-18-2020 by Ord. No. 20-1007915D]**

(13) Farms and poultry farms. Farms and poultry farms, but not piggeries; market gardens, orchards, nurseries, greenhouses and stands for the sale of produce raised on the premises. Cultivated uses are allowed up to all property and street lines. All other uses permitted shall be located not less than 25 feet from any street line.

(14) Golf courses, country clubs and beaches. Golf courses, country clubs and beaches and the sale of equipment and refreshments incidental to that of the foregoing purposes shall be permitted in Rural Residence Districts. In Residence A1, A2 and A3 Districts, the forgoing shall be permitted by special permit.

(15) Charitable and philanthropic buildings. Religious purposes or educational purposes 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, however, that such land or structure shall be subject to regulations concerning the bulk and height of structures, yard size, lot area, open space, parking and building coverage requirements in accordance with the provisions of this chapter.

(16) Child-care centers. Child-care centers, (either nonprofit or for-profit), subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

(17) Public buildings. Buildings used exclusively for administrative purposes, such as government buildings, City, county, state or federal; telephone exchanges

and other administrative office buildings, provided that there is no service yard or garage; parks and playgrounds and housing for the elderly under the jurisdiction of any governmental agency. The use of any building, structure and/or land which is used by a lessee of the City of Marlborough is permitted in all portions of the City with prior approval of the City Council following, when requested by a Councilor, a public hearing, and any such use as an assisted living facility shall be exempt from compliance with the dimensional, landscaping and parking requirements set forth in Chapter 650, Article VII, §§ 650-40 through 650-49, provided that approval of wireless communications facilities shall be subject to the provisions of § 650-25. **[Amended 8-28-2006 by Ord. No. 06-1001202B]**

(18) Buildings converted to offices, banks, insurance and financial institutions. Buildings converted to offices, banks, insurance and financial institutions, provided that the exterior character of the building shall not be altered.

(19) Retail stores, shops and service establishment uses, excluding automotive service establishments (such as gasoline filling stations and places for the repair and service of motor vehicles), on a retail lot are also permitted upon the issuance of a special permit, provided that such uses are not inconsistent with uses customarily located in shopping malls.

(20) Commercial radio towers, television towers and wireless communication. Commercial radio towers, television towers, receivers, transmitters and wireless communications facilities only when authorized by a special permit of the City Council and pursuant to all the applicable provisions of § 650-25 of this chapter.

(21) Hotels and motels with conference centers. Hotels and motels, together with associated conference, trade and meeting facilities. Commercial uses may also be included, subject to the same special permit and subject to the following limitations:

(a) Permitted commercial uses shall be limited to the following: flower shops; laundry and dry-cleaning pickup stations; restaurants; snack bars; sundries shops; gift shops; banks; travel agencies; car rental agencies and similar uses.

(b) The structure which houses the commercial uses must be under the same ownership as the hotel or motel.

(c) The major public entry to commercial facilities shall be provided from the interior of the hotel or motel.

(d) No outside storage or display of merchandise shall be permitted.

~~(d)~~(e) Hotels and motels with conference centers should be built to Design Flood Elevation as they are commonly used for disaster relief centers and/or evacuation sheltering.

~~(22)~~ Residential conference and training center with food and recreation facilities. Residential conference and training center, which may include conference and education facilities, facilities for preparation and serving of food and alcoholic

and other beverages, sleeping and living accommodations, tennis courts, swimming pools and other recreational and athletic facilities, on a single lot of not less than 15 acres. Residential conference and training centers should be built to Design Flood Elevation as they are commonly used for disaster relief centers and/or evacuation shelters.

~~(23)~~(22) Recreation centers. Recreational center for the purpose of providing ice-skating rinks, swimming pools, tennis courts and any other indoor or outdoor recreational facility and use.

~~(24)~~(23) Clubs. Clubs, provided that the chief activity of such club is not a service customarily carried on as a business.

~~(25)~~(24) Places of repair for cars, boats, trucks and farm equipment. Automobile sales and service. No use otherwise permitted pursuant to automotive sales and service and salesrooms and places for the repair and service of boats, trucks, cars, farm equipment and building supplies shall be allowed if any residential use is still being made of the property. In addition, no said use pursuant to the uses noted above shall be allowed on any lot which is smaller than one acre in size as of November 1, 1995, unless a special permit authorizing said use has been approved by the City Council.

~~(26)~~(25) Outdoor storage. Outdoor storage, but not an auto junkyard, may be permittedin the Business, Commercial Automotive, and Industrial Districts if it is accessory to one of the permitted uses in the zoning district in which the mainbuilding and lot is located. Outdoor storage is allowed as an accessory use in aLimited Industrial District only for light non-nuisance manufacturing and assembly of specialized vehicles for use by municipal, state and other public agencies. Further, the outside storage must be adequately screened from the street and adjacent properties to obscure the materials stored therein. **[Amended 5-9-2005 by Ord. No. 05-100713C]**

~~(27)~~(26) Parking lots and garages. Automobile parking garages or lots are permitted, provided that the drives are at least 100 feet from intersections.

~~(28)~~(27) Gasoline filling stations and auto service establishments. Automotive service establishments, such as gasoline filling stations for dispensing fuel, washing and lubricating vehicles, and such minor repairs as changing tires, provided that all activities except dispensing fuel are conducted inside the structure. Noentrance or exit shall be within 50 feet of any residence district, and no appliances for dispensing gasoline or greasing or oiling automobiles shall be located within 50 feet of any residence or within 20 feet of any street line. No appliances for dispensing gasoline shall be located within the 500-year floodplain.

~~(29)~~(28) Open air markets. Open air markets, including flea markets, conducted by one or more sellers in the open air or under tents or other temporary structures, where the primary purpose of the markets is business related, provided the market operator responsible for the entire market receives a license from the City Council as specified in Chapter 444 of the Code of the City of Marlborough.

~~(30)~~(29) Soil removal. Removal from the site of sod, loam, sand, clay, gravel, stone or quarry stone from any location, provided that approval of the City Council is obtained in accordance with Chapter 534, Soil Removal, of the Code of the City of Marlborough.

~~(31)~~(30) Restaurants and cafes.

(a) Restaurants and cafes serving food outdoors, including drive-in facilities.

[1] Outdoor dining areas shall not be located in parking or landscaped areas required by Article VII.

[2] Outdoor dining areas shall be screened from any abutting lot residentially zoned or used by a solid fence at least six feet high.

[3] Any raised structure (such as a deck) on which the outdoor dining occurs shall comply with the building setback requirements of this chapter.

[4] Any at-grade area on which the outdoor dining occurs shall be located no closer to the lot line than would otherwise be allowed of exterior parking areas.

[5] Service of alcoholic beverages out of doors shall require a separate license from the License Commission and any appropriate state approval.

[6] Within the Marlborough Village District, a special permit may be granted to allow for rooftop, sidewalk, or other outdoor restaurant seating that varies the provisions of this section. **[Added 12-1-2014 by Ord. No. 14-1005947C]**

(b) Restaurants and cafes for employee use. Service buildings, built and maintained by one or more of the permitted uses, containing either or all of the following uses: restaurant, drugstore, bank or other similar services primarily for the use of employees of the permitted uses, are allowed in Limited Industrial and Industrial Districts.

~~(32)~~(31) Adult bookstore, video store, paraphernalia store, motion-picture theater, liveentertainment establishment.

(a) The following uses are permitted when approved by the City Council, as provided for in Article VIII, § 650-59:

[1] Adult bookstore.

[2] Adult video store.

[3] Adult paraphernalia store.

[4] Adult motion-picture theater.

[5] Adult live entertainment establishment.

[6] Tattoo and body piercing parlors/shops.

(b) Special permits for uses listed above shall be subject to the establishment of rules and regulations promulgated by the City Council and shall also be subject to the following terms and conditions:

[1] No use listed above may be located less than 1,000 feet from a residential zone, school, library, church or other religious use, day-care facility, public park, public playground, public recreational

facility or another use listed above. The one-thousand-foot distance shall be measured from all property lines of the proposed uses listed above.

[2] No pictures, publications, videotapes, movies, covers or other implements, items or advertising that fall within the definition of any use listed above, or are erotic, prurient or related to violence, sadism or sexual exploitation shall be displayed in the windows of or on the building of any establishment listed above or be visible to the public from the pedestrian sidewalks or walkways or from the other areas, public or semipublic, outside such establishments.

[3] No special permit shall be issued to any person convicted of violating the provisions of MGL c. 199, § 63, or c. 272, § 28.

[4] Any special permit issued by the City Council pursuant to the uses listed above shall lapse within one year of the date of the grant, not including the time required to pursue or await termination of an appeal referred to in MGL c. 40A, § 17, if substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun within two years of the date of grant except for good cause.

[5] Any existing establishment listed above shall apply for such permit within 90 days following the adoption of the above-referenced additions to the Zoning Ordinance by the City of Marlborough.

~~(33)~~(32) Research, experimental and testing labs. Research, experimental or testing laboratories shall be permitted, provided that, for biomedical and biotechnology uses, the following provisions shall apply:

(a) All use of RDNA shall be undertaken only in conformity with current and applicable NIH guidelines, as promulgated in the Federal Register and as may be amended from time to time by the NIH or by any successor agency. (Refer to § 650-5 for definitions of "RDNA" and "NIH Guidelines.")

(b) All users of RDNA technology shall provide at their own cost appropriate medical and environmental surveillance programs in accordance with the NIH guidelines.

(c) Use of RDNA technology shall require certification by the user to the Board of Health that the use is in full compliance with the NIH guidelines. The Board of Health may establish appropriate rules and procedures to administer these requirements.

~~(34)~~(33) Light manufacturing using portable electric machinery. Light manufacturing using portable electrical machinery is permitted, provided that it is above the ground floor of a business building.

~~(35)~~(34) Associated and accessory research uses. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities

permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production.

~~(36)~~(35) Manufacturing or warehousing. Manufacturing and/or warehousing of footwear, precision instruments, tool and die, dental, medical and optical equipment, electrical or electronic instruments, biomedical or biotechnology products, subject to the provisions governing biomedical research in Subsection A(33) above, provided truck loading and parking areas are effectively screened from abutting office and residential use. Oil or asphalt manufacturing is prohibited.

~~(37)~~(36) Manufacturing or warehousing (Industrial Districts). Oil or asphalt manufacturing is prohibited.

~~(38)~~(37) Retail sales accessory to manufacturing. Retail outlets accessory to manufacturing firms are permitted, provided that they use less than 1/3 of the floor and/or ground area.

~~(39)~~(38) Service buildings, industrial. Service buildings, built and maintained by one ormore of the permitted uses in the LI or I Districts shall be permitted containing either or all of the following uses: restaurant, drugstore, bank or other similar services primarily for the use of employees of the permitted uses.

~~(40)~~(39) Large tract development. The following uses of land, buildings and structuresare permitted on a large tract development lot, provided that a traffic impact and access study, sufficient in scope in the opinion of the City Engineer, is prepared and submitted as part of site plan review and approval for theproposed large tract development.

(a) Office, research and development.

(b) Light non-nuisance manufacturing or assembly.

(c) Experimental laboratory purposes.

~~(41)~~(40) Hotels within the Marlborough Village District are by right, subject to site plan approval by the City Council with input from department staff who participatein administrative site plan review as provided under § 270-2. See in § 650-34Bspecial provisions for site plan review by City Council of hotels in the Marlborough Village District. **[Added 12-1-2014 by Ord. No. 14-1005947C]**

~~(42)~~(41) Mixed-use development, including multifamily residential uses, shall not be subject to special permit provisions for multifamily uses. In the Wayside District, multifamily dwelling shall be allowed only as part of a mixed-use development. Mixed-use development may include vertically mixed uses in a single building or horizontally mixed uses in which multiple buildings create the mix of uses on a single parcel. Each individual building may include a single use with multiple uses occurring next to each other and within multiple buildings on the single parcel. **[Added 12-1-2014 by Ord. No. 14-1005947C; amended 12-16-2019 by Ord. No. 19-1007716E]**

~~(43)~~(42) A combination of permitted business uses is allowed, such as a coffee shop

ina bookstore, or a restaurant in a food/wine shop, or entertainment/arcade

elements accessory to a restaurant. **[Added 12-1-2014 by Ord. No.14-1005947C]**

~~(44)~~(43) Assisted living facilities: **[Added 11-28-2016 by Ord. No. 16-1006631D]**

(a) Shall only be located within the A-2 Zoning District north of U.S. Route 20 and with frontage on Massachusetts State Route 85;

(b) Shall be located only on parcels of five acres or more;

(c) Shall be subject to a special permit based on the City Council's written determination which shall include, but not be limited to, consideration of each of the following criteria:

[1] Adequate access to and from the proposed assisted living facility for emergency response vehicles;

[2] Structures will be built to Design Flood Elevation for the 500-year flood while maintaining accessibility at entryways;

~~[1]~~[3] Structures will have HVAC systems that meet future Heating and Cooling Degree Days using the Climate Resilient Design Standards Tool as a basis for design -and back-up power systems for emergency events and cooling capacity.

~~[2]~~[4] Adequate alternative access, if necessary, to and from the proposed assisted living facility in case an emergency requires evacuation thereof;

~~[3]~~[5] Provision for medical transport; and

~~[4]~~[6] The overall impact of the proposed assisted living facility will not adversely affect the neighborhood or the City; and

(d) Shall be subject to the following additional requirements:

[1] Dimensional conformity. A proposed assisted living facility shall conform to the dimensional criteria for the A-2 Zoning District as set forth in § 650-41, entitled "Table of Lot Area, Yards, and Heightof Structures"; provided, however, that if the City Council finds, in accordance with § 650-59C(12)(a), that (i) land to be donated for municipal purposes to the City as a condition of a special permit to be granted hereunder will benefit the City and its citizens generally, and that (ii) prior to such land donation the proposed assisted living facility otherwise conforms to the dimensional criteria of § 650-41, then the City Council may, as a condition for granting a special permit hereunder, modify § 650-41's dimensional criteria as applied to the proposed assisted living facility.

[2] Application process.

[a] The applicant shall submit a plan for the overall development, including a final site plan showing the final completed

development in all phases as contemplated on the site at the time of application, regardless of the number of phases inwhich it may be constructed. The application shall include, at a minimum, a completely designed first phase of development.

[b] The application shall be filed in the name of the applicant. The applicant must either own the development parcel or, when the application is submitted, submit authorization in writing to act

for all of the owners of the development parcel.

[3] Design standards. In addition to all applicable landscaping and screening regulations set forth in § 650-47, the following design standards shall apply:

[a] Structures shall be designed to be compatible in architectural character with the surrounding neighborhood and shall not present an "institution"-like front facade;

[b] Surface parking in front of the facility shall be minimized, with staff parking preferably at the side and rear~~;~~. Surface parking should have XX% of pervious or landscaped area;

[c] Rooftop mechanicals shall be screened and not look like "add-on" elements. Rooftop mechanicals shall be encouraged for climate resilience purposes;~~;~~

[d] Pedestrian walkways and connections to surrounding uses, particularly public uses, shall be encouraged;

[e] Bicycle parking shall be provided; and

[f] As appropriate, a covered bus shelter may be required.

~~(45)~~(44) Medical marijuana treatment centers: **[Added 4-2-2018 by Ord. No. 18-1007163-1C]**

(a) Shall only be located within those portions of the B and LI Districts located along Massachusetts State Highway Route 20 (Boston Post Road) from the Northborough town line to Massachusetts State Highway Route 495, and within those portions of the B, Wayside and LI Districts located along Massachusetts State Highway Route 20 (Boston Post Road) from the Sudbury town line to Phelps Street; **[Amended 12-16-2019 by Ord. No. 19-1007716E]**

(b) Shall have frontage on Massachusetts State Highway Route 20 (Boston Post Road); and

(c) Shall be subject to the provisions of local and state laws, standards and regulations, and ordinances, including without limitation § 650-32 of the Zoning Ordinance of the City of Marlborough, any conditions imposed on licenses and permits held by the medical marijuana treatment center, agreements between the medical marijuana treatment center and the City of Marlborough, and a special permit from the City Council (the special permit granting authority).

~~(46)~~(45) Adult use marijuana retail; marijuana accessories retail: **[Added 5-21-2018 byOrd. No. 18-1007163-2D]**

(a) Shall only be located within those portions of the B and LI Districts located along Massachusetts State Highway Route 20 (Boston Post Road) from the Northborough town line to Interstate Highway Route 495, and within those portions of the B, Wayside and LI Districts located along

Massachusetts State Highway Route 20 (Boston Post Road) from the

Sudbury town line to Phelps Street; **[Amended 12-16-2019 by Ord. No. 19-1007716E]**

(b) Shall have frontage on Massachusetts State Highway Route 20 (Boston Post Road); and

(c) Shall be subject to the provisions of state law and of § 650-32, including but not limited to a special permit from the City Council (the special permit granting authority).

~~(47)~~(46) Medical and/or adult use marijuana cultivator, independent testing laboratory,product manufacturer or transporter: **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

(a) Shall only be located within those portions of the I and LI Districts located west of Interstate Highway Route 495;

(b) Shall be limited in number to one of each type (cultivator, independent testing laboratory, product manufacturer or transporter), but in no event fewer than the number of medical marijuana treatment centers registered to engage in the same type of activity in the City of Marlborough;

(c) Shall be subject to the provisions of state law and of § 650-32, including but not limited to a special permit from the City Council (the special permit granting authority);

(d) All aspects of a medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter concerning marijuana or products containing marijuana, related supplies or educational materials must take place in a fixed location within a fully enclosed building, with the exception of the actual transport of marijuana, marijuana products and related supplies, and shall not be visible from the exterior of the building; and

(e) No outside storage or display of marijuana, related supplies, equipment, or educational materials is permitted.

~~(48)~~(47) Contractor's yard and landscape contractor's yard. **[Added 6-22-2020 by Ord.No. 20-1007947H]**

(a) Exemptions; design standards for certain existing yards. All existing contractor's yards and landscape contractor's yards in the CA or LIZoning District as of the date of this amendment that existed prior to December 31, 2014, shall not be required to obtain a special permit, but shall file for site plan review with an as-built plot plan by the City of Marlborough Site Plan Review Committee within nine months of the effective date of this subsection and complete site plan review within 24 months of the effective date of this subsection. Said site plan review shall be limited to the following design standards:

[1] Screening. To the maximum extent practicable, the yard shall be adequately screened from the street and adjacent properties to obscure the vehicles parked thereon, and the equipment and/or

materials stored therein, to create an effective visual barrier.

[2] Vehicles, equipment and/or materials. To the maximum extent practicable, all vehicles, equipment and/or materials associated with the yard must be stored on and accessed from impervious or otherwise dust-free surfaces.

[3] Flammable, combustible or dangerous substances. A yard shall not store excessive quantities of flammable, combustible or dangerous substances, and may be required to comply with the notification, reporting and permitting requirements set forth in SARA Title III (the Emergency Planning and Community Right-To-Know Act, or EPCRA) and/or MGL c. 148.

[4] Maximum size of yard. The maximum size of the yard (including all structures, parking and driveways on the lot) shall not exceed the percentage of maximum lot coverage permitted under § 650-41 for the zoning district in which the lot is located. If the yard exceeds said lot coverage percentage, the yard shall not increase its lot coverage and shall be made compliant within 24 months of the effective date of this subsection.

For yards that are in compliance with a prior special permit or site plan approval, no special permit or site plan review is required.

(b) Design standards for all other permissible yards. Yards shall require a special permit, and site plan approval by the City of Marlborough Site Plan Review Committee, whose review shall include, but not be limited to, the following design standards.

[1] Screening. Yard shall be adequately screened from the street and adjacent properties to obscure the vehicles parked thereon, and the equipment and/or materials stored therein, to create an effective visual barrier from ground level to a height of at least five feet.

[2] Vehicles, equipment and/or materials. All vehicles, equipment and/or materials associated with the yard must be stored on and accessed from impervious or otherwise dust-free surfaces.

[3] Flammable, combustible or dangerous substances. A yard shall not store excessive quantities of flammable, combustible or dangerous substances, and may be required to comply with the notification, reporting and permitting requirements set forth in SARA Title III (the Emergency Planning and Community Right-To-Know Act, or EPCRA) and/or MGL c. 148. These substances shall not be located in the 100- or 500-year floodplains.

[4] Maximum size of yard. The maximum size of the yard, when combined with all structures, parking and driveways on the lot being proposed for the lot on which the yard is proposed to be located, shall not exceed the percentage of maximum lot coverage permittedunder § 650-41 for the zoning district in which the lot is located.

[5] Proximity to existing residential zoning districts/uses. (i) Yard shall not be located on a lot less than 200 feet from a residential zoning district, and on any lot if a residential use is being made of any abutting lot(s); and (ii) Minimum lot area. Minimum area of the lot shall be 22,500 square feet.

~~(49)~~(48) Chicken hens, personal use. The raising or keeping of female chickens (Gallusgallus domesticus) for personal use, not to exceed either six hens or 12 hens, as stated in the Table of Uses. The raising or keeping of roosters, cocks, or cockerels is prohibited. The slaughtering of chicken hens for nonpersonal use is prohibited. The selling of eggs is prohibited. No chicken coop shall be located between the street frontage and the primary structure front building line. **[Added 5-18-2020 by Ord. No. 20-1007915D]**

§ 650-19. through § 650-20. (Reserved)

ARTICLE VI
Special Districts, Overlays and Special Requirements

§ 650-21. Retirement Community Residence Districts.

In all portions of the City indicated on the City Zoning Map as Retirement Community Residence Districts:

A. All permitted uses must comply with the appropriate provisions of Article V and Article VII, except as otherwise specified herein.

B. The only use permitted in a Retirement Community Residence District shall be a retirement community. Such use shall be permitted as of right, provided that it is composed entirely of detached single-family residences on separate lots which comply in all ways with the Zoning Ordinance provisions then in effect which are applicable to single-family residences in a Residence A-1 Zone. A retirement community may also be allowed by special permit as specified in Subsection C below.

C. When approved by the City Council in writing by special permit in accordance with Article VIII, § 650-59, a retirement community as defined in § 650-5 may be allowed, subject to the following conditions:

(1) No building shall be more than 2 1/2 stories in height.

(2) Each building shall face either upon an existing street or upon a public or private way constructed within said retirement community and shall have a minimum front yard of no less than 20 feet from the edge of the paved way to the closest point of the structure and a side yard of no less than 10 feet from the edge of the paved way to the closest point of the structure. Each building, whether principal or accessory, shall be at least 20 feet distant from any other building by air line distance between the nearest points of the buildings.

(3) No dwelling shall contain less than 1,000 square feet of living area or more than 2,400 square feet of living area. **[Amended 4-25-2011 by Ord. No. 11-1002806-1A]**

(4) All dwelling units shall be detached from the others or attached only along side walls in the so-called "townhouse" style.

(5) The lot or lots on which a retirement community is located shall contain at least 5,000 square feet per unit in the retirement community.

(6) No part of any principal building shall be within 25 feet of any exterior lot line nor shall any part of any building be closer to any exterior lot line than the minimum side yard requirement which would have been applicable in the zoning district in which the land in question was located before it was rezoned into a Retirement Community Residence District. A building may be as close as 25 feet to the front yard line of the exterior lot; provided, however, that no said building shall be less than 50 feet from the side line of a public way.

(7) Each dwelling unit shall have its own attached yard area.

(8) Required off-street parking for each dwelling unit shall be adjacent thereto. Each unit shall be required to provide at least one parking space inside a garage and an additional space in front of a garage, said garage to be attached to said unit. The City Council may, as a condition of its special permit, require additional off-street parking areas to be used in common by dwelling unit owners and their invitees. In addition, the City Council may, as a condition of the special permit, require the adoption of legally enforceable condominium bylaws or other similar regulations to limit or prohibit the presence in the retirement community, either entirely or except in designated locations, of boats, boat trailers, campers or other recreational vehicles. **[Amended 4-25-2011 by Ord. No. 11-1002806-1A]**

(9) Maximum lot coverage in a retirement community shall not exceed 50% of the total lot size, excluding from lot size any land which, prior to development of the site as a retirement community, would be defined as a "resource area" as that term is defined in MGL c. 131, § 40. Yard areas should have XX% vegetative species such as trees and shrubs that are not lawn.

(10) Each lot or contiguous lots upon which a retirement community is located shall have total frontage on an existing public way of at least 250 feet; provided, however, that said frontage need not be continuous. Each lot or combination of lots shall have a total size of not less than 15 acres. **[Amended on 1-6-2003by Ord. No. 03-9821-2B]**

(11) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding retirement community regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in the retirement community and limiting or prohibiting the presence in the retirement community of boats, boat trailers or recreational vehicles, be made a part of the special permit, and that any change to or failure to enforce said provisions shall be a violation of said special permit.

(12) The City Council may, as a permit condition, require that the proposed retirement community be constructed entirely on one lot, and that, from and after the date of the issuance of the building permit for said community or any portion thereof, no subdivision of said lot shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.

(13) No unit in a retirement community shall have more than three bedrooms.[5]

~~(13)~~(14) The City Council may, as a permit condition, require more stringent climate resilient construction standards to protect retirement communities against future climate impacts.

§ 650-22. Retirement Community Overlay Districts.

A. Purpose. The purpose of the Retirement Community Overlay District shall be to advance the public health, safety and welfare by providing for the development of retirement communities that provide housing choices for persons aged 55 or over

on sites which are otherwise zoned for other purposes but which, because of the

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5. Editor's Note: Former Subsection D, pertaining to special permits, which immediately followed this subsection, was repealed 7-26-2004 by Ord. No. 04-100431B.

size of the parcel being developed and its proximity to other residential neighborhoods and/or residential amenities and supportive services, will provide an appropriate environment for a retirement community. **[Amended 4-8-2019 by Ord. No. 18/19-1007452G]**

B. Location. For the purposes of this section, a Retirement Community Overlay District shall be considered superimposed on the other districts existing at the time that any land in any said underlying district is also included in the Retirement Community Overlay District. The rezoning of any or all of the land included in the Retirement Community Overlay District from one underlying zoning classification to another shall not affect its inclusion in the Retirement Community Overlay District, unless said land is specifically removed from the said Retirement Community Overlay District. Retirement Community Overlay District shall not overlay with Floodplain and Wetland Protection District.

C. Permitted uses. All permitted uses must comply with the appropriate provisions of Article V and Article VII, except as otherwise specified herein. In addition to those uses which are allowed, either as of right or by special permit, in the underlying district of any land which has been included in the Retirement Community Overlay District, the City Council may, by special permit in accordance with § 650-59, permit a retirement community-detached and townhomes or a retirement community-multifamily, as defined in § 650-5, consistent with the following provisions: **[Amended 3-10-2003 by Ord. No. 03-9944B; 4-25-2011 by Ord. No. 11-1002806-1A; 4-8-2019 by Ord. No. 18/19-1007452G]**

(1) Retirement community - detached and townhomes (RCO-D/T).

(a) No building in an RCO-D/T community shall be more than 2 1/2 stories in height.

(b) Each building in an RCO-D/T community shall face either upon an existing street or upon a public or private way constructed within said RCO-D/T community and shall have a minimum front yard of no less than 20 feet from the edge of the paved way to the closest point of the structure and a side yard of not less than 10 feet from the edge of the paved way to the closest point of the structure. Each building, whether principal or accessory, shall be at least 10 feet distant from any other building by airline distance between the nearest points of the buildings.

(c) No dwelling in an RCO-D/T community shall contain less than 1,000 square feet of living area or more than 2,400 square feet of living area.

(d) All dwelling units in an RCO-D/T community shall be detached from the others or attached only along side walls in the so-called "townhouse" style.

(e) The lot or lots on which an RCO-D/T community is located shall contain, on a consolidated basis, at least 7,000 square feet per housing unit.

(f) No part of any principal building in an RCO-D/T community shall be less than 25 feet from any exterior lot line or less than 50 feet from the side of any public way.

(g) Each dwelling unit in an RCO-D/T community shall have its own attached yard area.

(h) Required off-street parking for each dwelling unit in an RCO-D/T community shall be adjacent thereto. Each unit shall be required toprovide at least one parking space inside a garage and an additional spacein front of a garage, said garage to be attached to said unit. The City Council may, as a condition of its special permit, require additional off- street parking areas to be used in common by dwelling unit owners and their invitees. In addition, the City Council may, as a condition of the special permit, require the adoption of legally enforceable condominium bylaws or other similar regulations to limit or prohibit the presence in an RCO-D/T community, either entirely or except in designated locations, of boats, boat trailers, campers, or other recreational vehicles.

(i) Maximum combined lot coverage in an RCO-D/T community shall not exceed 40% of the total lot size.

(j) Each lot or contiguous lots upon which an RCO-D/T community is located shall have total frontage on an existing public way of at least 250 feet. Each lot or combination of lots shall have a total size of not less than 10 acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial.

(k) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-D/T community regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in an RCO-D/T community and limiting or prohibiting the presence in a RCO-D/T community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.

(l) The City Council may, as a permit condition, require that a proposed RCO-D/T community be constructed entirely on one lot, and that, from and after the date of the issuance of the building permit for said community or any portion thereof, no subdivision of said lot shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.

(m) No unit in an RCO-D/T community shall have more than three bedrooms.

(n) If an RCO/DT community is proposed which contains at least 30 acres of land, the following provisions shall supersede those found elsewhere in § 650-22:

[1] The lot or lots on which an RCO/DT community is located shall contain at least 5,000 square feet per unit in the RCO/DT community;

[2] Maximum lot coverage in the RCO/DT community shall not exceed 50% of the total lot size, excluding from the lot size any land which, prior to development of the site as a RCO/DT community, would be defined as a "resource area," as that term is defined in MGL c. 131, § 40.

[3] Each lot or contiguous set of lots upon which a RCO/DT community is located shall have total frontage on an existing public way, or on a private way laid out by the City Council pursuant to MGL c. 82, § 21, of at least 250 feet; provided, however, that said frontage need not be continuous.

(2) Retirement Community - Multifamily (RCO-MF).

(a) The total area of the tract of contiguous parcels to be developed as an RCO-MF shall not be less than 10 acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial and be located within the area that lies within the perimeter of the following roadways: commencing at the Fitchburg Street intersection at the Route 85/290 Connector Road; then west along the Route 85/290 Connector Road to the intersection of Route 495; then south along Route 495 to where it passes over the intersection with Berlin Road; then southeasterly along Berlin Road to the intersection with West Hill Road; then easterly along West Hill Road to the intersection with Pleasant Street; then north along Pleasant Street to the intersection with Fitchburg Street; then north along Fitchburg Street to the intersection with the Route 85/290 Connector Road, all of said land being in reasonable proximity to the UMass Memorial Marlborough Hospital and the interstate highway intersection of Route 495 and Route 290.

(b) An RCO-MF may contain one- and two-bedroom units and studio units for independent living persons, and may include services and amenities for its residents, including but not limited to, dining facilities, in-unit kitchens, common rooms, activity rooms, exercise rooms, theater, chapel, library, pharmacy/gift shop/convenience store, beauty salon, barbershop, personal banking services, offices and accessory uses or structures, concierge and valet services, third-party vendor services, and recreation facilities.

(c) No building in an RCO-MF shall be more than three stories in height.

(d) The total number of dwelling units in an RCO-MF shall be limited to 12 units per acre.

(e) No part of any principal building in an RCO-MF shall be less than 50 feet from any exterior lot line or less than 100 feet from any public way.

(f) Maximum combined lot coverage in an RCO-MF, including any permitted accessory structures, shall not exceed 40% of the tract or contiguous parcels.

(g) The tract or contiguous parcels upon which an RCO-MF is located shall

have a minimum total frontage on an existing public or private way of at least 200 feet.

(h) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-MF regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in a retirement community and limiting or prohibiting the presence in a retirement community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.

(i) The City Council may, as a permit condition, require that a proposed RCO-MF be constructed entirely on one tract and that, from and after the date of the issuance of the building permit for said community no subdivision of said tract shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.

(j) A minimum of 1.0 parking space per dwelling unit shall be provided in an RCO-MF. Attached and detached garages shall count toward this parking requirement.

(k) No dwelling unit in an RCO-MF shall contain less than 500 square feet of living area or more than 1,300 square feet of living area.

(l) No building in an RCO-MF need be located or placed further from the exterior line of any street or public way than the average distance from such street or way line of the dwellings or other principal buildings located on the lots adjacent thereto on either side. In determining such average, a vacant side lot having a frontage of 50 feet or more shall be considered as though occupied by a building having the required setback, and a lot separated from the lot in question only by a vacant lot having a frontage of less than 50 fee shall be deemed an adjacent lot. The point of measurement of the average distance shall be from the closest point of the principal building to the street or public way regardless of parcel ownership.

(m) In an RCO-MF, there shall be provided with each multifamily building a landscaped area equal to the greatest single floor area of the building, provided that such landscaped area may include undisturbed naturalareas, such as vegetated areas, woodlands, wetlands and floodplain areas.

§ 650-23. Floodplain and Wetland Protection District.

A. Purpose. The Floodplain and Wetland Protection District and the regulations herein have been established with the following purposes intended:

(1) To protect the public health and safety, persons and property against flooding and the hazard of floodwater inundation.

(2) To control and regulate the development of land and construction of buildings thereon and structures therein within the Floodplain and Wetland Protection District, particularly in relation to the use of swampland, marshes and areas along watercourses, ponds and lakes and land subject to seasonal and/or periodic flooding.

(3) To protect the public from the burden of extraordinary financial expenditures for flood control and relief and to protect against unanticipated costs resulting from erosion, siltation, pollution or contamination of drainageways and surface water or groundwater resources of the City or neighboring communities.

(4) To preserve the capacity of floodplain, watershed or wetland areas to absorb, transmit and store runoff and to assure the retention of sufficient floodway area to convey flows which can reasonably be expected to occur.

B. Location.

(1) For the purpose of this section, the Floodplain and Wetland Protection Districts shall be considered superimposed on the other districts existing in thesame area as shown on the Zoning District Map of the City of Marlborough, Massachusetts, and any buildings, structure or use of land included in the Floodplain and Wetland Protection District shall also be deemed to be within the particular district in which it is located as shown on said Zoning Map and subject to all the regulations and requirements thereof in addition to those set forth in this section.

(2) The boundaries, elevations and setback requirements of the Floodplain and Wetland Protection District shall be as shown on a map entitled "City of Marlborough, Massachusetts Floodplain and Wetland Protection District 1982" and shall also include all special flood hazard areas within the City of Marlborough designated as Zone A and AE on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the City of Marlborough are panel numbers 25017C0344F, 25017C0363F, 25017C0457F, 25017C0476F, 25017C0477F, 25017C0478F, 25017C0479F, 25017C0481F, 25017C0482F, 25017C0483F, 25017C0484F, 25017C0501F and 25017C0503F, with an effective date of July 7, 2014. The exact boundaries of the floodplain and floodway may be defined by the 100-year based flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study ("FIS") report with an effective date of July 7, 2014. These plans are hereby, by this reference, made a part of the Zoning Chapter.~~designated as ZonesA, A1-A30 on the City of Marlborough Flood Insurance Rate Maps dated January 6, 1982, and these maps, as well as the accompanying Marlborough Flood Insurance Study, are hereby, by this reference, made a part of the ZoningChapter.~~[6]

C. Prohibited uses. The following uses are prohibited within the Floodplain and Wetland Protection District:

(1) The storage of buoyant, flammable, explosive or toxic material in a floodplain or wetland.

(2) The dumping of waste, rubbish, demolition or hazardous materials in a floodplain or wetland area.

(3) The addition, removal or transfer of such quantities of material, including earth, soil, trees, stumps or vegetation, that would reduce the water storage capacity of the floodplain or wetland, obstruct the flow of water in a floodway or otherwise adversely affect the natural hydrology of the area, except as maybe a part of a plan for public flood control, municipal drainage or utility system.

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6. Editor's Note: Said maps and accompanying studies are on file in the office of the City Clerk.

or organized mosquito control district.

(4) The digging or drilling of a well intended as a source of domestic water, except for public water supply wells adequately sealed against the infiltration of surface water.

(5) The construction of an on-site sewage disposal system in the floodplain or designated wetland area.

~~(5)~~(6) Critical uses

~~(6)~~(7) Any encroachment in the regulatory floodway, as shown on the Floodway-Flood Boundary Map, that would increase the water surface elevation of the ~~one-hundred-~~100-year flood.

D. Special permit required.

(1) In a Floodplain and Wetland Protection District, no building or structure shall be constructed, altered or modified in its present use, and no land shall be filled, excavated or otherwise changed in grade, except pursuant to a special permit authorized by the Board of Appeals as hereinafter provided. Any application for such permit shall be submitted in quintuplicate (five copies) tothe Board of Appeals and shall be accompanied by a plan of the premises in question showing:

(a) The boundaries and dimensions of the area.

(b) The location, dimensions and elevation above mean sea level of existing and proposed buildings and structures thereon. Applicant must show the projected elevations for the 2070 100-year and 500-year flood events and evidence that proposed building are built to the 100-year Design Flood Elevation for non-critical uses and the 500-year Design Flood Elevation for critical uses.

(c) The existing contours in ~~two~~one-foot intervals of the land and of any proposed changes therefrom.

~~(c)~~(d) Report from the Massachusetts Climate Resilience Design Standards Tool.

~~(d)~~(e) Such other information as is deemed necessary to the Board of Appeals to indicate the complete physical characteristics of the area and the proposed construction and/or grading thereof.

(2) The portion of any lot in this district may be used to meet lot area requirements for the residential districts over which the Floodplain and Wetland Protection District is superimposed, provided that such portion does not constitute more than 50% of the minimum lot area required in the residential district. Land in the Floodplain and Wetland Protection District may not be used to meet more than 15% of the minimum lot area requirements in Business, Commercial or Industrial Districts.

E. Reference to other boards. Within 10 days after receipt of the application for a special permit as herein provided, the Board of Appeals shall transmit copies

thereof, together with copies of the accompanying plan, to the Board of Health, Planning Board, Engineering Department and the Conservation Commission. Such Boards and Commission may, at their discretion, investigate the application and report in writing their recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the above Boards and Commission, or until such Boards and Commission have allowed 45 days to elapse after receipt of said application without submission of a report.

F. Other jurisdictions.

(1) If approval for filling the land must be obtained from the commonwealth or the United States government or any agency or subdivision thereof, or an orderof conditions is necessary from the Marlborough Conservation Commission in accordance with MGL c. 131, § 40, then such approval and any conditions imposed thereon shall be filed with the Board of Appeals with the application.

(2) If in the opinion of the Board of Appeals such application for approval by other jurisdictions is in sufficient detail and provides the necessary information to furnish the criteria for its decision, then the same application and plan may be used for filing with the Board of Appeals for approval under the Floodplain and Wetland Protection District regulations.

G. Criteria of approval. The Board of Appeals may issue a special permit hereunder, subject to other provisions of this Zoning Chapter, if it finds that the proposed construction and use and/or proposed change in grade will not derogate from the intent and purpose of this district nor endanger the health and safety of the public nor the legitimate use of other land in the City. In deciding on an application for a special permit under this section, but without limiting the generality of the foregoing, the Board shall assure to a degree consistent with a reasonable use of the premises for purposes permitted in the use district in which located that theproposed construction, use and/or change of grade will not obstruct or divert flood flow, reduce natural storage or increase stormwater runoff to the extent of raising high water levels on any other land to any significant degree; the proposed system of drainage and/or private sewage disposal will not cause siltation, pollution or otherwise endanger public health; the proposed construction shall have street or other appropriate access that shall be at least one foot above base flood elevation; and structures designed for human occupancy shall have lowest floor, including basement, heating, electrical and sanitary sewer systems, at least two feet above base flood elevation. Fill deposited to bring the lowest floor to the required elevation shall extend to at least 15 feet beyond the limits of the structure thereon.

H. Conditions of permit. In granting a special permit hereunder, the Board of Appeals shall impose conditions specifically designed to safeguard the health and safety of occupants of the premises and of other land in and adjacent to the district and to ensure conformity with the provisions thereof. It shall also be the duty of the Board of Appeals to ascertain that the requirements of the FEMA Flood Insurance Program have been met, in that:

(1) Within Zones A1-A30 of the Flood Insurance Rate Maps of the City of Marlborough, all new construction and substantial improvements the cost of which equals or exceeds 50% of the market value of the structure of residential and nonresidential structures shall have the lowest floor, including basement, elevated to two feet above the base flood elevation (the one-hundred-year flood elevation designated on the FIRM) or, in the case of nonresidential structures, be floodproofed, watertight to the base flood level.

(2) Within Zone A, where the base flood elevation is not provided on the FIRM the Building Commissioner shall obtain and review any already existing base flood elevation data. If the data is reasonable, it shall be used to require

compliance with Subsection H(1) above. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(3) Where watertight floodproofing of a structure is permitted, a registered professional engineer or architect shall certify that the methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the one-hundred-year flood.

I. Determination of levels.

(1) For the purpose of this section, the term "base flood elevation" refers to the flood having a one-percent chance of being equaled or exceeded in any given year, commonly referred to as the "one-hundred-year flood." Where, in the opinion of the Board of Appeals, engineering studies are needed to determine the high water level on a particular premises and/or the effect of a proposed building, structure or grading on flood flow, natural safety of any building or structure, such engineering study shall be at the expense of the petitioner.

(2) If any land in the Floodplain and Wetland Protection District is proven to the satisfaction of the Zoning Board of Appeals, after the question has been referred to and a recommendation received from the City Engineer, Planning Board, Board of Health and Conservation Commission, as being in fact above the base flood elevation, and that the use of such land will not be detrimental to the public health, safety and/or welfare, the Board of Appeals may, after a public hearing, with due notice, issue a special permit for any use allowed in the underlying district; in which case all other Zoning Chapter and state regulations applicable to such land use shall apply.

(3) The establishment of a Floodplain and Wetland Protection District hereunder shall not constitute a representation that all land outside of said district will be free from flooding.

J. List of Floodplain and Wetland District areas. The areas placed in said district are shown on the map and include in part the areas designated by FEMA for the flood insurance program and the major wetlands in the City designated by the Massachusetts Department of Environmental Management as being subject to an order of restriction under MGL c. 131, § 40A. Elevations given are based on the United States Coast and Geodetic Survey datum.

K. Mobile home development regulations.

(1) Within Zone A1-A30, all mobile homes shall provide that:

(a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level.

(b) Adequate surface drainage and access for a hauler are provided.

(c) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart and reinforcement is provided for piers more than six feet above ground level.

(2) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.

§ 650-24. Water Supply Protection District.

A. Purpose. The Water Supply Protection District and this section have been established with the following purposes intended:

(1) To protect the health, safety, and general welfare of the community.

(2) To protect, preserve, and maintain the quality and quantity of existing and potential drinking water supplies in the community.

(3) To regulate the development and uses of land within the Water Supply Protection District which, if not regulated, may contaminate or diminish the quality and quantity of water.

(4) To protect the public from the burden of extraordinary financial expenditures due to the closure of contaminated water supplies and the need to purchase alternative supplies.

B. Scope of authority. The Water Supply Protection District is an overlay district superimposed on the zoning district. This overlay district shall apply to all new construction, reconstruction, and expansion of existing buildings and new or expanded uses. Applicable activities or uses which fall within the Water Supply Protection District must comply with the requirements of this district as well as with the underlying zoning. Uses that are prohibited in the underlying zoning district shall not be permitted in the Water Supply Protection District.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ADVERSE IMPACT — Any activity during or after construction which will have a negative impact to water quality or quantity. This includes but is not limited to surface water contamination, groundwater contamination, water temperature changes, and changes in hydrology that would negatively affect the water quality and quantity.

BANK — A bank is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a bordering vegetated wetland and adjacent floodplain, or in the absence of these, it occurs between a body of water and an upland. The upper boundary of a bank is the first observable break in slope or the mean annual flood level, whichever is lower.

IMPERVIOUS SURFACE — Surface areas with material or structure on, above or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

LOT — A single tract of land in identical ownership throughout, with definite boundaries as ascertainable through a recorded plan or deed.

LOT COVERAGE — The area of a lot covered by all structures, areas used by vehicular traffic and parking, including driveways, loading bays and maneuvering aisles, whether paved, unpaved or graveled, and of all impermeable areas such as

paved walkways or outdoor storage areas, but not including gravel walkways or pedestrian areas not adjacent to parking lots or buildings. Areas not included in "lot coverage" shall be landscaped and natural areas.

RECHARGE AREA — Any point of groundwater and/or surface water which leads to the public water supply.

REDEVELOPED LOT; REDEVELOPMENT — When the building or site undergoes a change of use or is enlarged by more than 10% of the floor or ground areas of use or when any new principal building is built on the site or when any new building, addition, alteration or change of use requires a parking increase of five or more spaces.

SMALL LOT — A lot of land, as defined herein, existing at the time of the publication of this chapter, and which does not exceed three acres in total area.

TOXIC OR HAZARDOUS MATERIALS — Any substance or mixture of such physical, chemical or infectious characteristics in sufficient quantity as to pose, in the opinion of the Board of Health, a significant actual or potential hazard to water supplies if such substance or mixture were discharged to the land or waters of this City. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious waste, acids or alkalies and include products such as pesticides, herbicides, solvents and thinners.

TRIBUTARY — A body of running water, including a river, stream, brook and creek, and intermittent stream which moves in a definite channel in the ground due to a hydraulic gradient and which flows ultimately into a reservoir in the watershed, as determined by reference to the most recent edition of the United States Geologic Survey maps or any other map determined to be more accurate. A tributary shall include the land over which the water therein runs and the banks thereto.

VEGETATED BUFFER ZONE — An area between the wetland and the upland which is to be kept vegetated to allow for the protection of the adjacent bordering vegetated wetland, bank and land under water, as defined by MGL c. 131, § 40. The buffer zone shall be measured from the edge of the wetland area into the upland area. The buffer zone shall not be measured from the floodplain or isolated land subject to flooding.

D. Establishment of district.

(1) For the purpose of this section, the Water Supply Protection District shall be considered superimposed on the other districts existing in the same area as shown on the Zoning District Map of the City of Marlborough, Massachusetts. Any buildings, structure or use of land included in the Water Supply Protection Districts shall also be deemed to be within the particular district in which it is located as shown on said Zoning Map and subject to all the regulations and requirements thereof in addition to those set forth in this section.

(2) The boundaries of the Water Supply Protection District shall be as particularly described in Subsection D(3) below and as generally shown on a map entitled "City of Marlborough, Massachusetts, Water Supply Protection District 1996.. This map is hereby made a part of the Zoning Ordinance and is on file in the office of the City Clerk.

(3) The Water Supply Protection District shall consist of the following two zones:

(a) Zone A. Any area within 400 feet of the top of the stream bank or mean annual high water mark, whichever elevation is lower, of the following surface waters:

Millham Reservoir

Lake Williams

North branch of Millham Brook from Spring Street to Millham Reservoir

Millham Brook from Lake Williams to Millham Reservoir (including all culverted sections of Millham Brook)

Unnamed brook flowing from Evelina Drive to Millham Reservoir and parallel to Millham Street

Unnamed brook flowing from Simmons Street to Millham Brook and parallel to Elm Street

Unnamed brook flowing from Masciarelli Drive to Millham Brook at Glen Street

Unnamed brook flowing from the outlet pipe to the pond/detention facility located on Assessor's Map 78, parcel 1 to its intersection with Millham Brook approximately 550 feet east of Elm Street

(b) Zone B. All areas within 1/2 mile upgradient of the Zone A boundary or to the boundary of the Watershed Protection District, whichever is smaller.

(4) When the district boundary or zone boundary is questionable in relation to a particular parcel, the owner or project proponent shall meet with the City Engineer to ascertain the location of the respective boundary. The City Engineer may require the owner or project proponent to provide information sufficient to substantiate the boundary in question. Upon the request and at the expense of the owner or project proponent, the City Engineer may engage the services of a registered professional civil or sanitary engineer or hydrologist to determine the questionable boundary. The location as determined by the City Engineer shall be considered final for the purposes of determining the applicability of this chapter.

E. Prohibitions.

(1) The following uses are prohibited within all zones of the Water Supply Protection District:

(a) Disposal of solid wastes, other than brush and stumps, including without limitation landfills, junk and salvage yards, and disposal sites that require a site assignment from the Board of Health under MGL c. 111, § 150A.

(b) New underground storage tanks for heating oil.

(c) Hazardous waste disposal or hazardous waste treatment facilities. This does not include pretreatment facilities required for disposal into the

City's municipal sewerage system.

(d) Privately owned and operated sewage treatment plants; discharge of processed wastewater on site.

(e) Dumping of snow containing deicing chemicals originating from outside the district.

(f) Discharge of surface water runoff into closed drainage systems (except of public roadways) unless adequately treated according to Subsection F(7) below.

(g) Any floor drain system which discharges to the ground. Any existing facility with such a drain system shall be required to either seal the floor drain (in accordance with the State Plumbing Code, 248 CMR 2.0) or legally connect the drain to a municipal sewerage system.

(h) Land-filling of sewage sludge or land application of septage.

(i) Outside storage of pesticides, fertilizers and soil conditions other than in amounts normally associated with household or farm use.

(j) For the portion of any lot that lies within the Water Supply Protection District in a nonresidential zone, impervious surfaces shall not exceed lot coverages as noted in Subsection F(2) below.

(2) The following uses are prohibited within Zone A of the Water Supply Protection District but may be permitted by special permit in Zone B:

(a) Storage of road salt or other deicing chemicals, other than in amounts normally associated with household and office use.

(b) Sand and gravel excavation or other mining operations.

(c) Manufacture, use, storage or disposal of hazardous or toxic materials in quantities greater than those normally associated with domestic household and office use, including pesticides, fertilizers and soil conditioners.

(d) Motor vehicle service stations; automotive repair garages; car washes; truck or bus terminals; heliports; airports; electronic manufacturing; print shops; metal plating, finishing or polishing; chemical and biological laboratories; painting, wood preserving and furniture stripping establishments; golf courses; and dry cleaning establishments using toxic or hazardous materials on site.

(e) Outdoor storage of hazardous materials.

(3) The following uses are prohibited within Zone A of the Water Supply Protection District but permitted in Zone B with site plan approval:

(a) Subsurface sewage disposal systems.

(4) No provisions of this subsection shall be construed to limit routine

maintenance of public utilities or roads, conservation activities or recreation.

(5) No provisions of Subsection E(1) or (2) shall be construed to prohibit the maintenance or improvement of existing subsurface sewage disposal systems in accordance with state and local regulations.

F. Criteria for site design. In addition to the criteria specified in Chapter 270, Building and Site Development, the Site Plan Review Committee shall consider the following criteria for projects proposed within the Water Supply Protection District. The following criteria will also be considered, to the extent practicable, for redevelopment projects proposed within the WSPD.

(1) Adverse impact on water supply. The project will not have an adverse impact on the water supply. The project shall conform to the DEP Stormwater Management Policy as the applicable design criteria to limit adverse impact to the water supply. An environmental impact analysis of preconstruction and post-construction pollutant loading estimates into the water supply may be required.

(2) Impervious area. For the portion of any lot that lies within the Water Supply Protection District, the lot coverage as defined herein shall not exceed the following:

(a) Maximum total lot coverage.

[1] Business Zone: 70%.

[2] Limited Industrial Zone: 53%.

[3] Industrial Zone: 53%.

[4] Residential Zone: 30%.

(b) When an existing developed lot with impervious area exceeding the requirements of Subsection F(2)(a) above is proposed for redevelopment, the impervious area shall be reduced by a minimum of 10% or conform to the requirements of Subsection F(2)(a), whichever reduces the impervious surface area less.

(3) Hazardous materials. A complete list of chemicals, pesticides, fertilizers, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use shall be provided with the special permit submission. Protection against toxic or hazardous material discharge or loss through corrosion, accidental damage, spillage or vandalism shall be provided. Such protection shall include provisions for spill control in the vicinity of chemical or fuel delivery points and shall include secure storage provisions for corrodible or dissolvable materials. Secondary containment structures must be provided which are large enough to contain the volume of the containers total storage capacity per local Fire Department requirements.

(4) Fill. Fill material used in the Water Supply Protection District shall contain no solid waste, toxic or hazardous materials, or hazardous waste. Adequate

documentation shall be provided to ensure suitable condition of the fill. The Building Commissioner may require soil testing by a certified laboratory prior to the issuance of a building permit. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(5) Emergency response. For industrial and commercial uses, where hazardous materials are used a spill prevention, control and countermeasure plan to prevent contamination of soil or water in the event of accidental spills or the release of toxic or hazardous materials shall be submitted to the special- permit-issuing authority, if deemed necessary, for approval prior to granting of a special permit. Compliance with recommendations of the Fire Departmenton said plan shall be required.

(6) Monitoring. Periodic monitoring may be required by the Site Plan Review Committee and/or the Planning Board when the site location and land use activities indicate a significant risk of contamination to the water supply based upon recommendations of the City Engineer, Board of Health, Conservation Commission and/or the Water Division. Such monitoring may include analyses of water for appropriate substances and the installation of groundwater-monitoring wells appropriately constructed and located.

(7) Runoff. Degradation of surface water runoff shall be minimized. Pollutant loading estimates may be required. Applicants shall evaluate the feasibility of utilizing measures to infiltrate stormwater and to route runoff over vegetated surfaces prior to discharge into surface water, including but not limited to wet retention basins, infiltration basins and trenches, dry wells, filter strips, vegetated swales, filter berms and extended detention basins with constructed wetlands. Erosion from the site shall be minimized. Stormwater management systems shall use the best management practices to attenuate pollutants from all stormwater, including the first one inch of runoff times the total impervious surface (first flush) of the post-development project. Department of Environmental Protection guidelines on stormwater management policy and any regulations or policies which may be adopted by the State Department of Environmental Protection shall be followed. Best management practices shall be used and shall be designed to remove at least 80% or more of the total suspended solids and pollutant loads. The stormwater management system must also be designed to detain the two-, ten-, and one-hundred-year storm events to preconstruction runoff rates. For all nonresidential uses, all catch basins shall be preceded by oil, grease and sediment traps to facilitate removal of contamination and shall be maintained in full working order by the owner.

(8) Infiltration. In instances where infiltration is proposed to treat stormwater pursuant to Subsection F(7) above, soil overburden shall not be lowered to finish exterior grades less than two feet above maximum groundwater elevation unless technical evidence can be provided showing to the Planning Board's and/or Site Plan Review Committee's satisfaction that groundwater quantity or quality will not be detrimentally affected. Technical evidence may include, without limitation, a determination of soil and geologic conditions where low permeability will mitigate leachate penetration and evapotranspiration.

(9) Fifty-foot wetland buffer zone. No disturbance of the ground surface or development within 50 feet of a wetland resource area defined under MGL c. 131, § 40, (except the floodplain and isolated land subject to flooding) shall be permitted. Development shall mean any clearing, grading, earthmoving or construction of any kind.

(a) Notwithstanding the foregoing, in existing developed areas which are being redeveloped, and where a pervious buffer zone does not already exist, a fifty-foot vegetated buffer zone shall be created to provide buffering around the wetland resource area. Where this is not reasonably attainable, the maximum buffer zone possible will be provided, but in no case shall it be less than 20 feet.

(b) Notwithstanding the foregoing, wetland filling shall only be allowed after an alternatives analysis is provided and no other access or configuration is reasonably possible. Any wetland filling shall create the least environmental impact. In such events, the wetlands replication shall be 1 1/2 times the amount of wetlands to be filled. The new replication area shall also have a minimum of a fifty-foot buffer zone established around it.

G. Special permit.

(1) Preapplication review. Prior to filing an application for a special permit, the applicant shall meet with the Conservation Officer and City Engineer in order to review and to the extent possible identify all major areas of concern as they relate to the project and this chapter.

(2) Special permit procedure. The special permit procedure as outlined in § 650-59C (rules and regulations of application/petition for special permit by the City Council under the Marlborough Zoning Ordinance) shall be followed. In addition to the submission requirements under the special permit procedure, any additional information required as noted above should be included with the application. Except as may otherwise be specified herein, compliance withall other portions of the City Zoning Ordinance is required.

H. Small lots. The provisions of Subsection F(2)(a) and (b) shall not apply to a small lot or a group of small lots which, when combined into one lot, does not exceed three acres in size.

I. Existing orders of conditions. The provisions of Subsection F(9) in its entirety shall not apply to any lot which, at the time of the publication of this chapter, is subject to an order of conditions issued by the City of Marlborough Conservation Commission.

§ 650-25. Wireless communications facilities.

A. Purposes.

(1) To promote the health, safety and general welfare of the community.

(2) To guide sound development.

(3) To conserve the value of land and buildings.

(4) To encourage the most appropriate use of the land.

(5) To minimize the adverse aesthetic impact of wireless communications facilities.

(6) To minimize the number of wireless communications facility (WCF) sites.

(7) To encourage co-location by wireless communications companies on wireless communications facilities.

(8) To ensure that WCFs are cited, designed and screened in a manner that is sensitive to the surrounding neighborhood.

(9) To avoid damage to adjacent properties.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

COMMUNICATIONS DEVICE — Any antenna, dish or panel mounted out of doors on an already existing building or structure used by a commercial telecommunications carrier to provide telecommunications services. Interior-mounted antennas, dishes or panels are not subject to the provisions of this section, except for the provisions of Subsection F(10) of this section. The term "communications device" does not include a tower.

TOWER — Any equipment-mounting structure that is used primarily to support reception or transmission equipment and that measures 12 feet or more in its longest vertical dimension. The term "tower" includes, but is not limited to, monopole and lattice towers.

WIRELESS COMMUNICATIONS FACILITIES — Any and all materials, equipment, storage structures, towers, dishes and antennas, other than customer premises equipment, used by a commercial telecommunications carrier to provide telecommunications services. This definition does not include facilities used by a federally licensed amateur radio operator or facilities which are accessory to the use of a business or building and are for the exclusive use of the owner of the building or the tenant.

C. Application and jurisdiction.

(1) A WCF which include a tower shall be erected and installed in all portions of the City only in compliance with the provisions of this section and upon the grant of a special permit by the City Council.

(2) Communications devices shall be erected and installed only on an existing building or structure in all portions of the City, all in compliance with the provisions of this section and upon the grant of a special permit by the City Council.

(3) Notwithstanding anything to the contrary contained in the Zoning Ordinance, the City Council shall be authorized to grant a special permit for the erection or installation of a WCF which includes a tower in all portions of the City.

(4) Notwithstanding anything to the contrary contained in the Zoning Ordinance, the City Council shall be authorized to grant a special permit for a WCF which consists of a communications device on an already existing building or structure in all portions of the City.

(5) No WCF shall be erected or installed out of doors except in compliance with the provisions of this section. The provisions of this section apply to all WCFs whether as a principal use or an accessory use and to any and all extensions or additions to or replacement of an existing WCF.

D. Review standards. In addition to the special permit review criteria under § 650-59 of this chapter and Section 9 of Chapter 40A of the General Laws, the City Council shall also review the special permit application in conformance with the following objectives:

(1) When considering an application for a WCF which includes a tower, the City Council shall take into consideration the proximity of the facility to residential dwellings.

(2) New WCFs which include a Tower shall be considered only after a finding that existing or previously approved towers cannot accommodate the proposed users.

(3) When considering an application for a communications device proposed to be placed on an already existing building or structure, the City Council shall take into consideration the visual impact of the unit from the abutting neighborhood and streets and the proximity of the unit to residential dwellings.

(4) The City Council shall act on a request for the placement of a WCF within a reasonable period of time, and any denial shall be in writing and supported by substantial evidence contained in the record.

E. Development requirements.

(1) Any proposed tower must be of the minimum height necessary toaccommodate the use and in any event shall not be more than 190 feet in height, notwithstanding any other provisions to the contrary of this chapter.

(2) The applicant shall arrange to fly a balloon of at least three feet in diameter at the maximum height of the proposed tower at least once before the first public hearing. The date, time and location of the flight shall be advertised by the applicant at least 14 days, but not more than 21 days, before the flight in a newspaper of general circulation in the City.

(3) Visual impacts of towers and communications devices must be minimized by use of appropriate paint and/or screening.

(4) Applicants must, as part of their application for a special permit for a tower, submit evidence from the Federal Aviation Administration (FAA) demonstrating that said FAA has studied and approved the proposed tower and its location. If lighting is required by the FAA, the provisions of Subsection E(12) of this section shall prevail.

(5) The siting of towers shall be such that the view of the tower from other areas of the City shall be as minimal as possible and shall be screened from abutters and residential neighbors to the extent feasible.

(6) Shared use of towers by commercial telecommunications carriers is required unless such shared use is shown by substantial evidence to be not feasible.

(7) All towers shall be designed to accommodate the maximum number of presently interested users which is technologically practical. If the number of interested users is less than five, the applicant shall submit substantial evidence to support such an assertion. All towers shall be designed so that, if additional users require said location, the existing tower can be expanded or replaced with the minimum of technical difficulty and disturbance to neighbors and shall be subject to the obligation of the applicant to cause or allow such expansion or replacement on terms that are commercially reasonable to the additional users at any time following the granting of the initial special permit.

(8) Every tower must be set back from the property line of the lot on which it is located or from a point beyond said lot line but extending only over land for which written permission has been received for a distance at least equal to the height of the tower. For any land held by any person or entity other than the United States, the Commonwealth of Massachusetts, or an agency or political subdivision thereof, said written permission shall be evidenced by an easement covering the area in question and recorded in the South Middlesex Registry of Deeds or South Middlesex Land Registration Office.

(9) No portion of communications devices located on a building shall exceed 15 in height above the roofline of the building.

(10) Communications devices shall be situated on or attached to a building or structure in such a manner that they are screened whenever possible, shall be painted or otherwise colored to minimize their visibility, and shall be integrated into such structures or buildings in a manner that blends with the structure or building. Freestanding antennas or dishes shall be landscaped, screened and painted in a manner so as to minimize visibility from abutting streets and residents.

(11) Fencing shall be provided to control access to all WCFs which include towers.

(12) All towers must comply with all Federal Aviation Administration rules and regulations. Notwithstanding the requirement to comply with rules and regulations, any tower that would be required to install flashing lights or strobe lighting shall not be permitted.

(13) All towers shall be at least 150 feet from existing residential buildings.

(14) Accessory buildings and or storage sheds shall not exceed two stories in height; no more than 300 square feet in floor area shall be available for each user; any buildings or storage sheds added to a site must be attached to and abut the original building or storage shed and must be compatible in appearance.

(15) The maximum amount of vegetation shall be preserved.

F. Conditions. The following conditions shall apply to all grants of special permits pursuant to this section:

(1) For all WCFs, annual certification of compliance with Federal Communications Commission, Federal Aviation Administration and federal, state and local laws, rules and regulations must be provided to the City Council.

(2) All towers must comply with all applicable Federal Communications Commission rules and regulations. Annual certification of compliance must be provided to the City Council.

(3) For all towers located on municipal property, a certificate of insurance for liability coverage in amounts determined by the City Solicitor must be provided naming the City as an additional insured.

(4) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the City harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the City-owned property by the user.

(5) For all towers, the execution of an agreement must be executed with the property owner whereby the user shall, at his own expense and within 30 days upon termination of the lease or 30 days of nonuse of the tower, restore the premises to the condition it was in at the onset of the lease and shall remove any and all WCFs thereon.

(6) For all towers, a bond must be issued to the City from a surety authorized to do business in Massachusetts and satisfactory to the City in an amount equal to the cost of removal of any and all WCFs from the premises and for the repairof such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined by the City. The amount of the bond shall be the total of the estimate by the City plus an annual increaseof 3% for the term of the lease. The term of the bond shall be for the full termof any lease plus 12 months. The City must be notified of any cancellation or change in the terms or conditions in the bond. The amount of the bond is to bepayable to the City in the event that the user breaches the agreement in Subsection F(4) herein.

(7) For all towers located on nonmunicipal property, a clause must be inserted in any lease that unconditionally permits the City or contractors hired by the City to enter the premises at any time on which towers are located if any City-owned or -controlled telecommunications devices are located thereon.

(8) For all towers located on nonmunicipal property, a clause must be inserted in any lease that unconditionally permits the City or contractors hired by the City to enter the premises on which towers are located in the event the user breaches the agreement in Subsection F(4) herein.

(9) For all towers, an agreement must be executed whereby the user will allow the

installation of municipal communications devices at no cost to the City of Marlborough and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower or with any City-controlled telecommunications equipment. There will be a presumption that a tower can accommodate more than one user, and if the applicant alleges that another carrier or carriers would interfere with its use of the tower, it must support the allegation by substantial evidence.

(10) All permittees shall be required to file annually on or before February 1 with the City Clerk a complete list of all WCF locations in the City then used by the permittee, including communications devices mounted on the interior of a building or structure.

§ 650-26. Affordable housing.

A. All special permits granted to applicants to construct multifamily dwellings thereby increasing the number or density of residential dwellings to a number or level greater than that allowable as a matter of right under the zoning classification for the subject parcel shall require the following.

(1) Developments of 20 or more units.

(a) Number of affordable units. The development shall i) provide that at least 15% of the dwelling units to be constructed for homeownership or rental purposes will be made available at affordable prices to home buyers or renters, or ii) if authorized by a majority of the City Council, provide a sum not less than $50,000 per affordable dwelling unit that would have been required in Item i) above to be deposited as directed by the City Council into the fund for economic development created by Chapter 126 of the Acts of 2011 or into another fund designated by the City Council. **[Amended 6-15-2015 by Ord. No. 15-1006130C]**

(b) Local preference. The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable dwelling units to eligible residents of the City of Marlborough.

(c) Distribution of affordable units. Dwelling units to be sold or rented at affordable prices shall be integrated into the overall development to prevent physical segregation of such units.

(d) Appearance. The exterior of the affordable units shall be designed to be compatible with and as nearly indistinguishable from the market rate units as possible.

(e) Minimum and maximum floor areas. Affordable housing units shall have a gross floor area not less than the minimum required by the State Department of Housing and Community Development under the regulations created under the authority of MGL Chapter 40B.

(f) Period of affordability. Limitations and safeguards shall be imposed to ensure the continued availability of the designated affordable units for a minimum of 99 years or in perpetuity. Such limitations and safeguards

may be in the form of deed restrictions, resale monitoring, requirements for income verification of purchasers and/or tenants, rent level controls and the like.

(g) Limitation on change in affordability. In no event shall any change in affordability occur if the minimum percentage of affordable units required in the entire City under MGL Chapter 40B has either not been met at that time or such change in affordability would cause the City to fall below that percentage.

(h) Staging of affordable and market-rate units. No more than 50% of the building permits for the market-rate units shall be issued untilconstruction has commenced on 30% of the affordable units. No more than 50% of the occupancy permits for the market-rate units shall be issued until 30% of the occupancy permits for the affordable units have been issued. The City Council may modify this provision for developments under 50 units.

(i) Alternate site. The City Council may allow the developer to build some or all of the affordable housing required by Subsection A(1)(a) on an alternate site within the City, provided that the City Council determines that this is in the best interest of the City and orders that this specific condition be attached to the special permit. The location of the alternate site shall either be specified at the time of approval for the special permit or selected within six months of said application and shall then be subject to approval by the Housing Partnership Committee or its successor, by the City Council if otherwise required by this Zoning Ordinance and by any other proper authority as may be required by law. The development of the alternate site shall comply with Subsection A(1)(b), (e), (f), (g), (h)and (j) of this section, and the staging of development on the alternate siteshall be governed by Subsection A(1)(h) applied to all units on both the main and alternate sites.

(j) Guaranty of performance. The City Council shall require security in a form satisfactory to the City Council and City Solicitor to guarantee performance, including preservation of affordability, under this subsection, and no building permit shall be issued until and unless said security has been provided.

(2) Developments of 19 or fewer units. All provisions of Subsection A(1) above applicable to 20 or more units may also be applied to developments of 19 or fewer units as the City Council finds practical.

(3) The provisions of this section shall not apply to a special permit for an existing retirement community or the expansion of an existing retirement community as governed by §§ 650-21 and 650-22. This subsection will be effective pursuant to the applicable provisions of Chapter 40A of the General Laws. **[Amended 10-4-2004 by Ord. No. 04-100555C]**

(4) The provisions of this section shall not apply to projects which are granted special permits within the Marlborough Village District. **[Added 12-1-2014 by Ord. No. 14-1005947C]**

§ 650-27. Comprehensive developments.

A. Purpose and objectives. The City Council may grant special permits exempting comprehensive developments from certain regulations and restrictions contained in this chapter, provided that said comprehensive developments satisfy the terms and conditions which may properly be imposed pursuant to this section. A "comprehensive development" shall be as defined in this chapter in § 650-5, Definitions.

(1) Purpose. The purpose of this section is to increase the number of affordable dwelling units in the City to a number which meets the requirements of Chapter 40B of the General Laws.

(2) Objectives. The special permit procedure established hereby is intended to accomplish this purpose while meeting the following objectives:

(a) To provide a special permit procedure administered by the City Council, as the preferred local alternative to comprehensive permits authorized by MGL Chapter 40B.

(b) To provide local zoning standards by which to evaluate said special permits and to encourage a more efficient review process by clearly specifying local requirements in advance of applications for applicable permits.

(c) To provide for a variety of housing, particularly affordable housing, by special incentives allowing less restrictive development standards, including a moderately higher density than would otherwise be allowed.

(d) To equitably distribute affordable housing developments throughout the City's neighborhoods, in small- to medium-sized projects dispersed widely so as to avoid large concentrations in any area.

(e) To encourage the construction and location of affordable housing on certain sites without undesirable impacts on abutting uses or the neighborhood in terms of conflicting uses, visual impact, traffic impact or the like.

(f) To provide affordable housing which conserves environmental features, woodlands, wetlands and areas of scenic beauty and preserves sites and structures of historical importance.

(g) To provide affordable housing on sites which will not displace uses allowed as right which uses would contribute more positively to the City and have been planned for in terms of municipal services and infrastructure.

(h) To provide affordable housing without imposing an unnecessary increased financial burden on the citizens of the City because of demands for additional municipal services or public improvements.

(i) To provide affordable housing without threatening the ability of the City to provide bona fide infrastructure and public services to existing and

future development on other sites.

B. Special permit required. Applicability. In comprehensive developments, as specifically permitted by special permit in certain zoning districts in § 650-17,[7] no building or premises shall be used nor shall any building or structure be constructed or reconstructed except as follows: Provided that a special permit is issued by the City Council in accordance with the provisions of this section, single-family, two-family and multifamily dwellings, and structures appurtenant thereto, including but not limited to clubhouses (with facilities for serving food and beverages), athletic facilities, parking areas, rest areas, playgrounds, tennis courts, swimming pools and accessory storage facilities, shall be the only permitted uses therein.

C. Standards.

(1) General requirements. As an incentive to encourage the construction of affordable housing, the requirements of this section shall totally govern the dimensional and locational requirements for comprehensive developments unless otherwise provided in this section. Other provisions of Article VII of this Zoning Ordinance shall not apply to affordable housing developments. All the provisions of Article VIII for special permits shall apply to comprehensive developments.

(2) Review standards. It is not the intent of this section that developments meeting the standards provided hereinafter shall receive automatic approval nor that the standards be applied inflexibly in every instance. Each project shall undergo review and be judged on its merits. The standards are basic requirements and shall not preclude the City Council from specifying other requirements when necessary for particular sites to protect the public health, safety and welfare and meet the intent of this chapter, for instance in the case of reuse of older existing structures or on sites providing unforeseen development problems or impacts. In applying these standards, the mostrestrictive provisions of this section shall apply.

(3) Principals of development company. No application for a special permit shall be approved unless the City Council shall first receive the applicable information required in Subsection D and shall thereafter find that:

(a) The applicant's associates, professional advisers and contractors are qualified by training and/or experience to construct and market dwellings comparable to those proposed. [See Subsection D(1)(a).]

(b) The development plan proposed is financially and environmentally sound. [See Subsection D(1)(b).]

(c) The development plan proposed meets all other requirements of this section. [See Subsection D(1)(f).]

(4) Location and impact of comprehensive developments.

(a) Impact on sensitive areas. Comprehensive developments shall avoid

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7. Editor's Note: See the Table of Uses included at the end of this chapter.

impacts to the extent possible on environmentally sensitive areas, such as floodplains, wetlands, groundwater recharge areas, aquifers, areasfeeding drinking water supply or recreation water bodies, and significant woodlands, hillsides or other natural features.

(b) Impact on infrastructure. Comprehensive developments shall avoid areas which have public infrastructure or services incapable of serving the increased density of such developments without imposing significant increased public expense that would otherwise be unnecessary for uses built at densities permitted as of right (for example, inadequate roads, utilities or schools). Applicants may downsize their projects or improve the infrastructure to meet this criteria.

(c) Site suitability. Comprehensive developments shall strive to avoid sites which are clearly better suited for uses permitted as of right by zoning and planned for those sites by the City in terms of roads, utility, infrastructure and site characteristics.

(5) Project size. The maximum number of dwelling units (affordable and market-rate) in any comprehensive development shall be 175 on any lot or any combination of contiguous lots, and the minimum number shall be nine.

(6) Concentration. So that comprehensive developments are not unduly concentrated in the same areas of the City, they shall be located so that they meet all the following criteria:

(a) Density of comprehensive development. The maximum density of all dwelling units (market-rate and affordable) located within all comprehensive developments shall be no more than 250 units per square mile, measured within a one-half-mile radius from the center of any such development. This provision shall not apply within the inner City, as defined in the following subsection:

[1] The "inner City" shall be defined as the RB, RC and CA Zoned Districts existing as of January 1, 1988, including the Business District between Lakeside Avenue and Clinton Street.

(b) Proximity of comprehensive developments. The minimum distance between comprehensive developments shall be as specified in the following table. Said distance shall be measured between the closest dwelling units in each development. The inner City shall be as defined in Subsection C(6)(a)[1].

Table of Proximity Between Comprehensive Developments

Number of Units in Comprehensive Development	Minimum Distance Apart (feet)	
	Inner City	Outside Inner City
9 to 50	600	1,000
51 to 100	1,200	2,000
101 to 150	2,000	3,500
151 and greater	3,500	5,000

(7) Density relief. A development seeking an increase in the density allowed as of right for a particular parcel of land may not exceed the density allowed by right or by special permit in the district in which it is located, except as provided for in the following subsection.

(8) On-site dimensional regulations.

(a) Purpose. The purpose of the following dimensional regulations shall be to allow an appropriate increase in density as an incentive for affordable housing but not so great as to cause an undue impact on or conflict with the surrounding neighborhood density. This density increase will permit sufficient affordable units to meet the minimum 10% required by MGL Chapter 40B throughout the entire City.

(b) Modifications. The City Council may determine that these dimensional regulations should be modified on particular sites where conditions on site or abutting the site so warrant.

(c) Exceptions. Conversion, reconstruction or replacement of preexisting buildings may exceed the dimensional regulations to an extent of any preexisting nonconformity.

Table of On-Site Dimensional Regulations for Comprehensive Developments

Zoning District	Minimum Lot Area Per Dwelling Unit (square feet)	Maximum Lot Coverage (percent) (excluding wetlands)	Maximum Height (stories)
RR	14,000	30	2 1/2
A-1	8,000	35	2 1/2
A-2	7,000	40	3
A-3	5,000	45	3

Table of On-Site Dimensional Regulations for Comprehensive Developments

Zoning District	Minimum Lot Area Per Dwelling Unit (square feet)	Maximum Lot Coverage (percent) (excluding wetlands)	Maximum Height (stories)
Outside the inner City:			
All nonresidential districts and districts in which multifamily residential is permitted	4,000	50	3
Within the inner City:			
RB	3,500	55*	4
RC	3,000	60*	4
B, CA	2,000	80*	5

NOTE:

* Coverage within the inner City may be modified according to Subsection C(8)(c) above.

(9) Affordable units.

(a) Type of housing. "Affordable housing" shall mean sale or rental housing as defined in § 650-5 of this chapter.

(b) Nonfamily housing. This section shall apply only to affordable housing for families and not to sites for elderly or special needs housing built by or for the Marlborough Community Development Authority.

(c) Inclusionary affordable housing provisions in § 650-26.

[1] Certain provisions of § 650-26 requiring a minimum percentage of affordable housing units in all multifamily developments shall also be applicable to this section governing comprehensive developments.

[2] Said provisions shall include the following subsections of said section:

[a] Local preference: § 650-26A(1)(b).

[b] Distribution of affordable units: § 650-26A(1)(c).

[c] Appearance: § 650-26A(1)(d).

[d] Floor areas: § 650-26A(1)(e).

[e] Period of affordability: § 650-26A(1)(f).

[f] Limitation on change in affordability: § 650-26A(1)(g).

[g] Staging of affordable and market-rate units: § 650-26A(1)(h).

(d) Proportion and income level or cost. The percent of affordable units and their income level or cost shall be governed and modified pursuant to MGL Chapter 40B and related regulations as they may be amended from time to time.

(e) Provisions for Housing Authority ownership.

[1] New construction; for-sale units. The applicant shall offer to the Community Development Authority not less than 5% of the newly constructed home-ownership affordable units. The Community Development Authority may opt to purchase (by signing a right of first refusal) any or all of the units offered, subject to available funding.

[2] Expiration of affordability; for-sale units. If and when any home-ownership affordable units are converted to market-rate units, the Marlborough Community Development Authority shall have the right of first refusal to buy said units at the affordable rate established for each of those units in the deed restrictions.

[3] Expiration of affordability; rental units. Following any requiredlock-in period requiring rental of any units at affordable or below- market rates, the applicant shall give the Marlborough Community Development Authority the first option to purchase said affordable units at an amount no higher than the purchase limits specified by the Executive Office of Communities and Development or its successor agency for housing units under Chapter 705 or any successor programs.

[4] Provisions for handicapped units. The City may require a certain number of units to be specifically designed for the handicapped.

(10) Profit sharing. It is not the intent of this section that either the previous landowners or the developers of affordable housing obtain excess profit by means of a substantial increase in the number of dwelling units allowed in comprehensive developments above the number allowed under existing zoning. Such excess profit may drive up project density and have undesirable impacts on the neighborhood. Accordingly, the applicant shall submit the information required in Subsection D(1)(b) and (c) concerning financial analysis and land acquisition and interest, and the City Council shall make the following determinations or conditions prior to approval of a special permit:

(a) Land sales profit; see Subsection D(1)(b). The current or former landowners, as outlined in Subsection D(1)(b), have not profited and/or will not profit unduly, as defined hereinafter, from the sale of the land for affordable housing built at a substantially higher density allowed in a comprehensive development. In order to encourage the construction of affordable housing, while at the same time limiting the increase in project density, the level of profit from land sales shall be permitted to be no more than 25% greater than would be received if the land was sold for development permitted by right under existing zoning. If the City Council determines that an undue profit on the land sale will be or has been obtained, then said special permit may be denied unless either or both of the following requirements are met:

[1] The excess profit is deposited into a City-controlled affordable housing fund to be used exclusively to support development of more affordable housing on this site or other sites within the City; or

[2] The applicant reduces the land sale price so that the project density is reduced and/or the proportion of affordable units in the project is increased.

(b) Determination of project size and affordability; see Subsection D(1)(c). The project size shall be limited to the minimum number of total units required to make the project economically feasible, while providing the maximum number of affordable units which can be supported at the proposed project size. "Economic feasibility" shall be as defined in the following Subsection C(10)(c). The information required under Subsection D(1)(c) must be submitted to fulfill this requirement.

(c) Land development profit. No building permit shall be issued until the applicant has entered into an agreement with the City and the Marlborough Community Development Authority for the sharing of excess profits, if any, from land development allowed at the increased density permitted in the comprehensive development. In order to encourage the construction of affordable housing, the level of profit from development shall be limited to 15% (pre-tax, as a percentage of total projected sales), or the return permitted by the applicable state or federal funding agency for limited profit developers. Said agreement shall specify that the applicant's annual records shall be reviewed at the developer's expense by an independent auditor chosen by the City and agreed to by the applicant. Any excess profit shall be deposited into a City-controlled affordable housing fund to be used for development of more affordable housing within the City.

(11) Parking. All requirements for parking and driveways in Article VII shall apply except for the following provisions:

(a) Number. The minimum number of parking spaces per dwelling units shall be as follows:

[1] Market-rate units: as required by § 650-26.

[2] Affordable units: 25% less than required by § 650-26.

(b) Reserve. A site for future, reserve parking shall be shown on the development plan and left as landscaped area until such time as it may be necessary to provide additional parking. The size of this reserve site shall provide additional spaces in the ratio required for market-rate units under Article VII of this chapter. Provisions shall be made in the covenants and deed restrictions for the future installation of reserve parking by the owners of the dwelling units, if such parking is needed.

(12) Driveways and maneuvering aisles. All driveways and maneuvering aisles shall be designed to the standards required by Article VII of this chapter and shall be located, constructed and maintained as private ways. Design of said facilities shall be in accord with the recommendations of the City Planner, City Engineer and Fire and Police Departments.

(13) Pedestrian paths. Paths for the use of residents shall be a minimum of five feet wide and attractively designed with proper regard to convenience, separation of vehicular, bicycle and pedestrian traffic, adequate connectivity, completeness of access to the various amenities and facilities on the site. Pedestrian areas shall be designed for wheelchair accessibility according to state law.

(14) Landscaping and screening. The development shall meet all landscaping and screening requirements of § 650-47. In addition, comprehensive developments over 20 units in size shall be buffered on side and rear lot lines from adjacent homes by a landscaped area at least 15 feet wide, which shall be planted with trees at least six feet high when planted and spaced no more than 15 feet apart. No building shall be closer than 25 feet to any landscaped buffer. Said buffer shall be required to the maximum practical extent within the inner City as defined in Subsection C(6)(a), as required by the City Council.

(15) Recreation facilities.

(a) For comprehensive developments of over 50 units in size, small outdoor play facilities shall be provided close to the residential units for younger children.

(b) For comprehensive developments over 100 units in size, major, active, outdoor recreation facilities shall be provided and installed on site or nearby by the applicant, sufficient for all the residents of the site (such as softball, tennis, swimming pool or basketball), unless there are adequate existing public recreational facilities nearby, if deemed appropriate by the City Council. Any new facilities provided by the applicant shall belocated so as to minimize any negative impact on the abutters.

(c) Such facilities shall be shown on the development plan and itemized in the special permit but shall not be included in lot coverage.

(16) Surface drainage. The surface drainage system shall be designed in accord with the rules and regulations governing subdivisions in the City of Marlborough and more stringent requirements as may be set by the City

Council and/or Conservation Commission when the site may affect sources of water supply or bodies of water used for recreation in the City of Marlborough.

(17) Private utilities. All electric, gas, television cable and telephone distribution lines shall be placed underground unless the City Council shall grant an exception to this requirement.

(18) Sewer and water. All sewer and water facilities shall be designed in accordance with the requirements of the City Engineer and City Master Plan for such facilities, the Sanitary Code promulgated by the Massachusetts Department of Public Health, the regulations of the Marlborough Board of Health and all other laws pertaining thereto.

(19) Conservation restriction on open space. In cases where the special permit would allow the applicant to build at greater density than allowed as of right, in exchange for the increase in density, the applicant shall prepare and submit a conservation restriction that preserves all open space identified on the development plan as open space in perpetuity, except only for those areas which may be reserved for additional parking construction or the like. There shall be public access to appropriate areas of said open space if so designated by the City Council and agreed to by the applicant. Said restriction shall be submitted to the City Solicitor for review and approval and shall be recorded with the Registry of Deeds prior to the issuance of a building permit on the project.

(20) Operation and maintenance of common facilities and services. All on-site commonly owned facilities shall be operated and maintained by a management agent or association of unit owners.

D. Administration.

(1) Application for a special permit. An application for a special permit for construction of dwellings in a comprehensive development shall be governed by all procedures, standards, criteria and submission requirements applicable to all special permits under Article VIII, § 650-59, and in addition shall contain the following information:

(a) Applicant qualifications; see Subsection C(3). All information required by the City Council regarding the training and experience of the applicant, its associates, professional advisers and contractors in thedevelopment and management of housing as well as their respective financial positions. Such information must include evidence of prior experience with residential development, the capacity to undertake the type of development proposed, the work history of key personnel and evidence of financial capacity to undertake a project of this scope.

(b) Land sale and interest; see Subsection C(10)(a). Information documenting the dates of sale, names of all corporate and individual sellers and buyers, and consideration paid or exchanged for the subject property over the previous three years, but in any event including the previous three owners having no business relationship. Details of any relationships between the applicants and current and former owners of the

property shall be supplied. An appraisal shall be submitted by an independent qualified appraiser selected by the City and approved by the applicant but paid for entirely by the applicant. Said appraisal shall determine the current land value under the zoning regulations governing the use of the land without a special permit for a comprehensive development.

(c) Financial analysis to determine project size and affordability; see Subsection C(10)(b). For projects over 20 units in size, a financial analysis shall be submitted which shall help determine the minimum number of total units required to make the project economically feasible and maximum number of affordable units which can be supported at the proposed project size. Economic feasibility shall be defined bySubsection C(10). Such analysis shall be conducted by an independent consultant to be jointly selected by the City and the applicant, but paid forentirely by the applicant. Projects under 20 units in size may be required to provide said analysis at the discretion of the City Council.

(d) Funding. Identification of funding program for the affordable units and a copy of the funding application.

(e) Market program. Summary of income range and methods for attracting residents of broad income and ethnic backgrounds.

(f) Development plan showing location of affordable units and all information required on plans under special permits as provided for by Article VIII, § 650-59.

(g) Impact report. A report on the adequacy of capacity and mitigation proposed for utilities and roadways leading to and serving the development.

(h) Covenants and deed restrictions. The following documents shall be provided to the City Solicitor for review and approval prior to issuance of a certificate:

[1] Provision for reserve parking: see Subsection C(11)(b). Legal agreements for provision of future reserve parking.

[2] Provision for common facilities: see Subsection C(20). Deed restrictions on management agreements.

[3] Provision for open space: see Subsection C(19). Deed restrictions on open space.

[4] Other information. Any and all other information that the City Council may reasonably require in a form acceptable to it to assist in determining whether the applicant's proposed development meets the objectives of Subsection A and satisfies the standards of Subsection C above.

(2) Review and comment by boards and agencies.

(a) Prior to submission. Before submission by the developer of the full application to the City Council, the developer shall submit a preliminary application to the Marlborough Housing Partnership Committee (or its successor), which shall then conduct initial reviews and ensure the application meets the intent of this section.

(b) After submission. After submission by the developer to the City Council, the developer shall provide the following with a copy of the application for its review and recommendation prior to a decision on any application by the City Council: Marlborough Housing Partnership Committee, Community Development Authority Housing Division, City Departments of Engineering, Planning, Fire and Police. The Planning Board shall be provided with a copy for its review and comment if any public roadway or subdivision of land is involved in the proposed development. The Conservation Commission shall be provided with a copy for its review and comment if any wetlands are involved in proposed development.

(c) Comment period. In accordance with MGL Chapter 40A, failure of any such board or agency to make recommendations within 35 days of receipt by such board or agency of the final application shall be deemed lack of opposition thereto. Said board or agency may request an extension of time from the developer as provided for under MGL Chapter 40A.

(3) Review and action by City Council. The procedures for review and action by City Council shall be as provided for all special permits under Article VIII, § 650-59.

(4) Site plan review. Following approval of the general scope of the project under the special permit, the application shall be subject to site plan review for purposes of detailed review of site and engineering concerns prior to construction.

§ 650-28. Open space developments.

A. General description. An "open space development" shall mean a development of residential lots in which the houses are in one or more groups on the site, separated from each other and from adjacent properties by permanently protected open space.

B. Purpose and objectives. The purpose of this section is to:

(1) Encourage a less sprawling form of development that has consumed excessive open space, caused land erosion, and destroyed attractive natural features of the land.

(2) Allow for greater flexibility and creativity in the design of residential subdivisions.

(3) Encourage the permanent preservation of natural resources and open space.

(4) Protect scenic vistas.

(5) Allow for more economical construction and maintenance of streets and utilities.

(6) Encourage the production of more affordable and diverse housing types.

(7) Allow for more economical construction and maintenance of recreational amenities through common ownership.

C. Applicability.

(1) Special permit required. In open space developments, no building or premises shall be used, nor shall any building or structure be constructed or reconstructed, unless a special permit has been granted by the Planning Board in accordance with the provisions of this section.

(2) Zoning districts. Open space development shall be limited to the following zoning districts: Rural Residence RR, Residential A1, A2 and A3.

(3) Compliance with subdivision regulations.[8] Subsequent to the granting of the special permit, compliance with the rules and regulations regarding the subdivision of land must be met.

(4) Previously approved subdivisions. Where a definitive plan has been previously approved under conventional zoning by the Planning Board and construction has not commenced, an applicant may submit a new plan under this section. As an incentive to encourage new applications to be made under this section:

(a) The number of allowable lots may be based on the previously approved plan.

(b) Consideration may be given by the Planning Board to requests for waivers from the subdivision rules and regulations if a benefit to the City is demonstrated, so that the cost of constructing roads, utilities and other infrastructure items may be reduced.

(c) Application fees may be waived by the Planning Board.

D. General requirements.

(1) Uses. Uses in an open space development shall be limited to those uses permitted within the applicable zoning districts as specified in Article V, § 650-17.[9]

(2) Site ownership. The development may consist of a single parcel of land or contiguous parcels, provided they are in common ownership or are submitted with the binding consent of different owners.

(3) Access. Each lot shall have adequate access on a public or private way. Common driveways are permitted in accordance with requirements appearing elsewhere in this chapter.

(4) Ways, interior drives, and utilities. The construction of all ways, interior drives and utilities shall be in accordance with the standards specified in the Planning Board's Rules and Regulations Governing the Subdivision of Land unless the

8. **Editor's Note: See Ch. A676, Subdivision of Land.**

9. **Editor's Note: See the Schedule of Uses included at the end of this chapter.**

Planning Board waives said rules and regulations based on its determination that adequate access will be provided to all lots in the development by ways that will be safe and convenient for travel.

(5) Lot layout. Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.

(6) Internal circulation. There shall be an adequate, safe and convenient arrangement of pedestrian circulation, roadways, driveways and parking.

E. Dimensional and intensity requirements.

(1) Minimum area of site. The total area of the site proposed for open space development shall be at least five acres. Any site shall have a minimum of 50 feet of frontage on a public way.

(2) Maximum density.

(a) Number of lots. Except as provided below, the total number of building lots on the tract proposed for open space development shall not exceed the number of lots which could reasonably be expected to be developed under a conventional plan in full conformance with zoning and subdivision regulations, health codes and wetlands protection regulations.The number of lots allowable without bonuses shall be determined as follows:

[1] The applicant shall prepare a conventional plan to show the number of lots which could be created by right under conventional zoning. In order to ensure that the lots are buildable, the plan shall not include building lots that have more than fifty-percent coverage by wetlands or by slopes of 25% or greater. The requirements for the conventional plan are further detailed under Subsection H.

[2] Alternatively, the applicant may elect to use the number of lots from a definitive subdivision plan for the same parcel which has a valid approval from the Planning Board.

(b) (Reserved)

(c) Density bonuses and incentives. The applicant may apply for density bonuses as an incentive to provide certain amenities which would not otherwise be provided in the open space development. The Planning Board shall authorize an increase in the number of lots of up to 15% above the number otherwise permitted in this section as specified in the preceding Subsection E(2)(a) and (b), based on the following criteria, unless the Planning Board explains in its decision why unusual circumstances cause it to act otherwise:

[1] Affordable housing. A bonus of one added lot for each affordable housing unit included in the open space development. Said affordable units shall be administered by the Marlborough Housing Partnership or successor agency, where applicable. The affordable

housing shall meet the following requirements:

[a] The housing shall meet the requirements of the definition of "affordable housing" included in § 650-5.

[b] All affordable housing units shall meet the requirements of § 650-26A(1)(b), Local preference; (c), Distribution of affordable units; (d), Appearance; (e), Minimum and maximum floor area; (f), Period of affordability; (g), Limitations on change in affordability; (h), Staging of affordable and market-rate units.

[c] The affordable housing shall consist of either single-family dwellings or single-family zero-lot-line dwellings, as defined in this chapter. For the purpose of this section, single-family zero-lot-line dwellings shall not be attached to more than one other unit. No multifamily dwelling units shall be permitted. Single-family zero-lot-line dwellings shall be permitted in an open space development solely for the purpose of providing affordable units and shall be designed to appear as attached single-family dwellings when viewed from the street, shall fit into the overall design, and shall be reasonably mixed with the single-family dwellings.

[2] (Reserved)

(3) Intensity regulation. The Planning Board may grant a reduction of all intensity and yard regulations applicable to the underlying zoning districts for all portions of an open space development, provided the Planning Board finds that the reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with these regulations, and also provided that in no instance shall a lot deviate from the following table of requirements:

Table of Lot Area and Yard Requirements for Open Space Development

	Zoning Districts			
Minimum requirements	**RR**	**A-1**	**A-2**	**A-3**
Lot area (square feet)	20,000	15,000	12,000	10,000
Lot frontage (feet)[1]	70	60	50	50
Lot width at front building line (feet)	90	80	70	70
Front yard setback (feet)	25	20	20	20
Side yard setback (feet)[2]	15	15	10	10

Table of Lot Area and Yard Requirements for Open Space Development

	Zoning Districts			
Minimum requirements	**RR**	**A-1**	**A-2**	**A-3**
Rear yard setback (feet)[3]	25	25	20	20
Maximum lot coverage (%)[4]	25	30	30	30

NOTES:

[1] Lots located on the turnaround of a dead-end street shall have a minimum of 50 feet of street frontage, provided the minimum lot width at the front building line is maintained as required in this table.

[2] A side yard setback on one side needs to be provided for a single-family zero-lot-line dwelling.

[3] Rear yard dimensions may be increased where perimeter buffers are required. See Subsection F(7) below.

[4] Lot coverage shall be defined to include buildings, driveways, and parking areas.

F. Common open space requirements.

(1) General. All land not devoted to dwellings, yards, accessory uses, roads or other development shall be set aside as common open space.

(2) Use. The use of common open space shall be restricted to the following:

(a) Active and passive recreation, conservation, forestry, agriculture, natural buffers.

(b) Accessways, parking, underground utilities and structures necessary for and accessory to the uses in Subsection F(2)(a) above.

(3) Number of parcels. Common open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.

(4) Access. The common open space shall be provided with adequate access from a public or private way.

(5) Minimum area. The total area of common open space shall equal or exceed the area by which all residential lots are reduced below the basic minimum lot area normally required in the zoning district. In no case shall said total area be less than 40% of a total site in an RR District, 30% in an A-1 or A-2 District or 20% in an A-3 District, even if density bonuses are included as provided for under Subsection E(2)(c).

(6) Land characteristics. The following lands may be used to meet the minimum

requirements for common open space only in the proportions specified in the table below. However, if more than the minimum area of open space is provided, then these lands may be included within the excess common open space.

Table of Common Open Space Dimensional Requirements for Open Space Developments

Land Characteristic	Maximum Area Permitted Within Required Common Open Space
Steep slopes, defined as slopes greater than 25%	50%
Wetland and floodplain resource areas, as defined by MGL c. 131, § 40	Not greater than percentage of wetlands found in the overall parcel
Roads and parking areas serving dwelling units[1]	0%
Roads, parking areas and structures serving common open space[1]	10%

NOTES:

[1] Roads and parking areas serving dwelling shall always be paved. Roads and parking areas serving common open space shall be paved if so requiredby the Planning Board.

(7) Perimeter buffers. Perimeter buffers are required where abutting property has already been developed with single-family homes on lots in full conformity with the requirements of this chapter as of January 1, 1992, and where residential structures within the open space development are located on lots of reduced size allowed by this section. Where buffers are required, said structures shall be set back from the boundaries of the development by a distance no less than double the minimum yard dimension in the underlying zoning district. Within said setback shall be a buffer strip which shall be kept in a natural landscaped condition. The Planning Board may require the planting of trees if none exist naturally. Said buffer strip may be located eitherwithin a privately owned residential lot having a buffer easement or, alternatively, within the common open space, as the Planning Board shall determine.

(8) Design guidelines. The design of the common open space shall, to the extent practical, follow the design guidelines to be used by the Planning Board in making a decision on the special permit, as described in Subsection H(8)(b).

G. Ownership and management of open space.

(1) City, trust or association. Common open space in any open space development approved under this section shall be conveyed to:

(a) The City and may be accepted by it for conservation and/or recreational use;

(b) An open space land trust or any other nonprofit corporation approved by the Planning Board, the principal purpose of which is land conservation and preservation of open space; and/or

(c) A corporation, trust or association owned or to be owned by the owners of lots in the development, hereafter referred to as the "homeowners' association," subject to covenants enforceable by the City to keep the common space open or in a natural state, as approved by the Planning Board. If a corporation or trust owned by the owners of lots is utilized, ownership thereof shall pass with the conveyances of the lots in perpetuity. A homeowners' association agreement shall be submitted with the special permit application guaranteeing continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of the City Solicitor and Planning Board.

(2) Entity other than the City. If the common open space is not to be conveyed to the City, then the applicant shall provide all of the following to the Planning Board for approval prior to commencement of construction:

(a) A provision in the covenant that the common open space will be deeded as approved by the Planning Board. In addition, the covenant shall not be released by the Planning Board until proof of ownership has been provided by the applicant to the Planning Board.

(b) A perpetual conservation restriction of the type described in MGL c. 184, § 31 (including future amendments thereto and corresponding provisions of future laws), enforceable by the City, which shall be recorded by the applicant and shall provide that such land shall be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways except as previously approved by the Planning Board.

(c) A maintenance program describing how the common open space will be maintained in perpetuity to standards satisfactory to the Planning Board.

(d) An agreement empowering the City to perform maintenance of the common open space in the event of failure to comply with the maintenance program included in the application pursuant to the preceding paragraph, providing that, if the City is required to perform any maintenance work, the owners of the lots included in the open space development shall pay the cost thereof and the cost shall constitute a lien upon their properties until said cost has been paid.

(3) Time of dedication. All open space shall have been dedicated before any building permits are issued.

H. Application and review procedure.

(1) Preapplication review. Prior to filing an application, the applicant shall meet with the Planning Department in order to promote better communication and avoid misunderstanding. The Planning Department shall arrange for a

preapplication review with the Conservation and Engineering Departments.

(2) Streamlined submission. The Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve a related definitive plan for subdivision, nor reduce any time periods for Planning Board consideration under that law. However, in order to facilitate processing, the following procedures allow for streamlined submission of an application for special permit and Subdivision Plan approval. The Planning Board may adopt further regulations if necessary, insofar as practical under law, to satisfy the Planning Board's regulations under the Subdivision Control Act.[10]

(3) Summary of two-step process.

(a) Step one: submission of concept plan to the Planning Board for special permit. In the first step, the applicant shall submit a concept plan for the open space development together with a conventional subdivision plan showing the number of lots determined in accordance with Subsection E(2). A public hearing shall be held on the special permit, followed within 90 days by a decision of the Planning Board to grant or deny a special permit for the open space development in accordance with MGL Chapter 40A.

(b) Step two: submission of definitive subdivision plan. If a special permit has been granted, the applicant must submit a definitive subdivision plan for the open space development, based upon the concept plan. If the special permit has been denied, the applicant may submit a definitive subdivision plan for a conventional layout. The Planning Board shall hold a public hearing for the definitive subdivision plan and render a decision within 90 days in accordance with MGL Chapter 41.

(4) Special permit application.

(a) Special permit rules and regulations. The Planning Board may adopt rules and regulations for the issuance of special permits applicable to this section, in accordance with MGL Chapter 40A.

(b) Submission. The application shall be filed in accordance with MGL Chapter 40A.

(c) Application materials. The application or petition for special permit shall be made in writing by the applicant or his duly authorized agent, who shall file the following number of sets of application materials at the offices set forth below:

Number of Sets	Office
1	Office of City Clerk
1	Police Chief
1	Fire Chief

10. **Editor's Note: See MGL c. 41, § 81K**

Number of Sets	Office
1	City Engineer
1	Director of Planning
1	Conservation Officer
2	Planning Board
1	Conservation Commission

(d) Special permit review fees. At the time of application, the applicant shall pay a filing fee at the office of the City Clerk in the amount calculated to be the same as the preliminary plan design review fees specified in the Marlborough Subdivision Rules and Regulations.[11] The Planning Board may waive the fees.

(e) Conventional subdivision plan. The conventional subdivision plan required to determine the number of lots allowable shall be drawn to the same scale as the concept plan and shall contain the following:

[1] The names, approximate location and widths of adjacent streets.

[2] The existing and proposed lines of streets, ways and easements and any public areas within the subdivision.

[3] The approximate boundary lines of proposed lots with approximate areas and dimensions.

[4] The topography of the land at the same contour interval as the concept plan.

[5] The boundaries of wetlands and floodplains in the same form as required for the concept plan under Subsection H(4)(g)[5], [6] and [7] below.

[6] Where the property would be served by subsurface sewage disposal in cases where public sewer is not reasonably available, percolation tests shall be conducted for all lots shown on the conventional subdivision plan. Said tests shall be under the supervision of the Board of Health and in conformity with Title V and Board of Health regulations. Those lots which are determined to be not suitable for subsurface sewage disposal shall not be counted as allowable lots under Subsection E.

[7] The Planning Board may require any additional information necessary to make the determination and assessments required by this section.

(f) Preparation. The concept plan shall be prepared by a professional landscape architect and a professional engineer, both registered in Massachusetts.

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11. Editor's Note: See Ch. A676, Subdivision of Land.

(g) Concept plan. The concept plan shall contain the following information, in addition to all requirements of a preliminary plan as specified in the Subdivision Rules and Regulations:

[1] Existing landscape features in such detail appropriate to the site, including differentiation of wooded versus open areas, and a further differentiation between coniferous and deciduous trees.

[2] Existing and potential open spaces and trails within 500 feet of the site.

[3] Archeological and historic features on site.

[4] Major long views within the site and within 500 feet of the site.

[5] The boundaries of all resource areas protected by the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, as established through a determination of applicability.

[6] Floodplain and Wetland Protection Districts defined by § 650-23 of this Zoning Ordinance.

[7] Inland restricted wetlands protected by the Inland Wetlands Restriction Act, MGL c. 131, § 40A.

[8] Any additional information necessary to make the determinations and assessments required by this section.

(5) Conservation Commission review. The Conservation Commission shall review the special permit application and shall submit in writing to the Planning Board its report and recommendations upon the degree to which the open space development enhances the protection of the environment, including at least:

(a) Compatibility with the requirements of the Massachusetts Wetlands Protection Act.

(b) Evaluation of the location and configuration of open space parcels as to their value to recreation, wildlife habitats and environmental protection.

(6) Public hearing, notice and decision. The procedure for public hearing, notice and decision shall be held in conformance with MGL Chapter 40A.

(7) Decision.

(a) Evaluation of plan. The Planning Board shall approve or approve with conditions a special permit for an open space development, provided that the Planning Board determines that the open space development is at least as beneficial to the City as a conventional plan. In evaluating the plan or plans, the following criteria shall be considered by the Planning Board:

(b) Design guidelines and evaluation criteria.

[1] Protection of scenic views and vistas.

[2] Protection of valuable or sensitive environments, with wetlands located away from roads or behind lots.

[3] Buffer areas are provided which minimize conflict between residential and agricultural or other uses or between adjacent residential subdivisions and lots of reduced size in an open space development.

[4] Proximity of the maximum number of lots (especially smaller lots) close to the common open space.

[5] Consolidation of open space as large, contiguous units, wherever possible.

[6] Continuity of open space of adequate width within the development, connecting to adjacent open space areas, whether existing or in future potential developments adjoining the site. (Narrow strips of common open space should be used only when necessary for access or buffers.)

[7] The elements of the site plan (lots, buildings, circulation, common open space, landscaping, etc.) shall be arranged favorably with existing natural features so as to minimize soil removal, tree cutting and general disturbance to the site.

[8] Protection of major street capacity by avoiding driveways egressing onto such streets.

[9] The pedestrian circulation system shall be designed to assure that pedestrians can move safely and easily on the site and between properties and activities within the site and neighborhood.

[10] The street system shall not only provide for the safe and convenient movement of vehicles on and off the site but also be designed to contribute to the overall aesthetic quality of the development.

(8) Findings. The Planning Board may grant a special permit only if the Planning Board finds that:

(a) The development meets the objectives of an open space development listed in Subsection B.

(b) The development meets the design criteria of an open space development listed in Subsection H(8)(b).

(c) The development will not have a substantial or undue adverse effect upon adjacent property or the character of the neighborhood.

(9) Definitive plan.

(a) Submission and general procedure. If the open space development special permit is granted by the Planning Board, then the applicant shall submit to the Planning Board a plan in conformity with the requirements and procedures for definitive plan submission and review under the

Subdivision Rules and Regulations of the Planning Board.

(b) Limitation on subdivision. No open space development for which approval has been granted under this section may be further subdivided and a notation to this effect shall be made on the definitive plan.

(c) Waivers. In accordance with MGL c. 41, § 81R, the applicant mayrequest a waiver from the Subdivision Rules and Regulations. It is the intent of this section that the comparative impact analysis should be waived.

(d) Review and public hearing. The Planning Board then shall review the aspects of the open space development with regard to its compliance to the Subdivision Control Law, and shall hold a public hearing as required by MGL c. 41, § 81T.

(e) Variations from concept plan. The overall concept shall only be reconsidered if there is substantial variation between the definitive plan and the concept plan.

[1] Definition of "substantial variation." A substantial variation shall be defined as any increase in the number of lots, a decrease in the open space acreage by more than 10%, a significant change in the character of the open space or amenities, a change in the layout which causes dwellings or roadways to be placed significantly closerto a dwelling located outside the development and which adversely and significantly affects natural landscape features and open space. The relocation of lot lines shall not be considered a substantial variation. The determination that a variation is substantial shallrequire a vote of the Planning Board by 2/3 majority of thosepresent, following consideration of recommendations from the City Engineer, Conservation Officer, Planner and Solicitor.

[2] New public hearing. If the Planning Board finds before the hearing on the definitive plan that a substantial variation exists or, alternatively, if the Planning Board finds the substantial variation subsequent to the hearing on the definitive plan, then the Board shall notify the applicant that a new public hearing shall be required to amend the special permit and that said hearing shall relate solely to the acceptability of the substantial variations. The acceptability of said substantial variations must be determined by the Planning Board after public hearing prior to final approval by the Planning Board of the definitive plan. If appropriate, a second hearing on the concept plan variations may be held on the same day as the hearing on the definitive plan.

§ 650-29. Applicability to historic district.

The provisions of §§ 650-40 through 650-49 shall not apply to any property located in a historic district which was duly created pursuant to the provisions of MGL Chapter 40C, or to any property which is used solely to provide accessory parking for any property in

said historic district, if and to the extent that:

A. A certificate of appropriateness has been granted by a local historic district commission pursuant to MGL Chapter 40C regarding a construction or alteration of a building or structure on said property;

B. Said certificate of appropriateness specifically refers to one or more of said zoning sections and specifies the way in which the matter which is the subject of that zoning section or sections will be handled as part of the construction or alteration; and

C. The decision of the Historic District Commission contains written findings that the said Historic District Commission has solicited and received the written comments of the Building Commissioner, City Engineer, City Planner, Police Chief and Fire Chief regarding any such matters and has duly considered any comments so received, and that the way in which such matters will be handled as part of the construction process is in harmony with the general purposes and intent of this chapter and will not be detrimental to the neighborhood. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

D. The alternative approved by the Historic District Commission does not reduce landscaping, the required pervious areas pursuant to § 650-23B(2), or building or other setback requirements which, according to the terms of the Zoning Ordinance, would otherwise have applied, by more than 50%, and does not reduce the required number of parking spaces by more than 25% of the number which would otherwise have been required.

E. The construction or alteration is done in compliance with all terms of the certificate of appropriateness.

§ 650-30. Limited development subdivisions. [Added 11-29-2004 by Ord. No. 04-100558C; amended 8-18-2008 by Ord. No. 08-1001835C]

A parcel located in a residence district with frontage on a public way may be subdivided, subject to a special permit from the Planning Board, into limited development subdivision lots for the use only as single-family dwellings under the alternative lot area, frontage and dimensional criteria set forth below; provided, however, that the special permit applicant must clearly demonstrate to the Board that the parcel whichis the subject of the special permit application could be subdivided by right under conventional subdivision requirements, as set forth in the applicable ordinances ofthe City of Marlborough, the Subdivision Control Law and the Board's rules and regulations, into at least 2 1/2 times as many building lots as the number of building lotsproposed in the special permit application.

A. Limited development subdivision lot criteria:

(1) A minimum lot area of 2 1/2 times the minimum lot area of the zoning district within which it is situated, exclusive of wetlands and land within utility easements. Where a lot is within two zoning districts, the minimum lot area provisions of the more restrictive district shall apply.

(2) A minimum lot frontage and minimum lot width of 40 feet.

(3) A minimum front, side and rear yard setback of 50 feet.

(4) An area of land must be provided wholly within the interior of the lot meeting a minimum dimension. That dimension shall be determined by creating a rectangle having two sides equal to the frontage requirement of the district and two sides having lengths equal to 75% of the district frontage.

(5) Driveways on limited development subdivision lots shall have a minimum width of 12 feet and a maximum grade of 10% and shall in all other aspects abide by requirements for driveways found in other sections of the chapter. Each lot shall have adequate access to ensure the accessibility of public safety and emergency vehicles. The Planning Board shall request a recommendation from the Site Plan Review Committee relative to the adequacy of such access.

(6) All driveways shall be provided with adequate turnarounds to allow theturning and exiting of public safety and emergency vehicles during all weather conditions.

(7) Shared driveways shall be allowed only if it has been demonstrated that adequate suitable space is available on each lot for construction of a nonshared driveway. Any special permit granted under this section shall require that the shared driveways be designated as private ways and not public ways.

(8) The applicant for a special permit hereunder shall file with the Planning Board a preliminary plan that must clearly demonstrate to the Board that the parcel which is the subject of the special permit application is capable, as of right, of conventional subdivision, pursuant to the applicable ordinances of the City of Marlborough, the Subdivision Control Law and the Board's rules and regulations, into at least 2 1/2 building lots for each building lot proposed under the limited development subdivision criteria.

B. Required findings and requirements for special permit:

(1) That the limited development subdivision results in sufficient advantage to the City to depart from applicable requirements of the Ordinances of the City of Marlborough, applicable Subdivision Control Law and the Rules and Regulations, as may be further amended, of the Planning Board, in that the use of the intended parcel is less intense than would be allowed in a subdivision, as defined by the Planning Board.

(2) That the submitted plan clearly conforms with all of the criteria enumerated in Subsection A above, and the applicant has demonstrated that access from the frontage to the single-family dwelling is sufficient to accommodate all private vehicles and the needs of all public safety and emergency vehicles.

(3) Before a building permit shall be issued, the applicant must provide satisfactory evidence that the special permit issued hereunder has been recorded at the Middlesex South District Registry of Deeds.

§ 650-31. Narcotic detoxification and/or maintenance facilities. [Added 11-23-2009 by Ord. No. 09-1002277F]

A. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, and provisions of the Rehabilitation Act and the Americans with Disabilities Act, the City of Marlborough Zoning chapter will not prohibit the location of a facility for narcotic detoxification or narcotic maintenance within the City of Marlborough, but will instead regulate such facilities. A narcotic detoxification and/or maintenance facility should provide medical support, security, drug testing with oversight by a physician, and standards that meet or exceed state regulations under 105 CMR 164 for licensure of substance abuse treatment programs. Facilities should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these facilities are located in such a way as not to pose a direct threat to the health or safety of either the participants in the rehabilitation treatment or the public at large, the provisions of this section will apply to all such facilities.

B. Where a special permit is required for a narcotic detoxification and/or maintenance facility, the special permit granting authority shall grant the special permit only upon its written determination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this chapter, the determination shall include consideration of each of the following:

(1) Social, economic, or community needs which are served by the proposal;

(2) Traffic flow and safety, including parking and loading;

(3) Adequacy of utilities and other public services;

(4) Neighborhood character and social structures;

(5) Impacts on the natural environment;

(6) Potential fiscal impact, including impact on City services, tax base, and employment; and

(7) The ability for the facility to:

(a) Meet a demonstrated need;

(b) Provide a secure indoor waiting area for clients;

(c) Provide an adequate pick-up/drop-off area;

(d) Provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and

(e) Adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the facility, and its impact on neighboring uses. The special permit granting authority may require the applicant to provide a traffic study, at the applicant's expense, to establish the impacts of the peak traffic demand.

C. A narcotic detoxification and/or maintenance facility shall not be located:

(1) Within 5,000 feet of another narcotic detoxification and/or maintenance facility; nor

(2) Within 1,000 feet of:

(a) A school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough;

(b) A recreational facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or

(c) A park (as defined in § 517-2 of the Code of the City of Marlborough, as amended);

(d) An elderly housing facility (as defined in § 517-2 of the Code of the City of Marlborough, as amended); or

(e) A retirement community (as defined in § 650-5 of the Zoning Ordinance of the City of Marlborough, as amended) located within the City of Marlborough.

§ 650-32. Medical marijuana treatment centers; adult use marijuana retail; marijuana accessories retail; medical and/or adult use marijuana cultivator; independent testing laboratory product manufacturer or transporter.[12] [Added 8-14-2014 by Ord. No. 12/13/14-1005247I; amended 4-2-2018 by Ord. No. 18-1007163-1C]

A. Medical marijuana treatment centers. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, Chapter 94I of the Massachusetts General Laws, and 105 CMR 725.000, all as amended, the City of Marlborough Zoning Ordinance will not prohibit the location of a center formedical marijuana treatment within the City of Marlborough, but will instead regulate such centers. A medical marijuana treatment center should provide medical support, security, oversight by a physician, and standards that meet or exceed 105 CMR 725.000. These centers should not compete to provide streamlined care to patients and should not provide a location for patients to wait for treatment in the vicinity of children. Therefore, to ensure that these centers are located in such a wayas to not pose a direct threat to the health or safety of either qualifying patients or the public at large, the provisions of this section will apply to all such centers. **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

A.1. Adult use marijuana retail; marijuana accessories retail. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws, 935 CMR 500.000, and the ordinances and regulations of the City of Marlborough, its boards and commissions, all as amended, the City of Marlborough Zoning Ordinance will not prohibit the locationof adult use marijuana retail business establishments and marijuana accessories

12. Editor's Note: Former § 650-32, Temporary moratorium on medical marijuana treatment centers, added 6-17-2013 by Ord. No. 13-1005247D, expired 6-30-2014 and was removed from the Code.

business establishments within the City of Marlborough, but will instead regulate such businesses. To ensure that these businesses are located in such a way as to not pose a direct threat to the health or safety of children and other vulnerable populations, the provisions of this section will apply to all such businesses. **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

A.2. Medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter. Subject to the provisions of this Zoning Ordinance, Chapter 40A of the Massachusetts General Laws, Chapter 94I of the Massachusetts General Laws, Chapter 94G of the Massachusetts General Laws, 105 CMR 725.000, 935 CMR 500.000, and the ordinances and regulations of the City of Marlborough, its boards and commissions, all as amended, the City of Marlborough Zoning Ordinance will not prohibit the location of cultivators, independent testing laboratories, product manufacturers, or transporters, for the purposes of medical marijuana or adult use marijuana, within the City of Marlborough, but will instead regulate such businesses. To ensure that these businesses are located in such a way as to not pose a direct threat to the health or safety of children and other vulnerable populations, the provisions of this section will apply to all such businesses. **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

B. In the interpretation of this chapter, the meanings of words and phrases shall be according to the definitions included in § 650-32 of the Code of the City of Marlborough entitled "medical marijuana treatment centers," Chapter 334 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 105 CMR 725.000, MGL c. 94G and 935 CMR 500.002, all as amended, and unless the context shows another sense to be intended. For purposes of this chapter, the following definitions shall also apply: **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

ADULT USE MARIJUANA (including the words "MARIJUANA" AND "CANNABIS" as those words pertain to adult use marijuana) — Means all parts of any plant of the genus Cannabis, not excepted in 935 CMR 500.002: Cannabis or Marijuana (a) through (c) and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture,salt, derivative, mixture, or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in MGL c. 96G, § 1, as amended, provided that adult use marijuana, marijuana or cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparationof the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any other ingredient combined with cannabis or marijuana to prepare topical or oral administrations, food, drink or other products.**[Added 5-21-2018 by Ord. No.18-1007163-2D]**

ADULT USE MARIJUANA RETAIL — An entity licensed and registered under 935 CMR 500.050, as amended, as a marijuana retailer to purchase from a craft marijuana cooperative, marijuana cultivator, independent testing laboratory, product manufacturer or transporter and to sell or otherwise transfer the marijuana to consumers and to marijuana establishments.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MARIJUANA ACCESSORIES — Equipment, products, devices or materials of

any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, injecting, inhaling or otherwise introducing marijuana or cannabis into the body.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MARIJUANA ACCESSORIES RETAIL — A retail business open to the public where an entity sells marijuana or cannabis accessories to consumers.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MARIJUANA ESTABLISHMENT — A licensed marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, marijuana retailer, independent testing laboratory, marijuana research facility, marijuana transporter, or any other type of licenses marijuana-related business, except a medical marijuana treatment center.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MARIJUANA-INFUSED PRODUCT (MIP) — A product infused with marijuana that is intended for use or consumption, including but not limited to edible products, ointments, aerosols, oils, and tinctures. These products, when created or sold by a medical marijuana treatment center business, shall not be considered a food or a drug as defined in MGL c. 94, § 1.

MEDICAL AND/OR ADULT USE MARIJUANA CULTIVATOR — An entity licensed and registered under 105 CMR 725.100 and/or 935 CMR 500.000, as amended, to cultivate, process and package marijuana, to deliver to medical marijuana treatment centers and/or to other marijuana establishments, but not to consumers.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MEDICAL AND/OR ADULT USE MARIJUANA INDEPENDENT TESTING LABORATORY — A laboratory that is licensed by the Cannabis Control Commission and is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission, (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test, and (iii) qualified to test marijuana in compliance with 105 CMR 725.031 and MGL c. 94C, § 34 and/or 935 CMR 500.160 and MGL c. 94G, § 34.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MEDICAL AND/OR ADULT USE MARIJUANA PRODUCT MANUFACTURER — An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and/or to medical marijuana treatment centers, but not to consumers.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MEDICAL AND/OR ADULT USE MARIJUANA TRANSPORTER — An entity, not otherwise licensed by the Cannabis Commission, that is licensed to purchase, obtain, and possess marijuana and marijuana products solely for the purpose of transporting, temporary storage, sale and distribution to marijuana establishments and/or to medical marijuana treatment centers, not for sale to consumers.**[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

MEDICAL MARIJUANA — All parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and

every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. The term also includes MIPs except where the context clearly indicates otherwise.

MEDICAL MARIJUANA TREATMENT CENTER — Refers to the site(s) of dispensing, cultivation, and preparation of marijuana; shall mean a not-for-profit entity or a for-profit entity registered under 105 CMR 725.100 and known thereunder as a registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes [including development of related products, such as edible marijuana-infused products (MIPs), tinctures, aerosols, oils, or ointments], transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers; and shall be subject to the regulations under § 650-32 of this chapter.

MEDICAL USE OF MARIJUANA — The acquisition, cultivation, possession, processing [including development of related products such as marijuana-infused products (MIPs) that are to be consumed by eating or drinking, tinctures, aerosols, oils, or ointments], transfer, transport, sale, distribution, dispensing, or administration of marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

PERSON — An individual, nonprofit entity, or for-profit entity.

C. In such zoning districts where a special permit is required for medical marijuana treatment center, adult use marijuana retail business, marijuana accessories business, or medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter, upon application, the special permit granting authority shall grant the special permit only upon its writtendetermination that any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particularcharacteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this chapter, the determination shall include, but is not limited to, consideration of each of the following: **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

(1) Social, economic, or community needs which are served by the proposal;

(2) Traffic flow and safety, including parking and loading;

(3) Adequacy of utilities and other public services;

(4) Neighborhood character and social structures;

(5) Impacts on the natural environment;

(6) Potential fiscal impact, including impact on City services, tax base, and employment;

(7) Hours of operation;

(8) Requiring that contact information be provided to the Chief of Police, the Building Commissioner, and the special permit granting authority;

(9) Requiring payment of a community impact fee;

(10) Requiring the submission to the special permit granting authority of the same annual reports that must be provided to the Commonwealth of Massachusetts Department of Public Health and/or the Massachusetts Cannabis Control Commission;

(11) Requiring regular inspections by City officials or their agents, and access to the same records which are available for inspection to the Commonwealth of Massachusetts Department of Public Health and/or the Massachusetts Cannabis Control Commission;

(12) Requiring employees to undergo a criminal background check, including but not limited to CORI and an additional background check, by the Police Chief who shall have the authority to disapprove the employment of any person(s) as a result of said background check;

(13) Requiring surveillance cameras, capable of twenty-four-hour video recording, archiving recordings and ability to immediately produce images, in, on, around or at the premises;

(14) Prohibiting the sale of any materials or items unrelated to the purposes of registration by the Commonwealth of Massachusetts Department of Public Health and/or the Massachusetts Cannabis Control Commission, including, without limitation, tobacco products, clove cigarettes, or c-cigarettes;

(15) The ability for the business to:

(a) Provide a secure indoor waiting area for clients;

(b) Provide an adequate and secure pickup/dropoff area for clients, customers and products;

(c) Provide adequate security measures to ensure that no individual participant will pose a direct threat to the health or safety of other individuals; and

(d) Adequately address issues of traffic demand, parking, and queuing, especially at peak periods at the business, and its impact on neighboring uses; and

(e) Provide opaque exterior windows.

(16) Signs and signage; and

(17) Names of businesses, business logos and symbols, subject to state and federal law and regulations.

D. The special permit granting authority may require the applicant to provide a traffic

study, at the applicant's expense, to establish the impacts of the peak traffic demand.

E. Applicants for a special permit shall be subject to site plan review under § 270-2 of the Code of the City of Marlborough.

F. A medical marijuana treatment center shall not be located:

(1) Within a radius of 500 feet of a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough; and

(2) Within a radius of 500 feet of a day-care center (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough.

The five-hundred-foot distance in this Subsection F is measured in a straight line from the nearest point of the building in which the school or day-care center in question is located to the nearest point of the building within which the proposed medical marijuana treatment center would be located.

F.1. An adult use marijuana retail business, marijuana accessories retail business, medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter shall not be located: **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

(1) Within a radius of 500 feet of a school (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough; and

(2) Within a radius of 500 feet of a day-care center (as defined in § 517-2 of the Code of the City of Marlborough, as amended) located within the City of Marlborough.

The five-hundred-foot distance in this Subsection F.1 is measured in a straight line from the nearest point of the building in which the school or day-care center in question is located to the nearest point of the building within which the proposed adult use marijuana retail business, marijuana accessories retail business, and medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter would be located.

G. Chapter 412 of the Code of the City of Marlborough, as amended, prohibiting the smoking, ingesting, or other use or consumption of marijuana in any place accessible to the public, shall be construed as applying to the medical use of marijuana inside a medical marijuana treatment center (except for the administration of marijuana for the purposes of teaching use of vaporizers, or demonstration of use of other products as necessary), an adult use marijuana retail business, a marijuana accessories retail business, and to a medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter. **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

H. The number of Special Permits issued to adult use marijuana retail business establishments shall not exceed the number that is 20% of the number of liquor

licenses for off-premises alcohol consumption that have been issued by the Licensing Board pursuant to MGL c. 138, § 15. **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

I. An adult use marijuana retail business, marijuana accessories retail business, medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter shall not be an allowable home occupation use or an allowable accessory use. **[Added 5-21-2018 by Ord. No. 18-1007163-2D]**

J. Social consumption establishments and mixed-use establishments for the consumption of adult use marijuana and/or of medical marijuana are prohibited. **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

K. Direct delivery to a consumer or client from a marijuana cultivator or product manufacturer is prohibited. **[Amended 5-21-2018 by Ord. No. 18-1007163-2D]**

§ 650-33. Results Way Mixed Use Overlay District. [Added 12-17-2012 by Ord. No. 12-1005154C]

A. Purpose and objectives.

(1) The Results Way Mixed Use Overlay District (herein, also RWMUOD) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (Hereinafter any reference to City approval shall be deemed to mean approval by the City Council.) as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the Results Way Mixed Used Overlay District are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety and welfare by promoting integrated, pedestrian-friendly, mixed use development to allow for the development of housing, retail and workplaces within close proximity of each other consistent with the stated economic development objectives of the City (collectively, herein mixed use developments or MUD).

(2) For the purposes of this section, the RWMUOD shall be superimposed on the other districts existing at the time that any land in any said underlying district is also included in the RWMUOD. The RWMUOD is adjacent to Simarano Drive to the west, Forest Street to the north, and Puritan Way and Results Way to the east as indicated on the City Zoning Map and more particularly described in Exhibit A annexed hereto and incorporated by reference herein.[13]

(3) For the purposes of the Zoning Ordinance, a mixed use development or MUD shall include any eligible use set forth in Subsection E, below, which may be commingled into a single structure or structures with other eligible uses or may be located in separate structures on the site subject to any restrictions and/or limitations set forth in the development agreement described in Subsection C(2) below. Accordingly, mixed use developments shall benefit the public health, safety and welfare through the sharing of parking lots and driveway curb cuts to minimize the amount of impervious paved parking areas, to reduce

13. Editor's Note: Exhibit A is on file in the City offices.

traffic congestion, to reduce automobile trips, and accordingly to improve air quality.

B. Authority of permit granting authority.

(1) The City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD. In all instances, a development which proceeds under the RWMUOD overlay is subject to site plan approval in accordance with § 270-2 of the Marlborough City Code, with the exception that the City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD.

(2) The City Council may elect to vary the dimensional and parking requirements of this section by special permit if, in its opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

C. Master concept plan; development agreement. The property owner/developer of the RWMUOD shall, prior to or simultaneously with the first application for approval of a site plan and/or special permit for the RWMUOD, file the following with the City Council for approval:

(1) Master concept plan.

(a) A master concept plan (master plan) which shall in a general manner show:

[1] The location and areas of proposed development;

[2] Proposed open space (usable or natural);

[3] Proposed site access curb cuts off of Simarano Drive and Forest Street; and

[4] Proposed building envelope(s) where construction is anticipated to occur (excluding internal site driveways).

(b) A table showing approximate acres and calculations of the following:

[1] Total land area of each development area (building envelope area);

[2] Total development limitations, if any, of uses in any developable area;

[3] Total maximum development (square footage/use limitations); and

[4] Approximate number of parking spaces for the entire RWMOUD District.

(c) The master plan shall be approved by a super majority (2/3) vote of the City Council at a public meeting and shall thereafter become the general development plan governing development at the RWMUOD. The master plan may be amended from time to time by a super majority vote (2/3) of

the City Council by application from the property owner/developer to reflect changing development conditions.

(2) A development agreement in recordable form binding upon the developer/ property owner.

(a) The development agreement shall be approved by a super majority (2/3) vote of the City Council prior to the issuances of the first permit/site plan approval for development within the RWMUOD, which shall contain, without limitation:

[1] Required mitigation (including traffic demand management initiatives) to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the RWMUOD progresses.

[2] Restrictions on development areas and such other development limitations as may be agreed upon.

[3] Proposed phasing of the development of the RWMUOD.

[4] Obligations with respect to pedestrian and vehicular interconnectivity within the RWMUOD to facilitate pedestrian access and parking efficiencies.

[5] The authority of the City Council to retain the necessary professionals to assist in its review of development applications.

[6] An agreement by the property owner/developer of the residential component of the property to make a one-time financial contribution to the City per residential unit developed at the RWMUOD for which a building permit is issued. This payment shall be due at the time of the issuance of the building permit for the unit(s). This amount is to be used by the City acting by and through the City Council to assist in the identification and implementation of zoning, economic and other strategies to foster professional, retail and commercial development initiatives as well as the development of affordable housing which may include, without limitation, the preparation of a housing production plan in accordance with the rules and regulations of the Massachusetts Department of Housing and Community Development (760 CMR 56.03(4)) and the funding of the implementation of the goals and objectives set forth in such plan.

(b) The development agreement shall govern the implementation of the master plan and development at the RWMUOD.

D. Exclusivity/control. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this section (§ 650-33 et seq.) shall continue to remain in

full force and effect; provided, however, that the City Council shall be the special permit granting and site plan approval authority, if applicable. This section (§ 650-33 et seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any MUD undertaken in the RWMUOD and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District, provided that the maximum total impervious surface coverage for the RWMUD shall be 60% calculated on the entire land area of the RWMUOD and not on an individual lot basis). In the event of any conflict between the provisions of this section (§ 650-33 et seq.) and any other provision ofthe Zoning Ordinance, the provisions of this section shall govern and control.

E. Eligible uses. Except as specifically set forth below, all uses permitted in the Industrial and Limited Industrial Districts either as of right or by special permit in accordance with § 650-17 of the Zoning Ordinance are permitted in the RWMUOD. If a use requires a special permit under § 650-17, Table of Use Regulations, such use shall continue to require a special permit under this section.

(1) The following additional uses are also permitted by right in the RWMUOD:

(a) Research and experimental labs (33). (NOTE: Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.) Research and development includes, without limitation, laboratories engaged in research, experimental and testing activities, including, but not limited to, the fields of biology, chemistry, electronics, engineering, geology, pharmaceuticals, medicine and physics.

(b) Medical office and diagnostic medical laboratories appurtenant to offices of physicians and dentists.

(c) Associated/accessory research uses (35). (NOTE: Numbers inparentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.)

(d) Advanced manufacturing, which shall include high technology manufacturing, such as, but not limited to, laser technology, robotics, nanotechnology and computer-associated design and software development.

(e) Multifamily dwelling: up to 350 dwelling units within the entire RWMUOD Zoning District including, without limitation, age-restricted dwelling units.

(f) Retail sales and services: up to 75,000 square feet of total gross floor area; up to 10,000 square feet of gross floor area per establishment.

(g) Hotels and motels.

(h) Hotels with conference facilities and commercial uses.

(i) Car parking lots, garages: a structure or a group of structures that facilitate the parking of vehicles at ground level, above or below grade and shall include area for the parking of vehicles at, above and/or below

grade under a building or otherwise integrated into another structure.

(j) Consumer service establishments complementary to the other principal uses at the property.

(k) Restaurant, cafe with or without table service (including outside seating and service).

(l) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.

(m) Self-service laundry.

(n) Dry cleaning (pickup and dropoff only).

(2) The following additional uses are also permitted by special permit in the RWMUOD:

(a) Multifamily dwelling — more than 350 dwelling units within the entire RWMUOD Zoning District including, without limitation, age-restricted dwelling units.

(b) Drive-through facilities associated with retail (e.g. banks; pharmacies) and food services.

(3) The foregoing subsections notwithstanding, the uses set forth as follows are expressly prohibited in the RWMUOD:

(a) Adult entertainment, including an adult bookstore, video store, paraphernalia store, movie theater, or live entertainment establishment.

(b) Tattoo and body piercing parlors and shops.

(c) Dye works.

(d) Biosafety Level 4 laboratories, as defined by the United States Center for Disease Control and Prevention.

(e) Establishments for construction in such services as, but not limited to, building, building maintenance, plumbing, landscaping, electrical, masonry, carpentry, well drilling.

(f) Electroplating, metal finishing except by special permit as an accessory use to an otherwise permitted principal use.

(g) Hazardous and toxic chemical manufacturing.

(h) Trucking terminal and distribution center.

(i) Automotive sales and/or service.

(j) Retail gasoline, oil and lubrication stations.

(k) Commercial bakeries.

(l) On-site sales and rental of heavy machinery and vehicles.

(m) Laundry and dry cleaning establishment, except dropoff and pickup operations and facilities designed to service residents of multifamily dwelling.

(n) Any activity or use directly or indirectly involving, without limitation, the dispensing, use, sale, growing, storage or transportation of medical marijuana, including any medical marijuana treatment center.

(o) Any on-site facility or clinic devoted to the treatment of substance addiction, including any narcotic detoxification and/or maintenance facility.

F. Dimensional requirements. The RWMUOD shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:

(1) The RWMUOD shall consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the Results Way Mixed Use Overlay District.

(2) Minimum lot frontage measurement shall be no less than 50 feet for any lot wholly located within the boundaries of the RWMUOD.

(3) Minimum front yard measurement shall be no less than 30 feet for any lot wholly located within boundaries of a RWMUOD.

(4) No less than 15 feet shall separate the structural side wall of any two or more MUD structures. No less than 15 feet shall separate any area behind and/or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.

(5) Maximum building height in RWMUOD shall not exceed 80 feet, provided that:

(a) Residential structures shall not exceed 70 feet; and

(b) No structure located within 120 feet from the center line of Forest Street shall exceed 50 feet.

(6) Maximum lot coverage shall be calculated on the entire land area of the RWMUOD and not on an individual lot basis, and shall not exceed 60% of the total area of the RWMUOD.

G. Parking and curb cut requirements. Except as otherwise provided in this section, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.

(1) General. In the RWMUOD adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the City Council shall consider complementary or shared use of parking areas by activities having different

peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.

(2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses.

(3) Parking spaces for each dwelling unit. There shall be a minimum of 1.5 parking spaces for each dwelling unit.

(4) Granting of relief from parking regulations. The City Council may waive any of the foregoing requirements or the requirements of § 650-48 if it makes a finding that to do so will enhance the overall design of the RWMUOD.

H. Signage.

(1) Except as otherwise provided in this mixed use section, signage shall conform to the provisions of Chapter 526 of the Marlborough City Code, the Sign Ordinance.

(2) Granting of relief from signage regulations. The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the RWMUOD.

I. Application.

(1) An application for a special permit for a use in the mixed use development in the RWMUOD shall comply with the requirements of § 650-59 et seq. of the Zoning Ordinance. In the matter of a site plan approval, the application shall comply with the requirements of the City Code, Chapter 270, Article II, Permits and Approvals, § 270-2 et seq.

(2) The City Council in connection with a special permit and/or site plan application shall review such applications with respect to the following design criteria:

(a) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;

(b) Street facade and exterior walls visible from public ways;

(c) Public space;

(d) Scale of buildings; and

(e) External lighting.

(3) Concurrent with any public hearing/meeting associated with a special permit and/or site plan filing, the applicant shall make a presentation to the City Council to present the proposed architectural design and shall consider the comments and input from the City Council. A final building elevation shall be submitted prior to the close of the public hearing/meeting.

J. Standards for roadways and drainage.

(1) Roadways. Internal RWMUOD roadways shall be private ways and shall be maintained by the owners/developers of the RWMUOD and portions thereof. Private ways within the RWMUOD, to the extent feasible, shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the dimensional requirements thereof, provided that those private roadways shall be adequate for the intended vehicular and pedestrian traffic and shall be maintained by the owner/developer or an association of owners.

(2) Stormwater management system. The RWMUOD shall have a stormwater management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City and the Department of Environmental Protection's Storm Water Management Guidelines, as amended.

K. Amendments. After approval, the owner/developer may seek amendments to the approved permits. Minor amendments to a special permit and major or minor amendments to a site plan approval may be made by a super majority (2/3) vote of the City Council. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a major amendment or a minor one. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a special permit are not minor, per § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of § 650-59.

§ 650-34. Marlborough Village District (MV). [Added 12-1-2014 by Ord. No. 14-1005947C]

Within the Marlborough Village District (MV), the following provisions govern. Where these provisions conflict with other sections of the Zoning Ordinance, the provisions of this section shall apply.

A. Purpose and vision. The purpose of the Marlborough Village District is to implement smart growth principles with development that is compatible with the character of downtown Marlborough. The Marlborough Village District is envisioned as the hub of community gathering places that reflects and celebrates the existing historic character and enhances the traditional village atmosphere. The vision is to build value and to support our employers with a downtown that attracts visitors and helps to retain and recruit employees while creating new housing opportunities.

B. Site plan review. Projects within the Marlborough Village District shall be subject to site plan review as provided in § 270-2, entitled "Site plan review and approval," of the City Code.

(1) Applicability.

(a) Site plan review applies to both as of right and uses available by grant of

a special permit within the Marlborough Village District. Site plan review applicability includes, but is not limited to, new construction of any building or structure; addition to an existing building or structure; and increase in area of on-site parking or loading areas. [See § 270-2(3).]

(b) Site plan review shall be conducted administratively, as provided in § 270-2, except for hotel uses and for those projects over 10,000 square feet, which projects shall undergo site plan review by the City Council.

(2) Provisions for hotel site plan review. Within the Marlborough Village District, all hotel site plan reviews shall be conducted by the City Council. Site plan approval may contain conditions on the design and uses. The occupancy of the hotel may be limited to temporary and short-term occupancy, ordinarily and customarily associated with hotel use. The approval may allow extended stay to be permitted beyond 30 days with approval of the Building Commissioner. The extended stay approval may be granted only when an occupant has a verifiable employment contract or agreement coincident with the length of stay requested. Extended stay may be permitted where the unit is rented by a business entity for use of its employees (customarily referred to as a "corporate unit"), so long as the occupant is an employee or guest of the business entity.

(3) Provisions for projects over 10,000 square feet. Within the Marlborough Village District, all site plan review for projects over 10,000 square feet shall be conducted by the City Council, which may delegate in part or in whole its site plan review to appropriate department staff who participate in administrative site plan review under § 270-2. This provision applies to new construction, rehabilitation, or alterations that will result in a total project size of over 10,000 square feet.

C. Special permit granting authority. The City Council shall be the special permit granting authority within the Marlborough Village District.

D. Design standards.

(1) The purpose of the following design standards is to promote quality development emphasizing the City's sense of history and desire for contextual, pedestrian-scaled projects. Supporting streamlined development review, design standards are integral to the Marlborough Village District regulations and must be met as part of any site plan review and approval.

(a) Nonmandatory design guidelines which will complement the design standards of this section and which will provide a guide to the desired appearance and quality of design in the Marlborough Village District will be available at the Building Department and/or on the official website of the City.

(b) In performing site plan review, the City Council may employ the services of qualified professional consultants as provided under MGL c. 44, § 53G, as amended, entitled "Employment of outside consultants." These services may include those of an urban designer, architect and/or landscape architect.

(2) All site plan review and approval applications in the Marlborough Village District shall be subject to the following design standards:

(a) Building scale.

[1] New buildings and/or substantial alterations shall be pedestrian-oriented and shall reflect the community preference for moderate-scale structures that are in harmony with the existing historic brick structures. Building design shall incorporate features to add visual interest while reducing the appearance of bulk or mass. Such features include varied facades, rooflines, roof heights, materials, and architectural details.

[2] Buildings shall relate to the pedestrian scale by:

[a] Including appropriate architectural details to add visual interest along the ground floor of all facades that face streets, squares, pedestrian pathways, parking lots, or other significant pedestrian spaces.

[b] Articulating the base, middle, and top of the facade by cornices, string cornices, step-backs or other similar features.

[3] Continuous lengths of flat, blank walls adjacent to streets, pedestrian pathways, or open spaces are discouraged. Continuous blank walls in excess of 50% of the wall frontage are not allowed. If windows cannot be installed, the facade should include different materials or a design element to vary the frontage.

(b) Roof form.

[1] Mechanical equipment located on roofs shall be screened, organized and designed as a component of the roof design, and not appear to be a leftover or add-on element.

[2] Adverse impacts on abutters from vents, HVAC, etc., are to be minimized.

(c) Entrances.

[1] For visibility and accessibility, all primary commercial building entrances shall be visible from the right-of-way and the sidewalk and shall have an entrance directly accessible from the sidewalk.

[2] Doors shall not extend beyond the exterior facade into pedestrian pathways.

[3] Where parking is located to the rear of a building, any rear entrance is to be visible and accessible from the parking lot. Directional signage to the building entrance(s) shall be installed. All entrances are to have sufficient illumination at nighttime.

(d) External materials and appearance.

[1] Predominant wall materials shall be red brick, stone, or precast concrete panels; wood siding may be used where the structures are adjacent to residential districts where the intent is to blend the structure more into the existing neighborhood. If painted, or coated, a nonmetallic finish is to be used. Cladding materials should be consistent on all facades with the exception of special design elements, such as turrets. Materials designed to imitate brick are not permitted.

[2] The standards for acceptable masonry construction are as follows:

[a] Acceptable masonry construction will be of standard, fired clay, brick units bonded together with mortar. Acceptable applications include building components, such as walls, stairs, columns, arches, planter beds, etc.

[b] Utilize bricks which are sound, hard, well-burnt with uniform color, shape and size.

[c] The bricks should be compact, homogeneous, free from holes, cracks, flaws, air-bubbles, spawls and stone lumps.

[d] Frogged bricks shall be laid with the frogs pointing upwards.

[e] Mortar specifications shall comply with relative ASTM standards.

[f] The properties of masonry units shall comply with the requirements of relevant ASTM standards. Masonry units are classified into the following types: solid, hollow unit, cellular, perforated and frogged.

(e) Awnings and canopies. Awnings and canopies shall be compatible with the architectural style of the building. Colors and patterns used for awnings and canopies shall be subdued and compatible with existing awnings on adjacent buildings, if any.

(f) Reflective materials. Except for minor trim, the building shall avoid the appearance of reflective materials, such as porcelain enamel or sheet metal. Window panes shall be nonreflective.

(g) Transparent windows at ground floor of commercial buildings. Ground floor commercial building facades facing streets, squares, or other significant pedestrian spaces shall contain transparent windows encompassing a minimum of 35% of the facade surface.

(h) Landscaping and sidewalk amenities. To the maximum extent possible, projects shall provide pedestrian-friendly amenities, such as outdoor seating, patios, porches or courtyards. Window boxes are encouraged. Large windows that open up to provide the experience of open air dining are encouraged. Site landscaping shall be maximized. Links/sidewalks designed to connect Granger Boulevard parking areas with adjacent developments are encouraged to further the goal of providing safe

pedestrian access to businesses within downtown Marlborough.

(i) Service areas, utilities and equipment. Service and loading areas and mechanical equipment and utilities shall be unobtrusive or sufficiently screened so that they are not visible from streets or primary public open spaces, and shall incorporate effective techniques for noise buffering from adjacent uses.

(j) Vehicle and pedestrian features. Vehicle, pedestrian and bicycle features shall be designed to promote connectivity. Curb cuts shall be minimized.

(k) Parking. To maintain a pedestrian-friendly environment, motor vehicle parking spaces shall be located behind or beside buildings wherever possible. Parking located directly between the building and the street alignment shall be discouraged.

(l) Bicycle parking. Bicycle parking shall be provided for all new development and shall be located as close as possible to the building entrance(s). Any property required to have bicycle parking may establish a shared bicycle parking facility with any other property owner within the same block.

(m) Sustainable building design. It is desirable that new buildings incorporate green building techniques (such as those developed by the United States Green Building Council).

(n) Historic district. Proposed structures or alterations to existing structures within any historic district shall be allowed the design waivers under § 650-29, but shall otherwise be as consistent as possible with both the historic district (as determined by the Marlborough Historic District Commission) and these design review criteria.

(o) Other historic or landmark structures. Historic structures not in the historic district but which contribute to the character of the Marlborough Village District shall to the maximum extent possible be preserved.

E. Parking requirements for the Marlborough Village District.

(1) General parking requirements. The following provisions are applicable within the Marlborough Village District.

(a) Residential projects.

[1] For residential and the residential component of mixed use projects:

[a] Studio and one-bedroom units: 0.75 space per unit.

[b] Two-bedroom units: 1.25 spaces per unit.

[2] Spaces in City-owned garages and lots within 1,000 feet of the development can be counted to fulfill the required spaces, with payment-in-lieu required.

(b) Retail, restaurant, other business uses.

[1] Eliminate parking minimums per the existing off-street parking(§ 650-48).

[2] A maximum of three spaces per 1,000 square feet for these uses.

(c) Public assembly. For legal occupancy of up to 200 persons, no parking required. Over 200 persons legal occupancy, no parking required for the first 200; thereafter, a minimum of one space per six legal occupants and a maximum of one space per four legal occupants, except that parking may be reduced by special permit if the developer can show that there is adequate public parking available to service the place of assembly during the time that the facility will be used.

(d) Hotel. Minimum of 0.75 space per room, maximum 1.0 space per room, and no parking required for employees. For hotels with 30 rooms or fewer, spaces in City-owned garages and parking lots within 1,000 feet ofthe development can be counted to fulfill the required spaces, withpayment-in-lieu required.

(2) Payment in lieu of parking. In the Marlborough Village District, any new commercial or mixed use structure that is required to provide parking spaces may make payments to the City of Marlborough in lieu of providing for all or part of the on-site required parking.

(a) Payment made to the City of Marlborough in lieu of providing some or all of the required off-street parking spaces for a project in the Marlborough Village District (MV) shall be allowed by right, subject to site plan and design review.

(b) A one-time fee to be paid shall be $10,000 per parking space, which shall be paid prior to the receipt of an occupancy permit.

(c) Fees in lieu of parking shall be deposited into the City of Marlborough Downtown Parking Reserve Account, or such account as the City Council shall deem appropriate, to be used solely for expenses related to maintenance and capital repairs to the existing parking garages, improving the utilization of existing parking spaces (e.g., signage, parking management activities), reducing the need for new parking to serve the Marlborough Village District (e.g., bicycle parking, improved transit), or expenses (e.g., land acquisition, design/engineering services and construction costs) related to adding parking spaces. Requests to appropriate funds out of this reserve account, or such account as the City Council shall deem appropriate, shall be filed with the City Council and referred to the appropriate committee of the City Council, which committee shall have 60 days to forward its comments and recommendations before a City Council vote of the appropriation is taken. Fees collected are not to be used for routine parking lot maintenance, such as sweeping or plowing snow, or for salaries ofmunicipal staff.

(3) Additional reduction in parking requirements. Required on-site parking may be reduced by 10% if one of the on-site spaces is dedicated to use by a car-

share service (such as Zipcar) and an agreement with a car-share service to place a vehicle at the site is provided as part of the site plan approval process.

F. Heights of structures. **[Amended 12-17-2018 by Ord. No. 18-1007404D]**

(1) To encourage redevelopment and reuse of parcels within the Marlborough Village District, minimum and maximum heights are established. Minimum heights shall be 35 feet; maximum height is six stories and up to 70 feet except for where a proposed structure is within 50 feet of a residential district boundary, where the height limit shall be 52 feet. By grant of a special permit, maximum building height; including building areas within 50 feet of a residential district boundary, may be increased to seven stories and up to 85 feet. Height limits do not include roof-mounted mechanical appurtenances; however, said appurtenances, and the screening required for them in § 650-34D(2)(b), shall be subject to site plan review and design standards. Rooftop mechanical equipment, including wireless communications equipment, shall be located and screened to minimize impacts on abutters and the general public. No interior space shall be occupied for any purpose above these height limits. This shall not preclude the use of a flat roof for purposes allowed in this section.

(2) Roof decks, providing recreation and amenity areas for residents and businesses on the roof above the top story of a building, shall be encouraged in the Marlborough Village District. Roof decks may include open space areasfor sitting and gardens; open air areas covered by permanent roofs (flat or sloped); indoor areas for social gathering, meetings, common kitchens, restrooms, and storage; spaces for mechanical equipment; and enclosures for elevators and stairs. The portions of a building designed as a roof deck shall be subject to maximum height restrictions, as may be increased by special permit.

G. Residential development.

(1) The maximum number of residential units for which building permits may be issued in a calendar year in the Marlborough Village District is 100, including units developed as part of a mixed use development. This upper limit may be increased by special permit from the City Council.

(2) Not more than 10% of the units in any proposed development within the Marlborough Village District shall be more than two bedrooms in size.

H. Private open space.

(1) Minimum open space. The minimum amount of private open space per residential unit shall be 100 square feet. The open space shall be designed as usable for sitting, recreation, etc., and shall not include the required buffer strips/plantings. Up to 50% of the required private open space may be placed in the building (recreation rooms, pools); as individual unit balconies large enough for a table and chairs; or on the roof of the structure as a garden or sitting area.

(2) Ground level open space. All or a portion of ground level open space may be

reserved for residents of the development, or made available for public use.

(3) Joint open space. Two or more developments may cooperate to share usable open space on one lot, as long as the minimum square footage per unit is maintained, and the joint open space is within 300 feet of participating developments.

(4) City Council waiver under site plan review. In development or redevelopment proposals where, because of site-specific circumstances, it is not possible to meet the minimum standards for private open space per unit, or where there is not sufficient space for ground level open space on the parcel, or where it is not desirable or possible to establish the required amount of private open space for other reasons, the City Council, as part of site plan review, may negotiate with the developer and may set other conditions of approval to ensure or encourage other open space benefits, or may waive strict adherence to this provision.

I. Signage. In addition to the provisions of Chapter 526 of the Marlborough City Code, the following regulations apply within the Marlborough Village District. If the provisions of Chapter 526 conflict with this chapter, the regulations in this chapter apply.

(1) Display. The City Council may grant a license to display, on the sidewalk, items for sale in the adjacent business, for example flowers and plant materials. The displays must enhance the pedestrian experience and not detractfrom the Village character.

(2) Other business signs. To maximize parking and strengthen the business environment, A-frame valet parking signs may be licensed by the City Council after review by the Public Services Committee. An application fee will be required.

(3) Projecting (blade) signs. It is the intent of this section to allow for the installation of high-quality, artistic, visually appealing projecting (or blade) signs that will enhance the quality of the visitor/patron experience in the Marlborough Village District. Within the Marlborough Village District, one projecting sign per establishment shall be permitted by right, provided that it meets the standards below. All projecting sign applications shall be subject to site plan review and approval. Projecting signs exceeding these dimensions or using materials other than those specified may be allowed by special permit.

(a) The sign may not exceed six square feet in area (not including the area of the supporting bracket or hanger); the area of a hanging sign with but two parallel display surfaces not over six inches apart shall be determined by the measurement of a single face; for all other configurations, the area of a hanging sign shall be the sum of the areas of all display surfaces.

(b) For single-story structures, the sign shall not project above the roofline or 18 feet, whichever is lower; for multistory structures, projecting signs may not extend vertically above the window sill of the second story.

(c) The projecting sign must clear sidewalks by at least eight feet from the

bottom of the sign and may project no more than four feet from a building or 1/3 the width of the sidewalk, whichever is less.

(d) The projecting sign must clear the wall by at least six inches and must project from the wall at an angle of 90°. Angular projection from the corner of a building is prohibited.

(e) Projecting signs may only be externally lit; no internally lit signs shall be allowed. Lighting shall be properly screened so as to have no impact on abutting properties or any residential or commercial units above the business associated with the blade sign.

(f) All such projecting signs shall be wood, or have the visual impression of being made of wood, and shall be painted, stained, varnished or otherwise sealed. External finishing of the signs shall be maintained in its original quality; if not, the sign may be ordered to be removed as being in violation of its permit.

(g) Projecting signs which include three-dimensional elements that symbolically indicate the type of business being advertised areencouraged and may be allowed by site plan review, whether by the CityCouncil or under § 270-2. Any such three-dimensional element may add up to 33% of the allowed sign area, the size of the three-dimensional element to be measured as a cross section of the element perpendicular tothe street.

(h) The area of the blade or projecting sign, but not the additional area occupied by any three-dimensional element of the sign, shall count towards the total sign area (square footage) allowed under Chapter 526, the City of Marlborough Sign Ordinance.

§ 650-35. Hospitality and Recreation Mixed Use Overlay District. [Added 5-9-2016 by Ord. No. 16-10064430]

A. Purpose and objectives.

(1) The Hospitality and Recreation Mixed Use Overlay District (herein, also a "HRMUOD") allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (hereinafter any reference to City approval shall be deemed to mean approval by the City Council) as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the Hospitality and Recreation Mixed Use Overlay District are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety and welfare, by promoting integrated, pedestrian-friendly, mixed-use development to allow for the development of hospitality/hotel, recreation, retail and workplaces within close proximity of each other consistent with the stated economic development objectives of the City (collectively herein "mixed-use developments" or "MUD").

(2) For the purposes of this section, the HRMUOD shall be superimposed on the other districts existing at the time that any land in any said underlying district

is also included in the HRMUOD, in accordance with the procedures set forth in Subsection C(3) below. The HRMUOD district is located on the southerly side of Boston Post Road West (Route 20) to the west of Glenn Street to Ames Street, containing approximately 45.2 acres as indicated on the City Zoning Map and more particularly described in Exhibit A, annexed hereto and incorporated by reference herein.[14] **[Amended 11-13-2017 by Ord. No. 16/ 17-1006443W-2]**

(3) For the purposes of the Zoning Ordinance, a "mixed-use development" or "MUD" shall include any eligible use set forth in Subsection E below, which may be commingled into a single structure or structures with other eligible uses or may be located in separate structures on the site subject to anyrestrictions and/or limitations set forth in the development agreement described in Subsection C(2) below. Accordingly, mixed-use developments shall benefit the public health, safety and welfare, through the sharing of parking lots and driveway curb cuts, to minimize the amount of impervious paved parking areas, to reduce traffic congestion, to reduce automobile trips, and accordingly to improve air quality.

B. Authority of permit granting authority.

(1) The City Council shall be the permit granting authority for special permit approval in the HRMUOD where applicable. In all instances, a development which proceeds under the HRMUOD overlay is subject to site plan approval in accordance § 270-2 of the Marlborough City Code, with the exception that the City Council shall be the permit granting authority for special permit, where applicable, and site plan approval in the HRMUOD.

(2) The City Council may elect to vary the dimensional and parking requirements of this section by site plan approval if, in its opinion, such change shall result in an improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

C. Master concept plan.

(1) The property owner/developer of the HRMUOD shall, prior to or simultaneously with the first application for approval of a site plan and/or special permit for the HRMUOD, where applicable, file the following with the City Council for approval:

A master concept plan ("master plan") which shall in a general manner show:

(i) The location and areas of proposed development;

(ii) Proposed open space (usable or natural);

(iii) Proposed site access curb cuts off of Boston Post Road West;

(iv) Proposed building "envelope(s)" where construction is anticipated to occur (excluding internal site driveways);

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14. Editor's Note: Exhibit A is on file in the City offices.

(v) Proposed parcel interconnection for vehicular and pedestrian travel both within and to the site;

(vi) Wetlands, water supply protection areas, riverfront zones and other significant natural resources, and the relationship of these resources to the proposed development, as well as a description of the mitigation of impacts on the resource;

(vii) General locations of proposed bus stops and routes within the site, and commitments to the improvements (shelter, seating and signage) at these stops;

(viii) In general, the stormwater management location and methods to be used;

(ix) A master signage plan for the premises comprising theHRMUOD setting forth the types, locations and dimensions of signage among other issues at the properties comprising the HRMUOD;

(x) A parking plan;

(xi) A photometric plan; and

(xii) A master landscaping plan for the premises comprising the HRMUOD.

A table showing approximate acres and calculations of the following:

(i) Total land area of each development area (building envelope area);

(ii) Total development limitations, if any, of uses in any developable area;

(iii) Total maximum development (gross square footage/use limitations);

(iv) Approximate number of parking spaces for the entire HRMUOD District; and

(v) Approximate distribution and allocation of parking spaces relative to the proximity to the uses said parking spaces will be serving.

(vi) Total impervious area and percentage of impervious area for each lot.

(vii) Total temporary and permanent disturbance within the Water Supply Protection District's fifty-foot buffer area, and percentage of buffer area affected by temporary and permanent disturbance.

The master plan shall be approved by a super-majority (2/3) vote of the City Council at a public meeting and shall thereafter become the general development plan governing development at the HRMUOD. The master plan may be amended from time to time by a super-majority vote (2/3) of the City Council by application from the property owner/developer to reflect changing development conditions.

(2) A development agreement, in recordable form and binding upon the property owner/developer, shall be required. The development agreement shall be approved by a super-majority (2/3) vote of the City Council prior to the issuances of the first permit/site plan approval for development within the HRMUOD, which shall contain, without limitation, the following:

(a) Required mitigation (including traffic demand management initiatives), to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the HRMUOD progresses;

(b) Restrictions on development areas and such other development limitations as may be agreed upon;

(c) Proposed phasing of the development of the HRMUOD;

(d) Obligations with respect to pedestrian and vehicular interconnectivity within the HRMUOD to facilitate pedestrian access and parking efficiencies;

(e) A requirement that the property owner/developer submit each proposed individual (or group of) building(s) for architectural review by the City Council prior to issuance of a building permit to ensure that the detailed building design will substantially conform in all material respects, including but not limited to building form, motif, shape, grouping of forms, materials and design with the details provided within the master plan and the development agreement. To the extent practicable, and provided the same are commercially reasonable, consistent with the proposed use and requirements of the applicable tenant, and in keeping with the details presented by the property owner/developer within the master plan and the development agreement, the property owner/ developer will incorporate comments and input from Council; and

(f) The authority of the City Council to retain the necessary professionals to assist in its review of development applications.

The development agreement shall govern the implementation of the master plan and development at the HRMUOD.

(3) Upon approval of the master plan by the City Council, or at such later date as may be specified in the development agreement, this section (§ 650-35 et seq.) of the Zoning Ordinance shall govern the development of all parcels within the HRMUOD, in accordance with the approved master plan. In the event that individual parcels comprising the HRMUOD are under the ownership of different entities, each such entity shall be permitted to seek the approval of a modification [in accordance with the procedures of Subsection C(2), above] to the master plan and development agreement as it applies to each such parcel.

(4) Separation of the HRMUOD into future separate parcels or leaseholds shall not release any of the owners or leaseholders from obligations under the master plan and development agreement.

D. Exclusivity/Control. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this section (§ 650-35 et seq.) shall continue to remain in full force and effect provided, however, that the City Council shall be the special permit granting and site plan approval authority, if applicable. This section(§ 650-35 et seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any MUD undertaken in the HRMUOD and supersedes any other provision of the Zoning Ordinance, as set forth in Subsection C(3) above; provided, however, that this section supersedes § 650-24 (Water Supply Protection District) only with respect to the fifty-foot no disturbance/buffer zone to a wetland, as set forth in Subsection K(3) below; and provided, further, that the maximum total impervious surface coverage for the HRMUOD shall be 60%, calculated on the entire land area of the HRMUOD and not on an individual lot basis. In the event of any conflict between the provisions of this section (§ 650-35 et seq.) and any other provision of the Zoning Ordinance, the provisions of this section shall govern and control.

E. Eligible uses. Except as specifically provided herein, any uses which are not permitted, whether as of right or by a special permit, within the Limited Industrial District and within the Business District under § 650-17, Table of Use Regulations, of the Zoning Ordinance, shall be prohibited.

(1) The following uses are permitted by right in the HRMUOD:

(a) Medical office and diagnostic medical laboratories appurtenant to offices of physicians, optometrists, dentists, and other medical professionals.

(b) Retail sales and services, up to 20,000 square feet of gross floor area per establishment and one (1) establishment of up to 85,000 gross square feet.

(c) Hotels (as defined below) containing not more than 250 keyed sleeping rooms with conference facilities and commercial uses.

For purposes of this Subsection E(1)(c), a "hotel" shall be defined as:

HOTEL — A commercial establishment offering lodging for travelers and other transient guests, that may include uses accessory to the principal use, such as meals, entertainment, retail stores, recreation facilities or other amenities, and subject to the following restrictions:

Individual rooms or lodging units shall not be occupied by guests as their sole residence. Guests may not occupy rooms or lodging units for more than six months in any calendar year without a valid employment contract.

Notwithstanding anything contained herein, any hotel within which more than 10% of the keyed sleeping rooms have permanent cooking facilities shall require a special permit.

(d) Public or private commercial recreation establishment, indoor/outdoor commercial recreation, recreation grounds, movie theaters or places of amusement.

(e) Offices, professional offices, banks, insurance and financial institutions.

(f) Consumer service establishments complementary to the other principal uses.

(g) Restaurant, cafe with or without table service (including outside seating and service), with or without drive-through, provided that said facilities have no dedicated driveway with a curb cut on a public way.

(h) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.

(i) Up to two drive-through facilities associated with retail (e.g., banks; pharmacies), provided that said facilities have no dedicated driveway with a curb cut on a public way and integrate vehicular circulation with the surrounding site plan and circulation in an efficient manner, except that nothing in this section shall be deemed to prohibit or limit the existing drive-through facility on Assessors Map 78, Parcel 23, nor to prohibit or limit the existing dedicated driveway with a curb cut onto a public way located on Assessors Map 78, Parcel 23, the same being preexisting conditions which shall continue to be allowed notwithstanding anything contained in the HRMUOD to the contrary; however, said existing drive-through facility and existing dedicated driveway with a curb cut onto a public way shall remain subject to § 650-12. **[Amended 11-13-2017 by Ord. No. 16/17-1006443W-2]**

(j) Up to two drive-through facilities associated with food services, provided that said facilities have no dedicated driveway with a curb cut on a public way and integrate vehicular circulation with the surrounding site plan and circulation in an efficient manner, except that nothing in this section shall be deemed to prohibit or limit the existing drive-through facility on Assessors Map 78, Parcel 14A, nor to prohibit or limit the existing dedicated driveway with a curb cut onto a public way located on Assessor Map 78, Parcel 14A, the same being preexisting conditions which shall continue to be allowed, notwithstanding anything contained in the HRMUOD to the contrary; however, said existing drive-through facility and existing dedicated driveway with a curb cut onto a public way shall remain subject to § 650-12. **[Amended 11-13-2017 by Ord. No. 16/17-1006443W-2]**

(k) Taxable schools for business, trade, music, dance, and television or radio broadcasting studios (but not including towers).

(l) Copy shops, newspaper offices.

(m) Brew pubs.

(n) Accessory research, experimental labs and light manufacturing incidental to a medical office, medical laboratories, professional office, or veterinary hospital.

(o) Accessory solar energy installations.

(p) Accessory sale of cigars incidental to a business engaged in the sale of beer, wine and/or alcohol.

(q) Accessory uses.

(2) The following additional uses are also permitted by special permit in the HRMUOD:

(a) Any drive-through facilities associated with retail (e.g., banks; pharmacies) beyond the two such facilities permitted by right in the HRMUOD, expressly excluding drive-through facilities located on Assessors Map 78, Parcel 23, which facilities are existing and shall not require a special permit under this section; however, said existing drive-through facilities shall remain subject to § 650-12. **[Amended 11-13-2017 by Ord. No. 16/17-1006443W-2]**

(b) Any drive-through facilities associated with food services beyond the two such facilities permitted by right in the HRMUOD, expressly excluding drive-through facilities located on Assessors Map 78, Parcel 14A, which facilities are existing and shall not require a special permit under this section; however said existing drive-through facilities shall remain subject to § 650-12. **[Amended 11-13-2017 by Ord. No. 16/17-1006443W-2]**

(c) Retail sales and services in excess of 20,000 square feet of gross floor area per establishment [excluding the one establishment of up to 85,000 gross square feet noted in Subsection E(1)(b), above].

(d) Dry cleaning, excluding so-called dry cleaning drop stores where no dry cleaning is performed on premises which shall be permitted in the HRMUOD as of right. **[Amended 11-13-2017 by Ord. No. 16/17-1006443W-2]**

(e) Veterinary hospitals.

(f) Car washes.

(g) Self-service laundry.

(3) All uses not noted in Subsection E(1) and Subsection E(2) above shall be deemed prohibited in the HRMUOD, including but not limited to the uses listed below, except where so to deem would interfere with or annul any otherCity of Marlborough ordinance, rule, regulation, permit or license, or any state or federal law or regulation:

(a) Adult entertainment, including an adult bookstore, adult video store, adult paraphernalia store, adult movie theater, or adult live entertainment establishment.

(b) Tattoo and body piercing parlors and shops.

(c) Dye Works.

(d) Biosafety Level 4 laboratories, as defined by the United States Centers

for Disease Control and Prevention.

(e) Establishments for construction in such services as, but not limited to, building, building maintenance, plumbing, landscaping, electrical, masonry, carpentry, well drilling.

(f) Electroplating, metal finishing.

(g) Hazardous and toxic chemical manufacturing.

(h) Trucking terminal and distribution center.

(i) Automotive sales and services.

(j) Retail gasoline, oil and lubrication stations, and tire sales.

(k) Commercial bakeries.

(l) On-site sales and rental of heavy machinery and vehicles.

(m) Any activity or use directly or indirectly involving, without limitation, the dispensing, use, sale, growing, storage or transportation of medical marijuana, including any medical marijuana treatment center.

(n) Any on-site facility or clinic devoted to the treatment of substance addiction, including any narcotic detoxification and/or maintenance facility.

(o) Sales of tobacco products, e-smoking products, smoking accessories and paraphernalia, flavored tobacco products, vaping products, and similar products, excepting the sale of cigars within a hotel cigar bar which is accessible to adults only.

F. Dimensional requirements. The HRMUOD shall be subject to the dimensional standards in accordance with Article VII of the Zoning Ordinance, with the following exceptions:

(1) The HRMUOD shall consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the Hospitality and Recreation Mixed Use Overlay District.

(2) Minimum lot frontage measurement shall be no less than 50 feet for any lot wholly located within the boundaries of the HRMUOD.

(3) Minimum front yard measurement shall be no less than 20 feet for any lot wholly located within boundaries of a HRMUOD.

(4) Maximum building height in HRMUOD shall not exceed 80 feet.

(5) Maximum lot coverage shall be calculated on the entire land area of the HRMUOD and not on an individual lot basis, and shall not exceed 60% of the total area of the HRMUOD.

(6) Notwithstanding anything contained herein to the contrary, there shall be no setback requirements or planting strips required as to (i) internal lot lines

within the HRMUOD, and (ii) parcels outside the HRMUOD that abut the HRMUOD along at least three lot lines.

G. Parking, curb cut and landscaping requirements. Except as otherwise provided in this section, parking and circulation requirements shall conform with the provisions of § 650-47, § 650-48 and § 650-49 of the Zoning Ordinance.

(1) General. In the HRMUOD, adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal, for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal, the City Council shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.

(2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses, but must be integrated into the surrounding site plan and oriented so as to minimize visual impact of the garage on surrounding uses.

(3) Parking in the HRMUOD shall be at a minimum of one parking space per 333 square feet of net floor area. Each space shall be no less than nine feet by 18 feet, except that the use of compact spaces (no smaller than eight feet by 16 feet) may be utilized throughout the HRMUOD, provided that no more than 33% of the total parking spaces within the HRMUOD shall be compact spaces. Aisle widths shall be a minimum of 11 feet for one-way travel lanes and 22 feet for two-way travel lanes. The master plan is required to show further detail and explanation as to the distribution and allocation of parking space supply relative to the net floor area of each building distributed on the site.

(4) Landscaping strips. Continuous landscaping strips shall be provided no less than 10 feet to the right-of-way line along Boston Post Road West (Route 20), not including the width of sidewalks, unless the sidewalk is constructed within the right-of-way.

(5) Planting quantity and spacing along Boston Post Road West (Route 20):

(a) Plantings shall consist of at least one tree per 50 linear feet of planting area length.

(b) Plantings may be grouped, not evenly spaced, but groups of trees shall be spaced no further apart than 100 linear feet.

(6) Location of landscaped islands in parking areas. Landscaped islands shall be contained within or project into a parking lot and be so located that some part of every parking space is not more than 90 feet from a landscaped area on the perimeter or interior of the parking lot.

(7) Granting of relief from parking, curb cut and landscaping regulations. The City Council may, during the site plan approval process, waive any of the foregoing requirements or the requirements of § 650-47, § 650-48, and § 650-49 if it makes a finding that to do so will enhance the overall design of the HRMUOD.

(8) In order to enhance the functionality of reduced parking requirements, parking for employees of retail, restaurant, and hotel establishments should be designated in areas of the site which are remote, retaining the most convenient parking locations for patrons of the development's establishments.

H. Signage. Except as otherwise provided in this section, signage shall conform to the provisions of Chapter 526 of the City Code, the Sign Ordinance. In the event of any conflict between the provisions of this section (§ 650-35 et seq.) and any provision of Chapter 526 of the City Code, the provisions of this section shall govern and control. Subject to approval by the City Council as part of the signage plan pursuant to Subsection C(1)(a)(ix), including but not limited to appearance, the following signs are allowed in the HRMUOD district:

(1) A maximum of two wall signs, individual-letter signs, logo signs or projecting signs affixed to a building for each store, business or tenant. No sign shall project above the highest line of the roof, parapet or building. Each wall sign, individual-letter sign, or roof sign shall not exceed an area of 2.5 square feet for each linear foot of the storefront, business front or occupied tenant space for each applicable business or tenant advertised. In the event that a storefront, business front or occupied tenant space occupies more than one front of a building, the longest front shall be utilized to calculate the total area per wall sign, individual-letter sign, logo sign or projecting sign (up to a maximum of two). The total area as calculated herein shall be the applicable maximum area for each sign and not split between the two.

(2) Projecting signs shall not project more than six feet from the building, subject to approval by the City Council as part of the signage plan.

(3) Illumination, including internal illumination with translucent faces, shall be permitted for wall signs, individual-letter signs, logo signs or projecting signs provided under this section.

(4) Any business, tenant, or storefront may divide any allowed exterior sign(s) affixed to a wall of the building, to which it is entitled or hereinaboveprovided, into separate signs affixed to and parallel to such wall; provided, however, that the aggregate area of the separate signs shall not exceed the maximum area allowed under this section for a single exterior sign on the samefront.

(5) A lot in an HRMUOD Zoning District shall be allowed one freestanding pole, monument, ground or pylon sign for every 933 linear feet of cumulative frontage on a street or way, provided that each freestanding sign shall be subject to the following dimensional and lighting requirements:

(a) The total allowed illuminated cabinet square feet of signage shall not exceed 200 square feet per side, per freestanding sign, exclusive of any electronic messaging board as provided in Subsection H(5)(e) below and

exclusive of any sign embellishments, structure and address panels located thereon;

(b) The height of any freestanding sign shall not exceed 30 feet from the ground measured directly at the sign base;

(c) No freestanding sign shall be located closer than five feet to any property line, provided that there shall be no setback requirements to interior lot lines within the HRMUOD;

(d) Signs, logos or cabinets may be either externally illuminated or internally illuminated with translucent or transparent faces; and

(e) Electronic messaging boards shall be subject to the provisions of § 526-13 of the City Code, except as expressly approved by the City Council; provided, however, that one double-sided electronic messaging board ("EMB") in the HRMUOD shall be allowed by right with a display area of up to 60 square feet. Notwithstanding the provisions of § 526-13 of the City Code, the EMB within the HRMUOD may: 1) be located as the uppermost element of the pylon/monument sign upon which it is attached; 2) may display no more than four colors from sunrise to sunrise within background, field and message during any single display or message; 3) may present logos; and 4) may have a minimum display time of 20 seconds.

(6) During construction, one freestanding pole, ground, monument or pylon sign per 500 linear feet of cumulative frontage on a street or way, or wall sign where applicable, may be erected or installed advertising the rental, lease or sale of the premises, or portions thereof, provided that said signs shall be removed within seven days of the rental, lease or sale of the premises (or applicable portions thereof).

(7) Wire frame signs and A-frame signs are prohibited.

(8) The City Council may elect to vary the requirements of this section by site plan approval if, in its opinion, such change shall result in an improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

(9) Lawful signage which exists on the date of approval of this amendment to § 650-35 H. at or on Assessor's Map 78, Parcel 14A, and Assessors Map 78, Parcel 23, shall continue to be allowed, notwithstanding anything contained in the HRMUOD to the contrary; however any changes or alterations to said existing signage, whether on or outside of the buildings located on saidparcels, including any freestanding signs, shall be in conformity with § 650-35H and subject to approval of the City Council. **[Amended 11-13-2017 by Ord.No. 16/17-1006443W-2]**

I. Application.

(1) Special permits. An application for a special permit for a use in the mixed-use development in the HRMUOD shall comply with the requirements of § 650-59

et seq. of the Zoning Ordinance.

(2) Site plan approval. An application for site plan approval shall comply with the requirements of Chapter 270 the City Code, Article II, Permits and Approvals, § 270-2 et seq.

J. Site plan approval design criteria. An application for site plan approval under this section shall adhere to the following design criteria, in addition to those specified in § 270-2 of the Marlborough City Code:

(1) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;

i. The placement of utilities and wiring underground, to the extent practical;

ii. The placement of HVAC equipment, fans, generators, and other site-related structures and items so that they are not visible on roofs or building frontage areas, or that such features are suitably screened from view wherever reasonably practicable and where elevation permits;

iii. Pedestrian amenities: sidewalks to provide access from internal site uses to Route 20, between parking areas and uses, and between sites;

iv. Lighting. The applicant shall consider the following standards when designing a lighting plan:

a. The use of lighting should be integrally designed as part of the built environment and should reflect a balance for the lighting needs with the contextual ambient light level and surrounding nighttime characteristics which are appropriate for the uses;

b. The lighting designers shall consider utilizing lighting designs with automatic controls systems wherever possible;

c. Architectural lighting may be utilized to highlight special site features and areas;

d. Landscape lighting may be utilized to accent landscaping and special site features;

e. All lighting proposed shall be sensitive to the night sky, utilizing Illuminating Engineering Society of North America (IESNA) guidance for any lighting design;

f. On-site lighting shall not be directed towards Glen Street;

g. A lighting plan, as applicable, shall be included with any application for site plan approval.

K. Standards for roadways, drainage and water supply protection.

(1) Roadways. Internal HRMUOD roadways shall be private ways and shall be maintained by the owners/developers of the HRMUOD and portions thereof. Private ways within the HRMUOD, to the extent feasible, shall be constructed

using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City[15], but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those private roadways shall be adequate for the intended vehicular and pedestrian traffic and shall be maintained by the owner/developer or an association of owners. The design of private ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.

(2) Stormwater management system. The HRMUOD shall have a stormwater management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City and the Department of Environmental Protection's Storm Water Management Guidelines and the City's Stormwater Ordinance (Chapter 271) and Water Supply Protection District ordinance (§ 650-24), as amended.

(3) The HRMUOD shall comply with the provisions of § 650-24 (Water Supply Protection District). The City Council may waive the provisions of § 650-24F(8) with regard to a fifty-foot no-disturbance/buffer zone to a wetland within the Water Supply Protection District if, upon a review of additional information provided, a similar or greater protection is provided to the water supply with a buffer less than 50 feet but in no case less than 20 feet. Notwithstanding anything contained herein to the contrary, in no event shall the owner/developer be permitted to cause a temporary disturbance of more than 20% of the total area of the fifty-foot no-disturbance/buffer zone located within the HRMUOD, and in no event shall the owner/developer be permitted to create a permanent encroachment of impervious surface of more than 6% of the total area of the fifty-foot no-disturbance/buffer zone located within the HRMUOD. Additional on-site and off-site protection measures near the water supply may be required in exchange for encroachment into the fifty-foot wetland buffer.

L. Modifications.

(1) After approval, the owner/developer of the HRMUOD or any individual applicant may seek modifications to any approved special permits or site plan approvals.

(2) Special permits. Major modifications to a special permit may be granted by a supermajority 2/3 vote of the City Council, and minor modifications to a special permit may be granted by the Building Commissioner. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested modification to a special permit is deemed to be a major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment or the neighborhood. Where the effect of a modification to a special permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable

15. **Editor's Note: See Ch. A676, Subdivision Regulations.**

effect does not result in a ten-percent or greater variation from the applicable approval; provided however, that said modification would not result in a violation of any provision of this section. If it is determined that a modification to a special permit is not minor, per § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under § 650-59C(3)(f).

(3) Site plan approvals. Major amendments to a site plan approval may be granted by a majority vote of the City Council, and minor amendments to a site plan approval may be granted by the Building Commissioner. It shall be a finding of the Building Commissioner, not subject to dispute by the applicant, whether a requested modification to a site plan approval is deemed to be a major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment or the neighborhood. Where the effect of a modification to a site plan approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten-percent or greater variation from the applicable approval; provided however, that said modification would not result in a violation of any provision of this section. If it is determined that a modification to a site plan approval is not minor, an application for a revised site plan approval shall be filed in accordance with the requirements of the City Code, Chapter 270, Building and Site Development, Article II, Permits and Approvals, § 270-2 et seq.

§ 650-36. Executive Residential Overlay District.[16] [Added 6-3-2019 by Ord. No. 19-1007533E]

A. Purpose and objectives. The Executive Residential Overlay District (EROD) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval, as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the EROD are to enhance land use development and encourage desired growth patternsfor the benefit of the public health, safety, and welfare by promoting integrated, pedestrian friendly, residential and mixed-use development with convenient access to employment options in Marlborough's southwest quadrant and along Interstate 495.

B. Location of EROD; development phasing.

(1) For the purposes of this section (§ 650-36, et seq.), the EROD is located on the easterly side of Simarano Drive between the Interstate 495 Interchange and Cedar Hill Road containing approximately 43 acres as indicated on the City Zoning Map and more particularly described in Exhibit A annexed hereto and incorporated by reference herein.[17]

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16. Editor's Note: Former § 650-36, Temporary moratorium on recreational marijuana establishments and sale of marijuana accessories, added 3-19-2018 by Ord. No. 18-1007177B, expired 12-31-2018 and was removed from the Code.

17. Editor's Note: Exhibit A is on file in the City offices.

(2) Within the EROD, there may be one or more phases of development (ERO Phase). Each ERO Phase may consist of one or more parcels of land and may include any eligible use set forth in Subsection D below, which may be commingled within a single structure or located in separate structures on one or more parcels. Parcels within the EROD may be combined or subdivided and held under separate ownership or leaseholds. Each ERO Phase shall be subject to site plan approval.

(3) Upon the issuance of site plan approval for an ERO Phase on a parcel or parcels in the EROD, this section (§ 650-36, et seq.) shall govern said parcel as developed in accordance with the site plan approval.

(4) Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this section (§ 650-36, et seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this section (§ 650-36, et seq.) and any other provision of the Zoning Ordinance, the provisions of this section (§ 650-36, et seq.) shall govern and control.

C. Authority of permit granting authority.

(1) The City Council shall be the permit granting authority for special permits and site plan approvals in the EROD. Special permits shall require a two-thirds-vote of the City Council; site plan approvals shall require a simple majority vote.

(2) At the request of an applicant as part of an initial application or as part of a modification pursuant to Subsection H, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to an ERO Phase by site plan approval upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this section (§ 650-36, et seq.).

(3) An application for site plan approval for an ERO Phase shall comply with Chapter 270 of the Marlborough City Code. An application for a special permit for a use in the EROD shall comply with the requirements of § 650-59 of the Zoning Ordinance.

D. Eligible uses.

(1) The following uses are permitted by right in the EROD:

(a) Uses allowed by right in the underlying zoning district, as set forth in the Table of Use Regulations,[18] including but not limited to offices, banks, and insurance and financial institutions.

(b) Accessory uses, as defined in § 650-5B.

(2) The following additional uses are permitted by special permit in the EROD:

(a) Multifamily dwellings, provided that the total number of units within the

18. Editor's Note: The Table of Use Regulations is included as an attachment to this chapter.

entire EROD shall not exceed 475.

(b) Restaurant, cafe with or without table service (including outside seating and service) without drive-through.

(c) Restaurant, cafe with or without table service (including outside seating and service) with drive-through, provided that said facilities have no dedicated driveway with a curb cut on a public way.

(d) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.

(e) Retail sales and services.

(f) Brew pubs.

(g) Distilleries with attached restaurants.

(h) Accessory solar energy installations, including but not limited to rooftop systems and solar parking canopies.

(i) Uses allowed by special permit in the underlying zoning district.

(3) All uses not specified in Subsection D(1) and (2) above shall be deemed prohibited in the EROD.

(4) Once an ERO Phase receives site plan approval:

(a) An individual as-of-right use within the ERO Phase may be changed without further site plan approval, unless such change otherwise requires Site Plan Approval under § 270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H(3); and

(b) An individual use already granted a special permit within the ERO Phase may be changed upon the grant of a new or modified special permit, as appropriate, for that changed use, and will be subject to Site Plan Approval; provided, however, that if the change is to an as-of-right use in the EROD, no further Site Plan Approval is required unless such change otherwise requires Site Plan Approval under § 270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H(3).

(5) Multifamily dwellings in the EROD shall be subject to § 650-26 of the Zoning Ordinance.

E. Dimensional requirements.

(1) Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the EROD shall be subject to the following dimensional standards:

(a) Minimum lot area: none.

(b) Minimum lot frontage: none.

(c) Minimum front yard or setback from a public way: 20 feet.

(d) Minimum side and rear yard: 25 feet.

(e) Maximum building height: 80 feet, no limitation on stories.

(f) Maximum lot coverage: 60%, over the entire EROD.

(2) Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements, or planting strips required as to internal lot lines within the EROD.

F. Parking requirements.

(1) Parking locations. Parking may be provided at ground level, underground, or in parking garages. Parking garages may be freestanding or part of buildings dedicated to other permitted uses. Parking garages may contain accessory solar energy installation.

(2) Minimum required parking spaces. An ERO Phase shall provide parking as follows: one parking space per bedroom; one parking space per 250 square feet of office space; one parking space for every three seats plus one parking space for every three employees for a restaurant or other food/beverage service use; and one parking space for each 100 square feet of public floor area of other commercial space; provided, however, that the City Council may, through Site Plan Approval, authorize a reduction in the required number of parking spaces upon finding that the parking provided for the ERO Phase is sufficient to meet demand.

(3) Parking space dimensions. Each parking space shall be no less than nine feet by 18 feet, except that the use of compact spaces (no smaller than eight feet by 16 feet) may be utilized throughout provided that no more than 33% of the total parking spaces within an ERO Phase shall be compact spaces.

(4) Except as otherwise provided in this section (§ 650-36, et seq.), parking and circulation requirements in the EROD shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.

G. Design standards.

(1) Design criteria. An application for Site Plan Approval under this section (§ 650-36, et seq.) shall adhere to the design criteria specified in § 270-2 of the Marlborough City Code.

(2) Roadways. To the extent feasible, internal roadways shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those roadways shall be adequate for the intended vehicular and pedestrian traffic. The design of ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.

(3) Landscaping. Landscaping in the EROD shall conform to the provisions of

§ 650-47 of the Zoning Ordinance.

(4) Stormwater management system. An ERO Phase shall have a stormwater management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, Chapter 271 of the Marlborough City Code.

(5) Signage. Except as otherwise provided in this section (§ 650-36, et seq.), signage shall conform to the provisions of Chapter 526 of the Marlborough City Code.

H. Modifications.

(1) After approval, applicants may seek modifications to any approved special permits or Site Plan Approvals.

(2) Special permits. Major modifications to a Special Permit may be granted by a two-thirds-vote of the City Council, and minor modifications to a Special Permit may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Special Permit is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Special Permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten-percent or greater variation from the applicable approval; provided, however, that said modification would not result in a violation of any provision of this section (§ 650-36, et seq.). If it is determined that a modification to a Special Permit is not minor, per § 650-59 of the Zoning Ordinance, an application for a revised Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application.

(3) Site plan approvals. Major modifications to a Site Plan Approval may be granted by a majority vote of the City Council, and minor modifications to a Site Plan Approval may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Site Plan Approval is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Site Plan Approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten-percent or greater variation from the applicable approval; provided, however, that said modification would not result in a violation of any provision of this section (§ 650-36, et seq.). If it is determined that a modification to a Site Plan Approval is not minor, an application for a revised

Site Plan Approval shall be filed in accordance with the City Council's Rules for Site Plan Approval.

§ 650-37. Special Provisions Applicable to the Wayside Zoning District

Within the Wayside Zoning District, the following provisions govern. Where these provisions conflict with other sections of the Zoning Chapter, the provisions of this section shall apply.

A. Purpose and vision. The purpose of the Wayside Zoning District is to encourage compact mixed-use development that encourages walking and biking with development that will enhance compatible land uses and encourage desired growth patterns to improve a traditionally automobile-oriented commercial corridor for the benefit of public health, safety and welfare by promoting integrated, pedestrian-friendly, commercial mixed-use development, including retail, housing, and workplaces within close proximity to each other that are consistent with the stated economic development objectives of the City, contribute to enhanced streetscape, and designed to further promote livability and quality of life within the district.

(1) Commercial mixed-use development.

(a) For the purposes of this zoning district, a commercial mixed-use development shall include any eligible use set forth in Subsection E below which shall be commingled into a single structure or multiple structures with other eligible uses on the same property. Accordingly, commercial mixed-use developments shall benefit the public health, safety and welfare, through the sharing of parking lots and driveway curbcuts, to minimize the amount of impervious paved parking area and driveway curb cuts, to reduce automobile trips and traffic congestion, andaccordingly to improve air quality.

(b) All developments shall be designed to be pedestrian-friendly, and that shall include site design, building layout, and pedestrian circulation features and amenities in compliance with the design standards of this zoning district. Pedestrian-friendly developments shall benefit the public health, safety and welfare through the encouragement of walking and physical activity.

B. Site plan review. Projects within the Wayside Zoning District shall be subject to site plan review as provided in § 270-2, entitled "Site plan review and approval," ofthe Marlborough City Code.

(1) Applicability.

(a) In all instances, a development which proceeds within the WaysideZoning District is subject to site plan approval in accordance with § 270-2of the Marlborough City Code.

(b) Site plan review applies to both as of right and uses available by grant of a special permit within the Wayside Zoning District. Site plan review applicability includes, but is not limited to, new construction of any building or structure; addition to an existing building or structure; and

increase in area of on-site parking or loading areas. [See § 270-2A(3).]

(c) Site plan review shall be conducted administratively as provided in § 270-2, except for uses that are both over 10,000 square feet of building footprint and do not require a special permit, which projects shall undergo administrative site plan review with final review and approval by the City Council.

(d) The City Council may elect to vary the dimensional and parking requirements of this section by special permit or site plan approval if, in its opinion, such change shall result in an improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

C. Special permit granting authority. The City Council shall be the special permit granting authority within the Wayside Zoning District.

D. Exclusivity/control. This section of the Zoning Chapter exclusively controls the establishment, development, and design of any development undertaken in the Wayside Zoning District and supersedes any other provision of the Zoning Chapter. In the event of any conflict between the provisions of this section and any other provision of the Zoning Chapter, the provisions of this section shall govern and control.

E. Eligible uses. Except as specifically provided herein, any uses which are not permitted, whether as of right or by a special permit, within the Wayside Zoning District under § 650-17, Table of Use Regulations, of the Zoning Chapter, shall be prohibited. Uses allowed as of right and uses allowed by special permit are encouraged to be combined as a commercial mixed-use development. All uses noted as not permitted shall be deemed prohibited, except where to so deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation, permit or license, or any state or federal law or regulation.

F. Dimensional requirements. Dimensional requirements are set forth in § 650-41, Table of Lot Area, Yards and Height of Structures," as specified for the Wayside Zoning District. The special permit height of 85 feet shall step down to 52 feet when the building is within 50 feet setback from a property line that abuts a residential district.

G. Parking, curb cut and landscaping requirements. Except as otherwise provided in this section, parking, circulation and landscape requirements shall conform to the provisions of §§ 650-47, 650-48 and 650-49 of the Zoning Chapter.

(1) Parking locations.

(a) Parking shall be located to the side and/or rear of all new building structures that front on Route 20 East, an existing connecting street, or a new internal access street.

(b) Parking may be provided at ground level, underground, or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses but must be integrated with the

surrounding site plan and oriented so as to minimize visual impact of the parking garage on surrounding uses.

(2) Parking access. Where a proposed parking lot is adjacent to an existing parking lot of a similar use, providing vehicular and pedestrian connections between the two parking lots shall be required. This access shall allow vehicular circulation between parking areas without the need to travel on Route 20. This access shall allow the unobstructed flow of pedestrians between adjacent properties, businesses, and parking areas. A sidewalk shall be provided on at least one side of the driveway.

(3) Parking requirements. Parking in the Wayside District shall be provided at a minimum of one parking space per 250 square feet of net floor area for retail and restaurant uses. Parking for other commercial uses shall be provided at a minimum of one parking space per 350 square feet of net floor area. Parking for residential units shall be provided at a minimum of one parking space per unit.

(4) Curb cuts. Curb cuts shall be minimized. Vehicular access shall be provided through one of the following methods:

(a) Through the use of a common driveway serving multiple lots; or

(b) Through the use of an existing side or rear street; or

(c) Through the reduction in the number of existing curb cuts or the reduction of the width of existing curb cuts.

H. Design standards. In addition to the following design standards which apply to all developments within the Wayside Zoning District, commercial mixed-use development that includes residential development shall incorporate design guidance from the City of Marlborough Multifamily Development Review Criteria and Design Guidelines as adopted by the City Council.

(1) Site layout.

(a) Site and building layout. Buildings shall be located in close proximity to streets with the primary building frontage(s) oriented to street frontage(s) and to define outdoor spaces in coordination with adjacent buildings located on the same property or abutting property.

(b) Site and parking layout. Parking shall be located to the rear or to the side of buildings that front on a street. Where an existing parking lot is in front of a building that will be redeveloped, landscaping shall be placed to screen parking and enhance the visual appeal of the site and street frontage. Where a new parking lot is to the side or rear of a building, but adjacent to a street, landscaping shall be used to screen the parking and reduce the visual impact of the parking as viewed from the street.

(c) Site buffer. The setback abutting an existing residential or industrial use shall include landscape plantings and features that screen and separate adjacent residential or business uses from new commercial mixed-use development. This requirement does not need to be provided where

adjacent to an existing commercial mixed-use development, retail, or restaurants.

(2) Pedestrian and bicycle circulation.

(a) Pedestrian circulation. Safe, convenient, and attractive pedestrian circulation shall be incorporated into the site plan design. Where appropriate, new pedestrian and bicycle paths shall connect the site with abutting sidewalks, trails, amenities, or parks to promote pedestrian and bicycle circulation and safety. Where appropriate, pedestrian access should be expanded into a shared-use path to provide safe, convenient, and attractive bicycle access. Where parking is located to the rear of the building, pedestrian access via a pedestrian-oriented alley or walkway through to the primary street is encouraged.

(b) Pedestrian connections. Sidewalks shall provide access from internal site uses, building entries, and parking areas to Route 20 and between adjacent sites.

(c) Bicycle amenities. All developments shall include provisions for the parking of bicycles at locations that are safely separated from vehicular and pedestrian circulation and convenient to building entries. Bicycle racks shall be placed as not to obstruct pedestrian walkways or impede the parking area for automobiles.

(3) Outdoor pedestrian spaces.

(a) Usable outdoor pedestrian space. Buildings and site features shall be arranged to create functional public and private outdoor spaces, including sidewalks, patios, entryways, courtyards, and other types of spaces. Usable and accessible outdoor pedestrian space shall be provided and integrated with the site plan and building design. Such outdoor pedestrian spaces shall enhance visual connections between buildings, streets, open spaces, and pedestrian circulation. Outdoor pedestrian spaces shall be set back from major vehicular ways and be of a scale that is appropriate to the anticipated level of foot traffic.

(b) Location of outdoor seating. Outdoor seating areas may be provided for restaurants, cafes, coffee shops, or other establishments with seating and may overlap with outdoor pedestrian spaces. Outdoor pedestrian spaces and seating areas shall be oriented to street frontage, with side streets and secondary access streets the preferred locations, and integrated with the streetscape. Amenities and seating shall not reduce the required sidewalk widths or impact pedestrian or bicycle circulation.

(4) Building design.

(a) Mixed uses. The Wayside Zoning District shall benefit from mixed-use development that combines several uses that are allowed as of right or by special permit in the district. These uses could be provided in a cluster of separate buildings or combined vertically in a single building. A mix of uses in close proximity shall be used to create smaller, walkable clusters

that enhance the Route 20 East corridor and provide opportunities for residents and patrons to circulate between uses without the use of a vehicle.

(b) Facade step back. A step back in the facade of a building shall occur at the upper floor(s) for all buildings above three stories in height. For example, the fourth story of a four-story building shall be recessed from the lower three stories of the primary facade with a step back. Or, the fourth and fifth story of a five-story building shall be recessed from the lower three stories of the primary facade with a step back. Five feet shall be the minimum step back.

(c) Multiple buildings. In mixed-use developments with multiple buildings, recurring forms and materials shall be used to unify the development while establishing an overall hierarchy of buildings for visual interest and orientation.

(d) Define corners. Prominent corners of sites and buildings should be defined and celebrated by the layout and design of the building(s). Prominent building corners may use design elements, such as towers, arches, unique building massing, or roof forms to serve as identifiable and memorable landmarks.

(e) Roof forms. Gable, hip, mansard, gambrel, stepped, and peaked roofs add variety and interest to buildings and shall be incorporated into mixed-use developments. Flat roofs may be incorporated into the roof design with other roof forms and features.

(f) Blank walls. Large portions of building facades which are unarticulated or blank walls shall be avoided through the careful placement of doors, windows, facade features, and transitions in facade materials and finishes.

(g) Design quality. Building massing and facade design shall be of a high quality with well-composed and articulated building forms using a variety of techniques to create visual interest and character with architectural details, vertical and horizontal projections and recesses,changes in height, roof forms, cornice treatments, pilasters, window reveals, materials, colors, and prominent building entrances or otherdesign features.

(h) Building materials. Use of traditional, natural, and sustainable building materials, such as wood, brick, and stone, shall be preferred over other synthetic materials.

I. Signage.

(1) Except as otherwise provided in this section, signage shall conform to the provisions of Chapter 526 of the City Code, the Sign Ordinance.

(a) Signage plan. A master sign plan for the premises shall be provided for review and approval by the City Council, setting forth the types, locations and dimensions of proposed signs.

(b) A maximum of two wall signs, individual-letter signs, logo signs or projecting signs affixed to a building for each store, business or tenant. No sign shall project above the highest line of the roof, parapet or building. Each wall sign, individual-letter sign, or roof sign shall not exceed an area of 2.5 square feet for each linear foot of the storefront, business front or occupied tenant space for each applicable business or tenant advertised. In the event that a storefront, business front or occupied tenant space occupies more than one front of a building, the longest front shall be utilized to calculate the total area per wall sign, individual-letter sign, logo sign or projecting sign (up to a maximum of two). The total area as calculated herein shall be the applicable maximum area for each sign and not split between the two.

(c) Projecting signs shall not project more than six feet from the building, subject to approval by the City Council as part of the signage plan.

(d) Signs, logos or cabinets should be externally illuminated where possible, otherwise with translucent or transparent faces if no reasonable alternative is possible.

(e) Any business, tenant, or storefront may divide any allowed exteriorsign(s) affixed to a wall of the building, to which it is entitled or hereinabove provided, into separate signs affixed to and parallel to such wall; provided, however, that the aggregate area of the separate signs shall not exceed the maximum area allowed under this section for a singleexterior sign on the same front.

(f) A lot shall be allowed one freestanding pole, monument, ground or pylon sign for frontage on Route 20 East, provided that each freestanding sign shall be subject to the following dimensional and lighting requirements:

[1] The total allowed illuminated cabinet square feet of signage shall not exceed the total area allowed for a freestanding sign as per § 526-9C, exclusive of any sign embellishments, structure and address panels located thereon;

[2] The height of any freestanding sign shall not exceed 30 feet from the ground measured directly at the sign base;

[3] No freestanding sign shall be located closer than five feet to any property line;

[4] Signs, logos or cabinets should be externally illuminated where possible, otherwise with translucent or transparent faces if no reasonable alternative is possible; and

[5] Wire frame signs and A-frame signs are prohibited.

J. Application.

(1) Special permits. An application for a special permit for a use in a development in the Wayside Zoning District shall comply with the requirements of § 650-59 of the Zoning Ordinance.

(2) Site plan approval. An application for site plan approval in the Wayside Zoning District shall comply with the requirements of Chapter 270 of the CityCode, Article II, Permits and Approvals, § 270-2.

K. Site plan; special permit approval review criteria.

(1) Review criteria. In connection with a special permit and/or site plan application in the Wayside Zoning District, such applications shall be reviewed with respect to the following additional review criteria:

(a) Compliance of the design with the design standards in the above Subsection H;

(b) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;

(c) Scale of buildings relative to surroundings and relative to City of Marlborough Multifamily Development Review Criteria and Design Review Guidelines;

(d) Quality of design and materials for building facades visible from public ways;

(e) Quality of design and materials for public space; and

(f) Placement of utilities and wiring underground, to the extent practical.

(2) Submission requirements:

(a) Site plan depicting proposed development, buildings, parking, vehicular, pedestrian, and bicycle circulation, open space;

(b) Building elevations;

(c) Landscape plan;

(d) Lighting plan with photometrics; and

(e) Site and building signage plan.

L. Standards for roadways and drainage.

(1) Roadways. Internal Wayside Zoning District roadways shall be private ways and shall be maintained by owners/developers of the Wayside Zoning District and portions thereof. Private ways within the Wayside Zoning District, to the extent feasible, shall be constructed using the methods and materials prescribed in the City of Marlborough Subdivision Regulations,[19] but shall notbe required to conform to the dimensional requirements thereof, provided thatthose private roadways shall be adequate for the intended vehicular andpedestrian traffic and shall be maintained by the owner/developer or an association of owners.

(2) Stormwater management system. Developments proposed in the Wayside

19. Editor's Note: See Ch. A676, Subdivision Regulations.

Zoning District shall have a stormwater management system designed in accordance with the City of Marlborough Subdivision Regulations, the Department of Environmental Protection's Storm Water Handbook, and the Standards and the City's Stormwater Ordinance (Chapter 271 of the City Code), as amended. The stormwater design shall infiltrate all stormwater on site and avoid runoff onto adjacent properties and is encouraged to integrate bioswales, rain gardens, or other surface stormwater treatment features that areintegral to the function of the site's stormwater management and highlighted as a landscape feature.

M. Amendments. After approval, the owner/developer may seek amendments to the approved permits. For special permits, amendments may be granted by a two-thirds vote of the City Council. For site plan approvals, amendments may be granted by a majority vote of the City Council. The Building Commissioner shall be responsible for determining whether a project change is major or minor. Minor project changes may be made by the Building Commissioner, and major project changes by the permit granting authority. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the surrounding neighborhood. If it is determined that revisions to a special permit are not minor, per § 650-59 of the Zoning Chapter, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3) of § 650-59.

ARTICLE VII
Dimensional, Landscaping and Parking Regulations

§ 650-38. Location and height of buildings.

A. No building or other structure nor any land shall be used, nor shall any building or structure be erected, except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located.

B. No three-family dwelling, multifamily dwelling, two-family dwelling having two or more lodgers in addition to the family units contained therein, nor boardinghouse having facilities for four or more lodgers located in a district in which the building is otherwise permitted or exceeding 2 1/2 stories in height shall be erected or created through conversion or otherwise unless a special permit is granted in each case by the City Council after a public hearing, except as may otherwise bespecifically provided in this chapter.

C. A minimum accessway of at least 30 feet in width is required for any and all multifamily dwellings.

D. Within any district, no building, structure or lot shall be used or arranged or designed to be used in any part for any trade, business, industry or purpose of any kind that is noxious or offensive by reason of the emission of odor, dust, refuse matter, vapor, smoke, gas, noise, vibration, wastes or combination of wastes, whichbecause of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety or welfare or to the environment when improperly treated, stored, transported, used or disposed of or otherwise managed.

E. No uninhabitable structure which exceeds 30 feet above the ground shall be located in any district, unless otherwise provided.

F. For the purposes of this chapter, all principal buildings may be built on any lot located in a district in which the building is permitted, provided that:

(1) The lot has frontage abutting a public or private way or on a way shown on a plan previously approved under the Subdivision Control Law or on a way which existed when the Subdivision Control Law became effective and which, in the opinion of the Planning Board, has sufficient width, suitable grades and adequate construction to provide for vehicular traffic and for the installation of municipal services.

(2) It is located so as to comply with the following requirements for height and yards.[20]

(3) No building in any district need be located or placed further from the exterior line of any street or public way than the average distance from such street or

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20. Editor's Note: See § 650-41 and the Table of Lot Area, Yards and Height at the end of this chapter.

way line of the dwellings or other principal buildings located on the lots adjacent thereto on either side. In determining such average, a vacant side lot having a frontage of 50 feet or more shall be considered as though occupied by a building having the required setback, and a lot separated from the lot in question only by a vacant lot having a frontage of less than 50 feet shall be deemed an adjacent lot.

(4) The front, side and rear yard provisions hereof may be varied by the Board of Appeals in the specific case of an irregular, narrow or shallow lot or a lot unusual either in shape or topography, provided that in the opinion of the Board it is impossible or extremely difficult to adhere to such provisions.

(5) Nothing herein shall prevent the projection of cornices or eaves not exceeding 18 inches in width or of uncovered steps, unroofed porches or window sills into a required yard or other open space.

(6) In all districts except within the flight path of commercial or governmental airports, farm buildings, churches, municipal or institutional buildings and spires, domes, steeples, radio towers, chimneys, broadcasting and television antennas, bulkheads, cooling towers, ventilators and other appurtenances usually carried above the roof may have any height.

(7) Every building shall have frontage on a way, public or private, or a clear unobstructed passageway at least 20 feet wide for its entire length over the lot on which it is located to said way. If a building is located in the rear of another building located on the same lot, the open space between such buildings shall be at least 50% greater than the rear yard requirement for the district. The rear building shall be subject to side and rear yard requirements of the district in which it is located. For purposes of this Subsection F(7), separate buildings within a shopping mall or retail lot shall be treated as a single building.

(8) In all districts in which multifamily dwellings are allowed, there shall be provided with each apartment building a landscaped area equal to the greatest single floor area of the building.

(9) Land used for outdoor storage for commercial purposes shall be screened from streets abutting the property and for adjacent properties by a solid fence of sufficient height to obscure materials stored therein. Affected parties shall be given six months from date of adoption of this chapter to comply.

(10) Bridges, walkways or passageways, enclosed or otherwise, connecting buildings located on a large tract development lot shall not negate the existence of each such building as a separate building, and each building so connected shall be deemed to be a separate building for all purposes of this Zoning Ordinance.

(11) Bridges, walkways or passageways, no longer than 200 feet in length, enclosed or otherwise, connecting buildings located on different lots in a Limited Industrial District shall not thereby violate any lot setback provision of any building or buildings connected by said structures. **[Added 3-25-2013 by Ord. No. 13-1005306C]**

§ 650-39. Table of Lot Area, Yards and Height of Structures.

(The Table of Lot Area, Yards and Height of Structures is included at the end of this chapter.)

§ 650-40. Size of lots.

For the purposes of this chapter, all principal buildings may be built on any lot located in a district in which the building is permitted, provided that the lot complies with the requirements included in the Table of Lot Area, Yards and Height of Structures, except where specifically provided otherwise by this chapter, and further provided that:

A. Lot area requirements.

(1) Lot area.

(a) Minimum lot area. The lot contains the minimum area required.

(b) Minimum area for principal building. The minimum lot area shall not be counted for more than one principal building, except in the case of:

[1] Limited Industrial and Industrial Districts.

[2] Multifamily dwellings located in any district where said dwellings are permitted, subject to requirements specified elsewhere in this chapter for said dwellings.

(c) Single- or two-family dwellings. In all districts in which single- or two-family dwellings are allowed, only one principal building containing said one- or two-family dwelling shall be permitted on any one lot, no matter what the lot area, unless said lot is located in a district where more than one of said principal buildings is specifically permitted by other provisions of this chapter.

(d) Area within street not included. In determining lot area, no part thereof within the street lines or within a private road or right-of-way for travel by motor vehicles to another lot shall be included. Street lines shall determine lot boundaries.

B. Lot shape. The lot shall be large enough to contain a rectangle having one side equal in length to the required frontage and situated parallel to the mean direction of the front lot line and the other side equal to 3/4 of the required frontage. Where the front lot line is curved, the mean direction of the front lot line shall be the line established by connecting the intersection points of the side property lines with thestreet line. Said rectangle shall touch the front lot line, but no part of said rectangle shall intersect any lot line.

C. No lot on which a building is located in any district shall be reduced or changed in size or shape so that the building or lot fails to comply with the lot area, frontage, setback, yard or height provisions of this chapter applicable to the construction of the building on the lot. This provision shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.

D. On corner lots, the setback provisions governing the location of the building shall apply in relation to both streets or ways.

E. Any lot or lots of land described in a deed and officially recorded with the Registry of Deeds or included in a subdivision approved in writing in accord with the Subdivision Regulations of the Planning Board of Marlborough by said Board at the time of the adoption of this chapter may be used for any permitted use in the district in which the lot or lots are located, provided that:

(1) In the case of a nonconforming lot, the adjoining lot is not vacant and not in the same ownership.

(2) Any lot on which more than one house existed at the time of the adoption of this chapter may be divided and sold to separate owners and used with a minimum of nonconformance.

F. Any increase in the area, frontage, width, yard or depth requirements of this chapter shall not apply to a lot to be used for dwellings with one- and two-dwelling units which, at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land; conformed to then-existing requirements and had less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage. The provisions of this subsection shall not be construed to prohibit a lot being built upon if, at the time of the building, building upon such a lot is not prohibited by this chapter.

G. In the application of the requirements of this chapter, including, without limitation, those set forth in §§ 650-42, 650-43, 650-45, 650-47 and 650-48, the same shall not be applied to the individual lots comprising a developing lot or a retail lot but shall be applied as if the development lot or a retail lot were the lot, notwithstanding the fact that the individual lots within the development lot or a retail lot may be in different ownership.

§ 650-41. Maximum lot coverage.

A. Structures in all zones together with all parking and driveways shall conform to the maximum lot coverage provision indicated in the Table of Lot Area, Yards and Height of Structures.[21] Within a Limited Industrial District, maximum lot coverage for development of a shopping mall on a development lot may be increased to 85% when approved by the City Council, as provided in § 650-59, in writing, provided the City Council finds that, in connection with such development, infrastructure improvements are to be made by the applicant that will benefit not only the development but other property within the City.

B. Maximum lot coverage for development of retail stores, shops, restaurants or service establishment uses, excluding automotive service establishments (such as gasoline filling stations and places for the repair and service of motor vehicles), ona retail lot may be increased to 85% when approved by the City Council, as provided in § 650-59, in writing, provided the City Council finds that, in connection with such development, infrastructure and/or open space improvements are to be

21. Editor's Note: The Table is included at the end of this chapter.

made by the applicant that will benefit not only the development but other property within the City.

§ 650-42. General off-street requirements.

A. Underground utility lines. All electric, telephone, cable television and other utility lines shall be installed underground, subject to the approval of the City Engineer. This requirement shall apply to all new structures and all additions and major renovations to existing structures requiring site plan approval.

B. Refuse areas required. In all districts all structures except one- and two-family dwellings shall be provided with an area or areas suitable for storage of refuse and like matter, in compliance with regulations of the Board of Health, screened as required in this chapter, located away from living quarters and within the setback requirements for accessory buildings. Said refuse or like matter shall be removed and disposed of periodically and as required to prevent accumulations and to further ensure the health and safety of the tenants of such building or buildings or of abutters and to protect the property values of abutting property. Nothing herein shallprevent owners of abutting properties from jointly setting aside and managing an area for storage of refuse and like matter. **[Amended 12-1-2014 by Ord. No. 14-1005947C]**

C. Identification of buildings. All buildings shall be identified as follows: There shall be attached the number of each building, issued by the City Engineer at the time of site plan approval, in letters or numbers a minimum of four inches high, in at least one location clearly visible from the street and in any event at the front entrance of all buildings and the rear entrance of multifamily and nonresidential buildings.[22]

§ 650-43. Location of accessory structures.

A. The yard provisions for principal structures shall apply to accessory structures, both detached or attached to the principal structure, when used for human occupancy.

B. A detached accessory structure of one story shall not be closer to the principal structure than 10 feet. A detached accessory structure of two stories or more shall not be closer to the principal structure than 15 feet.

C. No accessory structure or structures shall occupy more than 25% of the required rear or side yard areas.

D. No accessory building shall be nearer than five feet to any side or rear lot line.

§ 650-44. Floor area.

All dwelling units, except those in detached one-family residence buildings, shall provide a minimum habitable floor area as follows:

A. Six hundred square feet for a dwelling unit on one floor.

B. Five hundred square feet for a dwelling unit on the first floor of a dwelling unit of

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22. Editor's Note: See Ch. 439, Numbering of Property.

1 1/2 floors.

C. Four hundred square feet for a dwelling unit on the first floor of a dwelling unit on two floors.

D. Trailer coaches and mobile homes situated in a trailer court or trailer park shall have a minimum of 200 square feet per dwelling unit.

E. Motels and hotels shall have a minimum of 125 square feet of floor area per motel or hotel unit.

F. In a residential conference and training center, each dwelling unit which includes one bedroom and a portion of related common residential space to be occupied by no more than two persons shall have a minimum of 200 square feet of floor area.

§ 650-45. Landscaping and screening.[23]

A. Objectives. The provisions of this section are intended to achieve the following purposes:

(1) To provide a suitable boundary or buffer between zoning districts.

(2) To separate different and otherwise incompatible adjacent land uses from each other in order to partially or completely reduce potential nuisances, such as dirt, dust, litter, noise, glare from motor vehicle headlights, the intrusion from artificial light, including the ambient glow therefrom, signs or the view of unsightly buildings and parking lots.

(3) To provide visual relief to parking lots and protection from wind in open areas.

(4) To preserve or improve the visual and environmental character of a neighborhood and of Marlborough generally.

(5) To offer property owners protection against possible diminution of property values due to adjacent commercial construction or a change in existing ostensibly incompatible land uses.

(6) To assure public safety requirements for sight distance visibility.

~~(6)~~(7) To provide shade and cooling and carbon sequestration to properties as mitigation to climate change

B. Applicability. Landscaping, planting areas and screening shall be provided in accordance with all provisions of this section as specified below:

(1) When the building or site undergoes a change of use or is enlarged by more than 10% of the floor or ground areas of use or when any new principal building is built on the site or when any new building, addition, alteration or change of use requires a parking increase of five or more spaces.

(2) Compliance with all provisions of this section to the maximum extent practicable, as determined at site plan approval, shall be a requirement for approval of any site plan or off-street parking plan or issuance of any building permit, occupancy permit or special permit.

23. Editor's Note: Landscaping and screening diagrams are included at the end of this chapter.

(3) An application for a special permit for a use, structure or activity that does not comply with the provisions of this section shall not be granted until compliance to the maximum extent practicable is demonstrated.

C. Landscaping plan required.

(1) A landscaping plan demonstrating compliance with the standards contained in this section for landscaping, planting areas and screening shall accompany each application for site plan approval and building permit. The plan shall be drawn to scale and may be part of a site plan application. A landscaping plan shall not be required for a single- or two-family dwelling.

(2) The landscaping plan for any lot used or zoned for multifamily or nonresidential use shall be certified by a landscape architect registered in the Commonwealth of Massachusetts.

(3) The landscaping plan shall show, apart from information normally required on a site plan:

(a) A layout plan showing existing and proposed grades, the proposed landscaped area and planting areas, the existing plant materials to be retained, the proposed plant materials to be provided and the location, size and type of such plant materials and of any nonplant materials to be retained or provided.

(b) A plant schedule giving botanical and common names of plants to be used, size at time of planting and quantity of each.

(c) The methods for protecting plant materials during and after construction.

D. Planting area requirements. The following requirements shall apply to all planting areas required by this section, except as provided hereinafter:

(1) Planting areas and lot coverage. Planting areas on a lot shall be considered a part of the total landscaped area on a lot required by the maximum lot coverage provisions of § 650-43. Any landscaped area required by the lot coverage provisions and located outside of a planting area required by this section shall meet the requirements of Subsection D(3), Ground surface materials, but need not meet the requirements of Subsection D(4) or (5) for planting type and size and planting quantity and spacing.

(2) Location. The planting area required by this section shall be located entirely within the lot. Additional planting area may be provided outside the lot but shall not be credited to the area required within the lot.

(3) Ground surface materials.

(a) Paving. The planting area shall not be paved over with asphalt, concrete or similar material, or covered with gravel, except for access drives and walks located essentially perpendicular to the area. No structure, parking area or paved play area may be located in a required landscape area.

(b) Plant materials. The planting area shall have a ground surface cover of

live plant material, such as lawn grass or live ground cover, over at least four inches of topsoil, except that bark mulch may be used in place of live ground cover, and except for nonplant materials solely as provided for hereinafter under Subsection D(3)(d).

(c) Substitution with artificial plants. The substitution of artificial shrubs, grass or other plants shall not be permitted.

(d) Nonplant materials. Nonplant ground surface material, such as brick, decorative stones or other similar material (but not gravel, concrete or asphalt paving), may be used in place of live plant material or bark mulch, provided that the nonplant material covers no more than 30% of any planting area required by this section and has shrubs and trees distributed over its surface as required below under Subsection D(5).

(4) Planting type and size. Required plantings shall include both trees and a mix of deciduous and evergreen shrubs to maintain effectiveness throughout the winter and preferably will include vegetation existing on the site. To be credited towards meeting these requirements, trees must be at least two inches caliper four feet above grade at the time of planting, be of a species common in the area and which reach an ultimate height of at least 20 feet when mature. Shrubs must be at least 12 inches in height at the time of building occupancy and be of a species common in the area. Live ground cover, lawn grass or hedgerows may be substituted for shrubs as provided under Subsection D(5) below.

(5) Planting quantity and spacing.

(a) Plantings shall consist of at least one shrub per five linear feet or 35 square feet of ground area, whichever results in a greater number of shrubs, and at least one tree per ~~40~~30 linear feet of planting area length~~, except one tree per 30 linear feet of street frontage planting area abutting Routes 20 and 85~~.

(b) Planting layout. Plantings may be grouped, not evenly spaced, but groups of shrubs shall be spaced no further apart than 10 linear feet and groups of trees no further apart than 50 feet.

(c) Substitution of shrubs with lawn grass or ground cover. Shrubs required by this section may be substituted with live ground cover or lawn grass, but not bark mulch or nonplant ground surface material, under the following conditions. To be credited for substitution:

[1] The substitution may occur in the street frontage planting area but not in the side line or district boundary planting areas.

[2] The substitution must be in a contiguous area of not less than 100 square feet.

[3] No more than 50% of the total number of shrubs otherwise required in the entire frontage landscaped strip may be substituted in the above manner, upon approval of Site Plan Review.

[4] No substitution may be made for tree plantings required by this section.

[5] The lawn grass or live ground cover must be properly maintained in presentable appearance. Additional areas of live ground cover or lawn grass may be provided in planting areas but cannot be used in substitution of the required number of shrubs or trees.

(d) Substitution of shrubs with hedgerow. Shrubs required by this section may be substituted in full by a continuous hedgerow not less than two feethigh when planted and attaining a height of at least three feet within threeyears. Such substitution may be made in any planting area, provided thatlive ground cover or lawn grass is planted in the remainder of the plantingarea along with the hedgerow. Trees may not be substituted with hedgerows.

(e) Egress visibility. Plantings shall be located or trimmed to avoid blocking egress visibility. (See Subsection N, Sight Distance.)

(6) Existing vegetation. Wherever possible, the above requirements shall be met by retention of existing plants, including as follows: If located within the street frontage planting area required by this section, no existing tree of six inches in caliper or greater (measured four feet above grade), dense hedgerow of four or more feet in both depth and height, or existing earth berm providing similar visual screening shall be removed or have grade changed more than one foot unless required by plant health or access safety.

(7) Curb protection of landscaping from vehicles. Except for single- and two-family dwellings, wherever landscaping areas are adjacent to parking areas or driveways, the landscaped areas shall be suitably protected by raised curbing to avoid damage to the plant materials by vehicles and by snowplows and to define the edge of the landscaped area. The edge of the landscaped area shall also be defined by tall stakes during winter season. Curb specifications for parking areas and driveways are included in § 650-49.

(8) Walls or fences. Walls or fences may not be substituted for plant materials to reduce the required planting area. A wall or fence may be added where a mass of plant materials would not provide an adequate screen, in which caseplanting shall be provided along the side of the wall or fence.

E. Street frontage planting area.

(1) Location and width.

(a) A continuous landscaped strip shall be provided adjacent to the right-of-way line of any street (existing, proposed, paper, public or private) or highway, except for driveways or walkways located essentially perpendicular to the street frontage. This landscaped strip shall have a minimum width as prescribed below, provided that said minimum width shall be increased if required by provisions of Subsection E(1)(b) following, and also provided that, if the front yard (building setback) as built, not as required, is less than the width of the landscaped strip, then

the landscaped strip may be reduced to not less than the depth of the front yard. Said minimum width shall be as follows.

[1] One- and two-family dwellings: the minimum width of the required front yard.

[2] Multifamily dwellings (except multifamily dwellings and mixed use structures in the Marlborough Village District): the minimum width of the required front yard. **[Amended 12-1-2014 by Ord. No.14-1005947C]**

[3] Nonresidential uses and districts: **[Amended 12-1-2014 by Ord. No. 14-1005947C]**

[a] Along Main Street in the Marlborough Village District: zero feet.

[b] Commercial and Automotive Districts, and for all portions of the Marlborough Village District not fronting on Main Street: 10 feet.

[c] Other districts: 15 feet.

(b) In nonresidential districts (except in the Marlborough Village District) or where nonresidential uses or multifamily housing exists in a residential district, the street frontage landscaped strip shall have a greater width than the requirements of the above subsection by providing, where applicable, an additional one foot of width for each 20 feet or fraction thereof of street frontage over 100 feet in length. The maximum requiredwidth for said street frontage landscaped strip shall be 25 feet. **[Amended12-1-2014 by Ord. No. 14-1005947C]**

(2) (Reserved)

(3) Planting in right-of-way. The landscaped strip adjacent to the right-of-way required by this section must be located within the affected parcel, and state or City property within the right-of-way may not be used to meet the requirements of this section. However, wherever possible, the extension of grass or ground cover into said right-of-way is encouraged but must be approved on the landscaping plan and maintained by the owner of the affectedparcel.

(4) Planting requirements.

(a) For other than residential uses in all districts, the street frontage planting area shall be planted with trees and shrubs according to Subsection D, Planting area requirements, entirely within the frontage planting strip next to the right-of-way.

(b) For residential uses in all districts, the required plantings shall consist of one shrub per five linear feet and one tree per 30 linear feet of frontage. Said plantings shall be located anywhere within the front yard.

(c) For one- and two-family dwellings, the plantings may be installed within one year of the issuance of the certificate of occupancy, provided that the dwelling is not built for profit or for the use and occupancy of the builder or developer. (See Subsection M, Inspection, date of completion and enforcement.)

F. Side line planting area. Side line planting areas are required with the following minimum widths except for where structures are built according to zero-foot side yard setbacks as allowed in the Marlborough Village District. **[Amended 12-1-2014 by Ord. No. 14-1005947C]**

(1) One- and two-family dwellings: No side line planting is required.

(2) Nonresidential and multifamily residential uses on lots with under 40,000 square feet of lot area: five feet.

(3) Nonresidential and multifamily residential uses on lots with over 40,000square feet of lot area: seven feet.

(4) All lots where common driveways on the lot line are approved at site plan approval: No side line planting is required.

(5) In a Limited Industrial District, the side yard landscaping requirement shall not apply to side yard or rear yard lines that bisect parking lots, if both lots are in common ownership or if there are parking easements that, in the opinion of the Building Commissioner, adequately allow for parking in one lot by persons using the other lot. **[Added 3-25-2013 by Ord. No. 13-1005306C]**

G. District boundary planting area. A district boundary planting is intended as a buffer or transition between different uses and shall be provided as follows:

(1) Location. District boundary planting is required in the following locations:

(a) Nonresidential parcels. On any nonresidential zoned or used premises along the full length of any boundary, which:

[1] Abuts a residential district;

[2] Is located across a street from a residential district; or

[3] Extends into a residential district and said premises are being developed for a use not allowed in that residential district, unless abutting property is unbuildable because of wetlands as determined by the Conservation Commission.

(b) Residential parcels. On any residentially zoned parcel to be used for residential purposes, along the full length of any boundary which abuts nonresidential zoned or used premises which are already developed in whole or part and do not contain said boundary planting.

(2) Width. The width of the district boundary planting area, located adjacent to the boundary, shall be sufficient to act as a buffer or transition between uses. Said width shall be determined at site plan approval but shall not be less than the widths prescribed in the table below:

Minimum Width of District Boundary Planting Area

Lot Area	Width Planting Area
(square feet)	**(feet)**
Under 40,000	5
40,000 to 80,000	7
80,001 to 120,000	10
Over 120,000	15*

NOTE:

* For lots over 120,000 square feet in area, the minimum width shall be as provided in the table above plus an additional one foot of width for each 10 feet or fraction thereof of district boundary over 100 feet in length. The maximum required width for said district boundary planting area shall be 25 feet unless it is determined by the Planning Director at site plan approval that a greater width is required.

(3) Planting. Said planting area shall be densely planted with shrubs and trees at least four feet high when planted and of a type expected to form a year-round dense screen or wall at least six feet high within three years or by an opaque fence or wall at least six feet high supplemented by landscaping on the residential side of the fence.

(4) Topographic features. If the abutting parcel is presently visually separated by topographic features, the planting area shall be provided with the required width, but the plantings need not be installed until and unless said topographic features are removed.

H. Parking lot planting area.

(1) Perimeter of parking lot. On at least three sides of the perimeter of an outdoor parking lot containing 10 or more parking spaces, there shall be a planting area or strip with a minimum width equal to the width required for side line planting areas under Subsection F above, except that, where the perimeter is along the street frontage or district boundary, the planting areas shall have the larger dimensions required by this section. The plantings in the perimeter area shall be according to Subsection D, Planting area requirements.

(2) Interior of lot.

(a) A minimum of 3% of the interior area of a parking lot containing a total of 50 or more spaces must be planted as landscaped islands or areas exclusive of perimeter landscaping. The interior area of the lot shall be computed as the paved area excluding all parking spaces abutting the perimeter of the parking lot.

(b) Planting on landscaped islands. Planting islands or areas on the interior of a parking lot shall each contain not less than 100 square feet of unpaved soil area and have a minimum dimension of seven feet. Each island shall

be planted with at least one tree and four shrubs. A minimum

of one tree and four shrubs, exclusive of perimeter plantings, must be planted for every 12 cars in the interior area of the parking lot.

(c) Location of landscaped islands. The landscaped islands shall be contained within or project into a parking lot and be so located that some part of every parking space is not more than 45 feet from a landscaped area on the perimeter or interior of the parking lot. See the Landscaping and Screening Diagram at the end of this chapter for alternative layouts.

(d) Protection of landscaped islands. Each such landscaped island shall be surrounded by curbs at least six inches high for protection from vehicles, and the area may be used to locate fire hydrants.

(3) Site plan approval. The above requirements shall be complied with to the extent practicable. Grouping of landscaped islands into larger landscaped areasmay be allowed if the result meets the intent of this section as interpreted by the City Planner at site plan approval.

(4) Within a Limited Industrial District, the requirements of Subsection H(2) may be suspended for the development of a shopping mall or a retail lot when approved by the City Council, as provided in § 650-59, in writing, provided that the City Council finds that, at the perimeter of the development lot or a retail lot, the strip required under Subsection H(1) is increased by a minimum of 125% of the area that would be devoted to the islands under Subsection H(2) if the requirements of Subsection H(2) were applicable to the development lot or a retail lot.

I. Screening of parking lots from residential uses. In all residential districts or on a lot used for residential purposes the following provisions shall apply: Any outdoor parking lot containing five or more parking spaces, all loading bays, maneuvering aisles and driveways shall be screened in a manner to protect abutting residential lots from the glare of headlights, noise and other nuisance factors by the following screening:

(1) A planting area not less than seven feet wide adjacent to the parking lot, densely planted with shrubs and trees at least four feet high when planted andof a type expected to form a year-round dense screen at least six feet high within three years; or

(2) A fence or wall of uniform appearance at least six feet high above the parking lot surface. Such wall or fence may be supplemented by planting and shall be located at least seven feet away from any parking or loading space to allow for vehicle overhang or snow clearance. Such wall or fence may be opaque or perforated, provided that no more than 50% of the fence face is open. If snowdrifts are likely, the fence shall be designed accordingly.

J. Screening of other use areas within lots.

(1) Outdoor storage and loading areas, refuse disposal.

(a) All outdoor storage areas for nonresidential uses in all districts, allloading areas for nonresidential uses located in a residential districts and

all facilities for refuse disposal for all uses in all districts, except one- and two-family houses, shall be screened from view at normal eye level from any residential living unit, public or private street, common parking lot or adjoining lot residentially used or zoned to the extent practicable. Refuse storage areas shall be located no closer to the property line than the applicable setback requirements for accessory buildings.

(b) Screening shall consist of a solid wall or fence compatible with surrounding architecture and materials, of a height sufficient to completely screen the area at the time of installation but not less than six feet high. The fence or wall may be supplemented but not replaced by plantings.

(2) Mechanical equipment. Wherever possible, in all districts on nonresidential properties all air-conditioning equipment, transformers, elevator equipment or similar mechanical equipment on any roof or building or on the ground shall be screened from public view to the maximum extent practicable.

(3) Transfer, equipment lockers and underground installation of utility lines. In all districts when electric, telephone and all other utility lines or cables are proposed to be extended or relocated in connection with the development or redevelopment of land or a building for nonresidential purposes, they shall be installed underground. Transformers and other equipment located above ground shall be screened from public view by planting or fencing.

(4) Exterior lighting.

(a) All artificial lighting used to illuminate a parking or storage area, maneuvering space or driveway shall be arranged and shielded so as to prevent direct glare from the light source into any public street or private way or onto adjacent property.

(b) The level of illumination of lighting for parking and loading areas shall be low so as to reduce the glow of ambient lighting perceptible at nearby properties or streets.

K. Retaining walls and embankment stabilization. Retaining walls and embankments requiring stabilization, visible from the exterior of the lot, shall utilize natural rock material for facing where practical and technically feasible and shall be planted with suitable shrubs at not less than one plant per 50 square feet to enhance appearance.

L. Maintenance.

(1) The owner of the lot shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with the approved landscaping plan required under Subsection C.

(2) All plant materials required by this section shall be maintained in a healthful condition. Dead limbs, refuse and debris shall be promptly removed. Bark mulch and nonplant ground surface materials allowed by the section shall be maintained so as to control weed growth. Dead plantings shall be replaced with

new live plantings of the required size and quantity at the earliest appropriate season. Shrubs and live ground surface plant materials, such as grass or ground cover, shall be properly maintained in presentable appearance or replaced in kind at the earliest appropriate season.

(3) Plantings shall be selected and designed so as not to require high water use for maintenance. If grassed lawn areas or thickly planted shrubs or ground cover are used in the street frontage planting areas, a permanent water supply system, sufficient to serve the landscaped areas, shall be provided by the installation of a sprinkler system and/or hose bibs placed at appropriate intervals.

(4) Fences and walls shall be maintained in good repair and presentable appearance or replaced.

(5) All approved landscaped areas shall be maintained in accordance with the approved plans in perpetuity by current and future owners, until and unless amended by a subsequent approved site plan.

~~(4)~~(6) Snow storage areas shall be on pavement areas only, and designated areas shall be shown on site plan.

M. Inspection, date of completion and enforcement.

(1) The landscaping plan and plantings, as approved, shall be completed and installed according to specifications prior to the issuance of a certificate of occupancy for any residential or nonresidential use or building, other than for single-family houses. If the completion of the structure occurs after the planting season has passed, only a temporary certificate of occupancy may be issued until the landscaping is completed.

(2) For single-family houses the same provisions shall apply, except that, for those houses not built for profit or for the use and occupancy of the builder or developer, the landscaping shall be completed within one year after the issuance of the certificate of occupancy.

(3) If at any time after the issuance of a certificate of occupancy the landscaping of any parking or vehicular area to which this section is applicable is found to be in nonconformance, notice shall be issued to the owners that corrective action is required to be in compliance with this section and shall describe what action is necessary to comply. The owners shall have 30 days to fulfill the landscaping requirements. Failure to comply within the allotted time shall be considered a violation of this section.

(4) At the time of site plan approval, a bond may be required to ensure the satisfactory planting of required landscaping and to ensure the survival of such landscaping for up to 18 months following such planting.

N. Sight distance.

(1) Measurement. In order to provide an unobstructed sight distance for motorists, there shall be no obstruction as described below within a triangle which measures at least 25 feet on two sides of the intersection of a street with another street or a driveway, interior drive or bikeway. The triangle shall be measured

from the point of intersection or, in the case of a rounded corner, thepoint of intersection of the tangents, in a direction away from the intersection for a distance of at least 25 feet along the street right-of-way line; along the side line of the other street, driveway, interior drive or bikeway for a distance of at least 25 feet; and by a third line connecting these two points.

(2) Obstruction. The word "obstruction," as used in this section, shall mean anything erected, placed, planted or allowed to grow in such a manner as to impede vision for motorists between a height of two feet and eight feet above the grade of the center line of the street and the intersecting street, driveway, interior drive or bikeway.

(3) Ground elevation. In all cases of new construction and in other cases when deemed necessary by the permitting authority, ground elevation (hills, embankments, etc.) shall be considered as an obstruction to sight requirements if said elevation is higher than the two feet put forth above within the prescribed area.

(4) Illustration. The illustration of sight distance is included at the end of this chapter.

O. Nonconforming landscaping and screening.

(1) Any landscaping, screening and fencing legally provided or erected and conforming to the requirements of this section when so erected may continue to be maintained, even though as a result of changes to this section the landscaping and screening no longer conforms to its requirements, provided that such landscaping and screening shall not be reduced, enlarged, redesigned or altered except so as to make them conform to said requirements, and further provided that any such landscaping and screening which has been destroyed or damaged to such an extent that the cost of restoration would exceed 50% of the replacement value of the landscaping and screening at the time of destruction or damage shall not be repaired, rebuilt or altered, except so as to make such landscaping and screening conform to the requirements of this section.

(2) The exemption for nonconforming landscaping and screening and fencing herein granted shall terminate with respect to any landscaping and screening which shall:

(a) Have been abandoned; or

(b) Not have been repaired or properly maintained for at least 60 days after notice to that effect has been given by the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

P. Exceptions. Where plant materials required by this section would harmfully obstruct a scenic view, substitution of additional low-level plantings which will visually define the street edge or property line may be authorized on the landscaping plan required by Subsection D, provided that proposed buildings are also designed and located to preserve that scenic view. Within the Marlborough Village District, where significant topographic change or other site conditions on the development lot or the abutting parcel would eliminate the benefits of the abovelandscaping and screening requirements on the abutting parcels, other more appropriate measures may be approved as part of site plan review and approval. **[Amended 12-1-2014 by Ord. No. 14-1005947C]**

§ 650-46. Off-street parking. [Amended 10-6-2014 by Ord. No. 14-1005921A;

12-1-2014 by Ord. No. 14-1005947C]

Except as may be superseded by the provisions of § 650-34 for the Marlborough Village District, the following provisions apply within all zoning districts in the City of Marlborough.

A. In all zoning districts, permanently maintained off-street parking shall be provided as part of the plan for any new construction as follows:

(1) Stores and shops for the conducting of retail business shall provide oneparking space, 350 square feet, for each 100 square feet of public floor space or area.

(2) Theaters, stadiums, auditoriums, halls, undertaking establishments or other places of public assembly, excluding churches, shall provide one parking space for each two legal occupants.

(3) Hospital or nursing home: one space for each two beds.

(4) Boardinghouse, lodging house, inn, hotel or motel: one space for each room.

(5) Offices and banks shall provide one parking space for each 250 square feet of office space or area.

(6) Industrial and manufacturing establishments shall provide one parking space for each three workers based on peak employment and adequate space for loading and unloading all vehicles used incidental to the operation of the establishment. All new commercial and mixed use buildings shall construct loading facilities. Renovated structures shall provide for loading facilities insofar as possible. Provision for loading facilities shall be shown on site plans.

(7) Multifamily dwellings: one off-street parking space per dwelling unit, plus one off-street parking space per bedroom; apartment buildings shall provide two off-street parking spaces for each dwelling unit over and above access roadways and maneuvering.

(8) Home occupation: one off-street parking space for each nonresident employee and two additional spaces.

(9) All parking spaces, other than for single-family dwellings, shall be provided with adequate fencing to prevent the creation of a nuisance to abutters from headlights of cars entering and leaving the property.

(10) Any other nonresident uses not otherwise covered in this chapter: Minimum requirements as shall be determined by the Building Commissioner must be adequate to serve the customers, patrons or visitors and the employees of such use.

(11) Clubs, restaurants, taverns and other eating places shall provide one parking space for every three seats, plus one space for every three employees.

(12) Residential conference and training center: two parking spaces for each three bedrooms.

(13) Shopping mall shall provide a minimum of one parking space for each 225 square feet of gross leasable area. Retail stores, shops, restaurants and service establishment uses, excluding automotive service establishments (such as gasoline filling stations and places for the repair and service of motor vehicles), on a retail lot shall provide a minimum of one parking space for each225 square feet of gross leasable area.

(14) A large tract development shall provide one parking space for each 333 square feet of office space or area. For purposes of this section, structured off-street accessory parking areas, areas used for employee amenities (including, but not limited to, cafeterias, lounges, fitness centers, convenience stores, and bank teller machines), and rooms for mechanical equipment, including but not limited to telephone, heating, air-conditioning or other mechanical equipment, shall not be considered as office space or area.

(15) Data storage/telecommunications facilities shall provide one parking space for each 2,500 square feet of building area; provided, however, that the site plan for a data storage/telecommunications facility shall provide an area labeled as "Reserve Parking Area" on the site plan, to be maintained as existing natural vegetation or as landscaped area, said reserve parking area to be sufficient in size to accommodate the parking requirements in existence at the time for an office use at the site. **[Added 3-11-2013 by Ord. No. 12/13-1005235B]**

(16) Assisted living facility: one space for each two beds. Reserve parking area equivalent to one space per four employees on the largest shift at the facility shall be provided on the site plan in case of need, such provision to be reviewed after one full year of continuous facility operation. **[Added 11-28-2016 by Ord. No. 16-1006631D]**

(17) A self-service storage facility shall provide a minimum of one parking space per employee and one parking space per 1,600 square feet of the facility. **[Added 11-27-2017 by Ord. No. 17-1007002C]**

B. Application of parking requirements.

(1) Approvals and permits.

(a) Site plan approval. No driveways, curb cuts or parking areas (whether such parking areas are required or not) shall be created, graded or constructed of any material, through expansion or otherwise, without receiving prior site plan approval.

(b) Permits. No permit shall be issued for the erection of a new structure, the enlargement of an existing structure or the development of a land use, unless the plans show the specific location and size of the off-street parking required to comply with the regulations set forth in this Zoning Ordinance and the means of access to such space from public streets. In the event of the enlargement of an existing structure, the regulations set forth in the Zoning Ordinance shall apply only to the area added to the existing structure.

(2) Buildings and land uses in existence on the effective date of this chapter are

not subject to these parking requirements, but any parking facilities then serving or thereafter established to serve such buildings or uses may not in the future be reduced below these requirements.

(3) Common parking areas and mixed uses. Parking required for two or more buildings or uses may be provided in combined parking facilities where such facilities will continue to be available for the several buildings or uses and provided that the total number of spaces is not less than the sum of the spaces required for each use individually, except that said number of spaces may be reduced by up to 1/2 such sum if it can be demonstrated that the hours or days of peak parking need for the uses are so different that a lower total will provide adequately for all uses served by the facility. The following requirements shall be met:

(a) Evidence of reduced parking needs shall be documented and based on accepted planning and engineering practice satisfactory to the City Planner and Engineer.

(b) If a lower total is approved, no change in any use shall thereafter be permitted without further evidence that the parking will remain adequate in the future, and if said evidence is not satisfactory, then additional parking shall be provided before a change in use is authorized.

(c) Evidence of continued availability of common or shared parking areas shall be provided satisfactory to the City Solicitor and shall be documented and filed with the site plan.

(d) The determination of how a combined or multi-use facility shall be broken down into its constituent components shall be made by the Planning Department.

(e) If any reduction in the total number of parking spaces is allowed as a result of this subsection, then 150 square feet of open space (per parking space reduced) shall be provided in addition to that required by lotcoverage provisions of this chapter.

(4) Temporary parking reserve. Where it can be demonstrated that a use or establishment will temporarily need a lesser number of parking spaces than is required (such as phased occupancy of large new facilities), the number of such spaces required may be reduced by not more than 50%, subject to the siteplan approval, provided that the following requirements are met:

(a) The applicant shall submit documentary evidence that the use will temporarily justify a lesser number of spaces for a period of time not less than one year.

(b) A reserve area shall be provided sufficient to accommodate the difference between the spaces required and the lesser number provided.

(c) Said reserve area shall be maintained exclusively as landscaped area and shall be clearly indicated as "Reserve Parking Area" on the site plan.

(d) The landscaping may either consist of existing natural vegetation or be

developed as a new landscaped area, whichever is granted site plan approval.

(e) No structure or mechanical equipment may be placed in the reserve parking area.

(f) Said reserve area shall not be counted toward the minimum open space required by lot coverage provisions of this chapter.

(g) When in the opinion of the Building Commissioner additional parking is required, said reserve area may be required to be improved as a parking lot.

C. Location and layout of parking facilities.

(1) Required off-street parking facilities shall be provided on the same lot as the principal use they are required to serve. The required parking areas may be provided on any lot under the same ownership and within 400 feet of the building or structure to be served. In a Limited Industrial District, the parking shall be provided within 500 feet of the building or structure to be served, on the building lot, on any lot under the same ownership, or on any lot subject to an easement to the owner of said building to be served which, in the opinion of the Building Commissioner, causes said parking to be available for the purposes of this section. **[Amended 3-25-2013 by Ord. No. 13-1005306C]**

(2) The requirement that parking areas be provided within 400 feet of the building or structure to be served set forth in Subsection C(1) above shall not be applicable to parking provided on a large tract development lot. Parking areas provided on a large tract development lot shall be within 600 feet of the nearest building or structure to be served.

(3) Full-size parking dimensions. The minimum dimensions of full-sized parking stalls and aisles shall be as indicated in the Table of Parking Dimensions: Full-Sized Spaces. [See Subsection C(4) below for compact-sized spaces.] The complete stall dimensions shall be paved and no deduction shall be obtained for bumper overhang.

Table of Parking Dimensions: Full-Sized Spaces

Angle of Parking (degrees)	Width of Parking Space (feet)	Depth of Parking Space (feet)	Width of Maneuvering Aisle* 1-way (feet)	Width of Maneuvering Aisle* 2-way (feet)
61° to 90°	9	18	24	24
46° to 60°	9	18	18	20
45°	9	18	15	20
Parallel	9	20	12	20

NOTES:

* Aisle widths may be different than driveway widths. For driveway width requirements, see § 650-49D(1) and E(1).

(4) Compact-sized parking spaces.

(a) Applicability. This subsection shall apply only to parking lots primarily used by employees or residents occupying the site in question and shall not apply to parking areas used by the general public and/or having constant turnover, such as shopping centers, unless authorized at site plan approval based upon determination that safety will be adequately protected and that commonly employed engineering and planning standards have been met in full.

(b) Percentages. Up to 33% of parking spaces may be designed for use by cars smaller than full size, hereinafter called "compact cars."

(c) Additional open space required. For any reduction in total parking area obtained as a result of using compact-sized spaces, an equal or greater area of open space shall be provided in addition to the minimum open space required by the lot coverage provisions of the chapter.

(d) Location. Compact-sized parking spaces, unless restricted for use by and located adjacent to a dwelling unit, shall be located in one or more continuous areas and shall not be intermixed with spaces designed for full-sized cars.

(e) Identification. Compact-sized parking spaces shall be clearly designed by pavement marking and by direction signs in conformance with the Sign Ordinance, Chapter 526, and labeled as "Compact Cars Only."

(f) Dimensions. The minimum dimensions of compact-sized parking stalls and aisles shall be as indicated in the Table of Parking Dimensions: Compact-Sized Spaces. [See Subsection C(3) above for full-sized spaces.] The complete stall dimension shall be paved and no deduction shall be obtained for bumper overhang.

Table of Parking Dimensions: Compact-Sized Spaces

Angle of Parking (degrees)	Width of Parking Space (feet)	Depth of Parking Space (feet)	Width of Maneuvering Aisle* 1-Way (feet)	Width of Maneuvering Aisle* 2-Way (feet)
61º to 90º	8	16	22	22
46º to 60º	8	16	18	18
45º	8	16	15	18
Parallel	8	18	12	18

NOTES:

* Aisle widths may be different than driveway widths. For driveway width requirements, see § 650-49D(1) and E(1).

(5) Parking setbacks. For purposes of maintaining adequate, open landscaped space in yards, adequate separation of parking and driveways from lot boundaries, streets and buildings and adequate space for snow ~~stockpiling~~storage, thefollowing provisions shall apply:

(a) Parking in front yard.

[1] One- and two-family dwellings. Off-street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard (building setback line), except on a driveway not exceeding 24 feet in width located essentially perpendicular to the front lot line and authorized at site plan approval. This provision may also apply where three or more dwelling units are provided through conversion of a one- or two-family dwelling, subject to site plan approval.

[2] Multifamily residential uses. Off-street parking shall not be permitted in the area between the front lot line and the prescribed minimum front yard (building setback line).

[3] Nonresidential uses. Where a front yard is required, off-street parking shall be allowed no closer than the minimum distances from the front lot line prescribed in § 650-47E governing the requirement for a street frontage planting area.

[4] Districts or areas where no front yard is required. In districts or areas where no front yard is required parking areas shall be set back at least five feet from the front lot line, and said setback shall be landscaped.

(b) Parking in side and rear yard. Parking areas shall be set back thefollowing minimum distance from any side or rear lot line:

[1] One- and two-family dwellings: five feet.

[2] Multifamily residential uses in all districts: The minimum distance for parking setback from side and rear lot lines shall be the same as the minimum width required for side line planting areas as prescribed in § 650-47F.

[3] Nonresidential uses in all districts: The minimum distance for parking setback from side and rear lot lines shall be the same as the minimum width required for side line planting areas as prescribed in § 650-47F.

[4] All lots where common driveways are approved on the lot line at site plan approval: No minimum width.

(c) Parking setback from building. No parking space shall be located within five feet of a building.

(d) Parking in rights-of-way. No parking space shall be located on land which is reserved as a vehicular right-of-way, whether developed or undeveloped or whether public or private.

(6) (Reserved)

(7) Parking areas shall not be used for automobile sales, gasoline sales, dead storage, repair work, dismantling or servicing of any kind, and lighting that is provided shall be installed in a manner that will prevent direct light shining onto any street or adjacent property.

(8) Access to parking spaces.

(a) Backing into street. In no case shall parking or loading stalls be so located as to require the backing or maneuvering of vehicles onto the sidewalk or into a public way upon entering or leaving the stall, except for single- or two-family houses. An exception may also apply where three or more dwelling units are provided through conversion of a one- or two-family dwelling, subject to site plan approval.

(b) Access to nonresidential and multifamily residential parking spaces. All required parking spaces serving nonresidential or multifamily residential uses shall be so arranged as to permit vehicle access and egress to any space when all other required spaces are filled.

D. Construction of parking and loading areas.

(1) Paving type. All parking spaces, loading bays and maneuvering aisles shall have a durable, dustless, erosion-resistant, all-weather surface suitable for year-round use and acceptable to the City Engineer and the Building Commissioner, such as bituminous concrete, ~~or~~ cement concrete, pavers, or clean crushed stone.

(2) Parking grades. The maximum grade of any parking or loading area shall be 5%.

(3) Paving drainage. All paving shall be designed and constructed in such a manner that the amount of surface water draining onto any public way or ontoany lot in other ownership, other than through a drainage easement or stream, shall be minimized.

(4) Striping of parking spaces. All parking spaces, except those for single- and two-family houses, must be clearly striped and remain striped at the required dimensions and locations as shown in an approved site plan.

(5) Curbing required. For purposes of protecting landscaped and pedestrian areas next to parking or driveways from damage by vehicles and snowplows and to assure proper maintenance and drainage, all parking lots and loading areas, except those for single- or two-family houses, shall be provided with durable continuous curbing a minimum of six inches high, except where approved stormwater design involves sheet runoff, as follows:

(a) Granite or cement concrete. Said curbing shall be constructed of cement concrete or better subject to site plan approval in the following areas:

[1] In heavily used areas of multifamily residential and nonresidential parking lots.

[2] In all loading areas.

[3] Surrounding all landscape islands or landscape projections within parking lots.

[4] Sloped granite may only be used in areas approved at site plan approval.

(b) Asphalt. In all other areas, the curbing may be asphalt if approved at site plan approval.

(6) Driveways. See § 650-49 for the provisions for driveways.

§ 650-47. Driveways and curb cuts.

A. Purpose and objectives.

(1) Purpose. The purpose of this section is to ensure adequate access for traffic generated by development and for emergency vehicles; to increase public safety for vehicles and pedestrians; and to reduce traffic congestion, dust and erosion within the development and in adjacent public ways.

(2) Objectives. The means to accomplish this purpose shall include reducing the number of driveway openings onto public streets; regulating the spacing, design and construction of driveways; requiring joint or shared use of driveways; and requiring off-site improvements where appropriate as specified in the following subsections.

B. All driveways. All driveways for all uses in all districts shall comply with the following minimum requirements:

(1) Road opening/curb cut permit required.

(a) Anyone wishing to construct a driveway on a lot having frontage on a public way or a way which the Clerk of the City certifies is maintained and used as a public way or a way shown on a plan heretofore approved and endorsed in accordance with the Subdivision Control Law or a way in existence when the Subdivision Control Law became effective in the City having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic, shall first obtain site plan approval followed by a road opening/curb cut permit from the City Department of Public Works.

(b) In all cases, said permit shall be limited to the project granted site plan approval. Any substantial change in use of the curb cut (see below) shall require modification of the permit or application for a new permit which may contain new restrictions. "Substantial change" shall mean an

increase of 10% or more in vehicle trips caused by expansion of the project or by a change of use from one use category to another as listed in § 650-48 of this chapter, or by addition of a drive-through facility, ora substantial impact on traffic caused by a change in the type, pattern or timing of such traffic.

(2) Location.

(a) Driveways per frontage. Driveway locations and number shall be subject to site plan approval, with the specific intent of meeting the purpose and objectives listed in Subsection A above. Where appropriate, particularly in commercial areas, joint driveways shall be required where practicable. There shall be no more than one driveway street connection for lots with less than 200 feet of frontage and not more than one additional driveway for each 200 feet of frontage in excess of 200 feet, unless granted site plan approval for an alternative configuration based upon determination that public safety will be adequately protected and that commonly employed engineering and planning standards have been met in full.

(b) Distance from property line. The edge of the driveway shall be located no closer than the minimum distance governing parking areas as provided for under § 650-48C(5).

(c) Distance from building. No driveway shall be located within five feet of a building, except for driveways intended for drive-up window service, which shall be subject to site plan approval.

(d) Distance from hydrant. Within the street right-of-way, the paved edge of the driveway shall be no closer than 15 feet to a hydrant unless otherwise granted site plan approval based upon determination that public safety will be adequately protected.

(3) Grades.

(a) Elevation at street. The elevation of the finished grade of the driveway at the right-of-way line of the street shall be equal to the elevation of the center line of the traveled way directly opposite the opening.

(b) Within street layout. In the event the horizontal distance from the edge of the existing street pavement to the side line of the street is five feet or less, the grade of that area lying between the edge of the traveled way andthe side line of the street shall have a minimum, positive grade of 3% from the edge of the traveled way for a horizontal distance of not less thanfive feet. See also Subsection B(3)(a) above.

(c) Outside street layout. No driveway outside the street right-of-way shall exceed a positive or negative grade of 3% for a distance at least 15 feet, and 12% for a distance of at least 40 feet from the street right-of-way. Beyond said 40 feet, the grade of a minor driveway shall not exceed 15%, but major driveways shall in no case exceed a grade of 12%.

(4) Paving material.

(a) Within street. All driveway openings shall be paved with a minimum of three inches of bituminous concrete between the traveled way and the side line of the street. If the area between the traveled way and the side line of the street includes a cement concrete sidewalk, the new driveway apron shall also be cement concrete for at least the width of the sidewalk.The cost of this work shall be borne by the owner of the driveway.

(b) Outside street. All driveways shall have a durable, dustless, all-weather surface suitable for year-round use, such as bituminous concrete orcement concrete or pavers or other approved ~~impervious~~ material. ~~Driveways to commercial, industrial and multifamily residential units shall in all cases be paved. Alternatives for single- and two-family houses must be approved by the Building Commissioner and City Engineer.~~ **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(5) Utilities relocation. The cost of any relocation of existing, City-owned and maintained utilities, mains and services due to the construction of a new driveway or repair or modification to an existing one shall be borne by the owner of the driveway.

(6) Paving drainage. All paving shall be designed and constructed in such a manner that the amount of surface water draining onto any public way or ontoany lot in other ownership other than through a drainage easement or stream shall be minimized.

(7) Maximum curb opening. The maximum width of any curb opening measured at the street line shall be 25 feet, not including the driveway returns, unless authorized by the City Engineer and City Planner at site plan approval based on safety and planning considerations.

(8) Sight distance. The location of all driveways shall have adequate sight distance as required by § 650-47N.

C. (Reserved)

D. Major driveways. "Major driveways" shall be defined as driveways likely to carry more than 200 vehicle trips per day. A "motor vehicle trip" shall be as defined in Article II of this chapter. Major driveways shall comply with the following requirements:

(1) Dimensional requirements. The following requirements shall be met unless granted site plan approval for an alternative configuration based upon determination that safety will be adequately protected and that commonly employed engineering and planning standards have been met in full:

Dimensional Requirements for Major Driveways

Minimum Requirement	On Route 20	On Route 85	Other Locations
Sight distance of exiting vehicle at edge of traveled way (feet)	400	300	200
Center-line separation:			
Between 2 major driveways or between a major driveway and intersecting street (feet)	200	150	100
Between major and minor driveway	Case-by-case		
Traveled width (feet)*			
2-way**	24	24	24
1-way***	15	15	15
Curb radius (feet)	40	30	20
Acceleration/ deceleration lanes required	Yes	Yes	Case-by-case

NOTES:

* Traveled width may be required to be greater if necessitated by traffic volume or safety considerations or smaller if justified by engineered design.

** See Subsection C(6) of this section, titled "Parking restrictions."

*** One-way width must be increased if driveway is used as parking aisle. See § 650-48C(3) and (4) for parking aisle dimensions.

(2) Obligations. The City may require, as a condition of site plan approval, that the developer dedicate or acquire and dedicate a strip of land for the purpose of widening to a safe width accessways leading to a development and that the developer either make physical improvements within such way or compensate the City for the cost of such improvements.

(3) No lot division. No existing parcel shall be divided into lots with frontage which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

(4) Shared access and egress. The requirements of Subsection C(1), Dimensional requirements, above, may be met by means of shared or common driveways. (See § 650-49.)

(5) Curbing. Vertical granite curbing shall be required beside driveways within the street right-of-way or sloped curbing subject to site plan approval. Said granite curbing shall also be required outside the right-of-way extending fromthe right-of-way continuously along the driveway as far as any parking area, but in no case more than 35 feet, unless otherwise required by provisions of § 650-48D(5).

(6) Parking restrictions. A major driveway shall not be used as a parking lot aisle, and no parking spaces shall be permitted requiring vehicles to reverse into a major driveway, unless the driveway is likely to carry less than 500 vehicle trips per day, and unless granted site plan approval based upon determination that public safety and traffic flow will be protected, such as by substantially increasing the driveway width.

E. Minor driveways. "Minor driveways" shall be considered as driveways likely to carry less than 200 vehicle trips per day. Minor driveways shall be governed by the following minimum requirements:

(1) Dimensional requirements. The following requirements shall be met unless granted site plan approval for an alternative configuration based upon determination that safety will be adequately protected and that commonly employed engineering and planning standards have been met in full:

Dimensional Requirements for Minor Driveways

	Uses Generating the Following Number of Vehicle Trips Per Day		
Minimum Requirement	**Under 10***	**10 to 50**	**Over 50**
Center-line separation (feet):			
Between minor driveway and intersecting street	75	75	75
Between two minor driveways in nonresidential area	50	50	75
Between two minor driveways in 1- or 2-family residential areas	30	30	50
Traveled width (feet)**			
2-way ***	12	18	24
1-way ***	12	15	15
Curb radius (feet)	9	10	15

NOTES:

* Including one- and two-family dwellings.

** Traveled width may be required to be greater if necessitated by volume or safety considerations or smaller if justified by engineered design.

*** Width must be increased if driveway is used as parking aisle. See § 650-48C(3) and (4) for parking aisle dimensions.

F. Common driveways. Common or shared driveways shall be permitted, provided that they meet the following requirements:

(1) Purpose and approval. A common driveway shall not be permitted unless said driveway is determined at site plan review and approval to provide a reasonable public benefit which would not otherwise be obtained without use of a common driveway. Said benefit or purpose may include reduction in the number of curb openings or driveways onto major streets or at unsafe or unsuitable locations which can be avoided by provision of common or shared driveways.

(2) Number of single-family lots. No more than five single-family residential lots shall be served by a common or shared driveway, unless permitted under the provisions of the Subdivision Control Law or under an approved site plan as provided for in this chapter. Notwithstanding the foregoing, owners of lots developed under an approval-not-required plan in accordance with and permitted by Massachusetts General Laws may use a common driveway for more than five residential structures, provided that such driveway meets minimum road standards of the City as specified in the Rules and Regulations of the Planning Board for Subdivisions, unless such standards are modified during site plan review.

(3) Number of lots other than single-family lots. The number of lots, other than single-family lots, shall be determined on a case-by-case basis, based upon determination that safety will be adequately protected and that commonly employed engineering and planning standards have been met in full.

(4) Frontage. Common driveways may never be used to satisfy zoning frontage requirements. All the proposed building lots must have frontage on an acceptable way as defined in MGL c. 40, § 81L, and each lot frontage must also provide the possibility of independent practical access from the proposed structure or use to the way without using a common driveway.

(5) Point of access. Access obtained by way of easement over an abutting lot shall only be authorized by site plan approval.

(6) Covenants. Provisions for proper maintenance of common driveways shall be included in covenants and deed restrictions which shall be recorded.

(7) Construction. Common driveways must meet the dimensional and construction standards of major or minor driveways, as applicable.

§ 650-48. (Reserved)

§ 650-49. (Reserved)

§ 650-50. (Reserved)

§ 650-51. (Reserved)

§ 650-52. (Reserved)

§ 650-53. (Reserved)

ARTICLE VIII
Administration

§ 650-54. Enforcement.

A. This chapter shall be enforced by the enforcing officer, who shall be the Building Commissioner, who shall grant no permit for the construction, alteration, relocation, occupancy or use of any building, structure or premises in violation of any provisions of this chapter. No municipal officer shall grant any permit or license for the use of buildings, structures or land, which use would be in violationof any provision of this chapter. Whenever any permit or license is refused becauseof some provision of this chapter, the reason therefor shall be clearly stated in writing and a copy delivered in person or by registered mail to the applicant. No building shall be constructed, altered or relocated without a building permit, and nostructure or land shall be occupied or used without an occupancy permit. **[Amended10-6-2014 by Ord. No. 14-1005921A]**

B. Every applicant for a permit for any construction, alteration or use of any building or land for which a permit is required by law shall, upon request of the Building Commissioner, file such written information, plans, specifications or other such data as shall be deemed necessary for the full and accurate exposition of the proposed construction, alteration or use. Such data shall be kept on file in the officeof the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

C. Site plan review and approval.

(1) Purpose and applicability. For purposes of assuring protection of the public safety, convenience, health and welfare, the achievement of objectives and compliance with requirements of Chapter 650, Zoning, site plan review and approval shall be required as provided for under Chapter 270, Building and Site Development, as amended, of the Code of the City of Marlborough.

(2) Procedure and requirements. The procedures and requirements for site plan review and approval, including but not limited to application, submission, review, approval and enforcement of site plan review and approval, shall be as provided in Chapter 270, Building and Site Development, as amended.

D. The enforcing officer shall institute appropriate legal proceedings to enforce the provisions of this chapter or to restrain by injunction any violation thereof, or both, and shall do all further acts, revoke the permit for occupancy, institute and take any and all such action as may be necessary to enforce the provisions of this chapter.

E. If the Building Commissioner is requesting, in writing, to enforce a provision or provisions of this chapter against any person allegedly in violation of the same and such officer declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefor within 14 days of receipt of such request. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

F. Construction or operations under a building or special permit shall conform to any subsequent amendment of this chapter, unless the use or construction authorized by the permit is commenced within a period of not more than 12 months after the

issuance of the permit and, in cases involving construction, unless such construction

is continued through to completion as continuously and expeditiously as is reasonable. **[Amended 12-19-2016 by Ord. No. 16-1006734B]**

§ 650-55. Continuation of Board of Appeals.

The Board of Appeals as presently existing under Appendix A of the Code of the City of Marlborough is expressly continued and designated as the Board of Appeals under this article.

§ 650-56. Provisions for Board of Appeals.

A. Creation, appointment and organization. A Board of Appeals consisting of five members and five associate members shall be appointed as provided in MGL Chapter 40A, as amended, who shall all be residents or taxpayers of the City of Marlborough, which shall act on all matters within its jurisdiction under MGL Chapter 40A, as amended, and under this chapter in the manner prescribed in said section and subject always to the rule that it shall give due consideration to promoting the public health, safety, convenience and welfare, encouraging the most appropriate use of land and conserving property values, that it shall permit no building or use of land or building that is injurious, noxious, offensive or detrimental to a neighborhood and that it shall prescribe appropriate conditions andsafeguards in each case.

B. Powers and duties. The Board of Appeals shall act as a permit-granting authority and shall have all the powers and perform all the duties conferred or imposed upon it by the provisions of MGL Chapter 40A, and this chapter, as follows:

(1) Appeals. To hear and decide an appeal taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from the Building Commissioner under the provisions of MGL Chapter 40A, or of thischapter, by the Metropolitan Area Planning Council or by any person, including an officer or board of the City of Marlborough or of an abutting municipality aggrieved by an order or decision of the Building Commissionerin violation of any provision of MGL Chapter 40A, or of this chapter. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(2) Variances. To hear and decide a petition with respect to particular land or structures for a variance from the terms of this chapter, where the Board specifically finds that owing to circumstances relating to 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 desirable relief may be granted without substantial detriment to the publicgood and without nullifying or substantially derogating from the intent or purpose of this chapter. The 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 limitation based upon the continued ownership of the land or structure 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 authorization, they shall lapse and may be reestablished only after a new notice and hearing.

(3) Lawful preexisting nonconforming single-family dwellings and two-family houses. **[Added 3-18-2019 by Ord. No. 18/19-1007460C]**

(a) As of right. Lawful preexisting nonconforming single-family dwellings and two-family houses may be altered, reconstructed, extended or structurally changed as a matter of right upon a determination by the Building Commissioner that a proposed alteration, reconstruction, extension or change would not increase or intensify the existing nonconforming nature of the dwelling or house in question. Upon such a determination, an application to the Board of Appeals for a special permit need not be made, and the owner may apply to the Building Commissioner for a building permit.

(b) By special permit. Upon a determination by the Building Commissioner that a proposed alteration, reconstruction, extension or structural change to a lawful preexisting nonconforming single-family dwelling or two-family house would increase or intensify the existing nonconforming nature thereof, the owner of such dwelling or house shall be required to apply to the Board of Appeals for a special permit to allow such alteration, reconstruction, extension or structural change. The Board may grant a special permit to allow such alteration, reconstruction, extension or structural change; provided, however, that the Board determines, by a finding under MGL c. 40A, § 6, that the proposed alteration, reconstruction, extension or structural change shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use; and provided, further, that any such special permit shall comply with the requirements of the Zoning Ordinance of the City of Marlborough, as may be amended from time to time, including but not limited to § 650-12, entitled "Nonconforming uses," as well as § 650-59A(1) pertaining to the powers and duties of special permit granting authorities. Application for a special permit to allow such alteration, reconstruction, extension or structural change shall be made to the Board pursuant to the procedures set forth in Subsection C(5) of this § 650-58.

(c) By variance. Upon the determination by the Building Commissioner that a proposed alteration, reconstruction, extension or structural change to a lawful preexisting nonconforming single-family dwelling or two-family house would create a new nonconformity(ies), the owner of such dwelling or house shall be required to apply to the Board of Appeals for a variance to allow such alteration, reconstruction, extension or structural change; provided, however, that the Board shall decide upon a variance petition pursuant to the Board's powers and duties set forth in Subsection B(2), and pursuant to the procedure set forth in Subsection C(1) through (4), of this § 650-58.

C. Procedure.

(1) In the case of every appeal made to the Board of Appeals and every petition for a variance to said Board under the provisions of this chapter, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing and by posting said notice in the City Hall for a period of not less than 14 days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property line, including owners of land in another municipality, all as they appear on the most recent applicable tax lists; the Planning Board; and the planning board of every abutting municipality. The Assessors shall certify to the Board the names and addresses of the parties in interest.

(2) The decision of the Board, including all findings, conditions and safeguards, and a record of the public hearing shall be filed promptly with the City Clerk and at the same time copies transmitted to the Planning Board, Conservation Commission, Building Commissioner and other appropriate City agencies. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(3) An appeal from a decision of the Building Commissioner and a petition for a variance shall be filed with the City Clerk, who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within 65 days of the receipt of the appeal or petition from the City Clerk and shall render a decision within 100 days from the date of filing. **[Amended 10-6-2014 by Ord. No. 14-1005921A; 1-9-2017 by Ord. No. 16/17-1006702C]**

(4) If the Board of Appeals shall fail to act within 100 days of the filing of the appeal or petition, as the case may be, then the appeal or petition shall be deemed approved subject to the following requirements: **[Amended 1-9-2017 by Ord. No. 16/17-1006702C]**

(a) The petitioner, after the expiration of the aforesaid periods, shall file with the City Clerk a copy of his petition and an affidavit stating the date of the public hearing or filing, as the case may be, and the failure of the Board of Appeals to render a decision within the required period.

(b) Upon receipt of the petition and affidavit, the City Clerk shall give notice of the filing to those persons entitled to a notice of the decision under MGL c. 40A, § 15. The filing of a petition and affidavit in the office of the City Clerk shall be deemed the equivalent of the filing of a decision for purposes of the provisions of MGL c. 40A, §§ 11 and 17.

(c) If no appeal is taken within the required statutory period, then the City Clerk shall furnish the petitioner with a certificate that no appeal has been filed, all of which shall be recorded in the manner prescribed under MGL c. 40A, § 11, in lieu of the documents required to be recorded under that section.

(5) Special permit procedure. Except as set forth below, the provisions set forth in § 650-59B and C, pertaining to the procedures and rules applicable to special

permit granting authorities, as such provisions may be amended from time to time, shall, so far as apt, be applicable to the Board of Appeals acting upon an application for a special permit proposing an alteration, reconstruction, extension or structural change which, per the determination of the Building Commissioner, would increase or intensify the existing nonconforming nature of a lawful preexisting nonconforming single-family dwelling or two-family house. In particular, each special permit application to the Board of Appeals filed under this subsection shall contain the information as itemized in § 650-59C(4), and shall be accompanied by a preliminary site plan which shall contain the information as itemized in § 650-59C(5). **[Added 3-18-2019 by Ord. No. 18/19-1007460C]**

Each application filed under this subsection shall be filed with the Office of the City Clerk in accordance with MGL Chapter 40A, on a form provided by that Office, and shall be accompanied by a filing fee in the amount calculated to be the same as for special permit applications submitted to the City Council under § 650-59C(3). The application for the special permit shall be made in writing by the applicant or its duly authorized agent, who shall file the following number of sets of application materials at the Office of the City Clerk, which shall keep the original and forward all copies to the Board of Appeals, which shall distribute those copies as follows:

Number of Sets	Office
8	Board of Appeals
1	Building Department
1	Office of the City Council
1	City Engineer
1	Legal Department
1	Conservation Officer (if wetlands are affected)

The Board of Appeals shall hold a public hearing on each special permit application filed under this subsection. The procedures for the public hearing and for the notice thereof to parties in interest shall be in conformance with MGL c. 40A and the Zoning Ordinance of the City of Marlborough, as either or both may be amended from time to time; provided, however, that the Board shall hold the public hearing on a special permit application on the same evening as it would be holding the public hearing on any variance petition that may be associated with the same proposed work (alteration, reconstruction, extension or structural change) on the same dwelling or house.

Within 90 days after the close of the public hearing on the special permit application filed under this subsection, the Board of Appeals shall take final action on a decision to grant or deny the requested special permit; provided, however, that no special permit shall be granted by the Board under this subsection if any variance petition that may be associated with the same proposed work (alteration, reconstruction, extension or structural change) on the same dwelling or house is denied by the Board.

The Board may adopt rules and regulations for the issuance of special permits under this subsection in accordance with MGL c. 40A and the Zoning Ordinance of the City of Marlborough, as either or both may be amended from time to time.

D. Rules. The Board of Appeals shall adopt rules and procedures not inconsistent with this chapter and the provisions of MGL Chapter 40A for the conduct of its business in deciding on appeals and granting variances and shall file a copy thereof with the City Clerk. Such rules shall include provisions for submission of petitions in writing, for advertising and holding hearings, for keeping records of proceedings, for recording the vote of each member upon each question, for setting forth the reason or reasons of each decision and for notifying the parties at interest, includingthe Building Commissioner and the Planning Board, as to each decision. Wherever proceedings under this chapter require the giving of notice by publication in a newspaper, mailing or service by a civil officer, the costs thereof shall be borne by the applicant. The Board of Appeals shall require estimated costs to be advanced by the applicant in accordance with provisions in the rules. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

§ 650-57. Powers and procedures of special-permit-granting authorities.

A. Powers and duties. As provided for under MGL Chapter 40A, certain classes of special permits shall be issued by one special-permit-granting authority and others by another special-permit-granting authority as specified in this chapter for those uses and activities designated in Article V, Permitted Uses, and in other articles and sections of this chapter. Said special-permit-granting authorities shall each have all the powers and perform all the duties conferred or imposed upon them under MGL Chapter 40A, and shall act separately upon each application for a special permit submitted to them as follows:

(1) Special permits. To hear and decide an application for a special permit, as provided in this chapter, only for uses in specified districts which are in

harmony with the general purposes and intent of this chapter and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards and limitations on time and use. A special permit shall lapse within a three-year period or a shorter period if so specified by the special-permit-granting authority, including any time required to pursue or await the determination of an appeal pursuant to MGL Chapter 40A if a substantial use thereof has not sooner commenced, except for good cause, or in the case of a permit for construction, if construction has not begun within the period, except for good cause. **[Amended 12-19-2016 by Ord. No. 16-1006734B]**

B. Procedures.

(1) Each application shall be filed with the special-permit-granting authority and a copy transmitted forthwith to the City Clerk and to the Planning Board, Conservation Commission, Board of Health and other appropriate agencies. The special-permit-granting authority shall hold a public hearing within 65 days of the filing date and shall render a decision within 90 days from the date of the public hearing. Notice of the hearing shall be in accordance with the requirements in Article VIII, § 650-58C. Agencies sent copies may, in their discretion, investigate the proposed special permit use and report in writing recommendations to the special-permit-granting authority; provided, however, that if reports with recommendations are not received by the special-permit-granting authority at the time of the public hearing, the special-permit-granting authority may act without the submission of such reports andrecommendations.

(2) Failure to take action within said ninety-day period shall be deemed to be a grant of the special permit applied for subject to the requirements in Article VIII, § 650-58C(4)(a), (b) and (c).

C. Rules. The special-permit-granting authority shall adopt rules and procedures not inconsistent with this chapter and the provisions of MGL Chapter 40A for the conduct of its business in granting a special permit, as authorized by Article VIII, § 650-59A, and shall file a copy thereof with the City Clerk. Said rules shall be similar to those required of the Board of Appeals under Article VIII, § 650-58D.

(1) Submission of application:

(a) Informal preapplication review. The applicant may request the Planning Department to schedule an informal preapplication review for the purpose of reviewing preliminary proposals and alternatives. By this means, the City may have the opportunity to have input into the planningand design process at its earliest level, and submission materials can be established.

(b) The application shall be filed with the City Clerk in accordance with Subsection C(1)(c) below, on the form provided by the City Clerk. [See Subsection C(4).]

(c) Application materials. The application or petition for special permit shall be made in writing by the applicant or his duly authorized agent, who

shall file the following number of sets of application materials at the offices set forth below: **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

Number of Sets	Office
3	Office of City Clerk
1	Police Chief
1	Fire Chief
1	City Engineer
1	Director of Planning
1	Conservation Officer (if wetlands affected)
1	Building Commissioner
11	Office of City Council

(2) Notice to City Council. Following the submission, the City Clerk shall promptly notify the City Council and forward one copy of the application to the City Council. The Clerk shall retain two copies in the City Clerk's office.

(3) Fees. At the time of application, the applicant shall pay a filing fee at the office of the City Clerk in the amount set forth below: **[Amended 2-9-2004 by Ord. No. 04-9962C]**

(a) Residential construction and use only:

[1] For plans proposing not more than three housing units: $300.

[2] For plans proposing more than three housing units: a base fee of $300 plus an additional fee of $25 for each housing unit in excess of three.

(b) Nonresidential construction and use only:

[1] For plans proposing construction containing not more than 34,999 square feet of floor area: $500.

[2] For plans proposing construction containing from 35,000 square feet of floor area up to and including 49,999 square feet of floor area: $1,000.

[3] For plans proposing construction containing 50,000 square feet of floor area up to and including 99,999 square feet of floor area: $1,500.

[4] For plans proposing construction containing 100,000 square feet of floor area, or any greater amount: $2,000.

(c) Residential and nonresidential use only without new construction:

[1] Proposals of not more than 34,999 square feet of floor area: $250.

[2] Proposals of 35,000 square feet of floor area up to and including 49,999 square feet of floor area: $500.

[3] Proposals of 50,000 square feet of floor area up to and including 99,999 square feet of floor area: $750.

[4] Proposals of 100,000 square feet of floor area or more: $1,000.

(d) Mixed or miscellaneous. The filing fee for the above shall be:

[1] Proposals of not more than 34,999 square feet of floor area: $1,000.

[2] Proposals of 35,000 square feet of floor area up to and including 49,999 square feet of floor area: $1,500.

[3] Proposals of 50,000 square feet of floor area up to and including 99,999 square feet of floor area: $1,500.

[4] Proposals of 100,000 square feet of floor area or more: $2,000.

(e) Hotels and motels (only applicable where special permit is required):

[1] Proposals of not more than 34,999 square feet of floor area: $500.

[2] Proposals of 35,000 square feet of floor area up to and including 49,999 square feet of floor area: $1,000.

[3] Proposals of 50,000 square feet of floor area up to and including 99,999 square feet of floor area: $1,500.

[4] Proposals of 100,000 square feet of floor area or more: $2,000.

(f) Fees for amendments to special permits and resubmittal of application. [See Subsection C(11) and (20).]

[1] Substantial amendments: 75% of the above fees.

[2] Minor amendments: 50% of the applicable fee above.

[3] No amendment (resubmittal only): 25% of the applicable fee above.

The determination as to whether an amendment is substantial or minor shall be made at the time of certification of the application by the Director of Planning as required by Subsection C(7) of this section, prior to the submission to the City Clerk, in accordance with the criteria in Subsection C(20) herein.

(4) Application content. Application or petition must contain the following information on the form provided by the City Clerk.

(a) The name and address of the petitioner or applicant.

(b) Name and address of owner of land, if other than petitioner or applicant.

(c) The location of the property for which a special permit is sought (street address, and plate and parcel number).

(d) The zoning district in which the property lies.

(e) The legal interest of the applicant or petitioner (owner, prospectiveowner, etc.).

(f) The specific article, section and paragraph of the Zoning Ordinance which a special permit can be granted.

(g) The specific reason for seeking the permit.

(h) List of abutters, including:

[1] Names and addresses of all abutters within 400 feet of each side line and rear line of said property in question.

[2] Name and address of the owner of the property directly across the street.

[3] Names and addresses of owners of property adjoining the landacross the street and lying within 400 feet of the extended side linesof the land in question.

[4] Name and property owner other than above which abuts in any way upon the land described in the petition or application.

Said list of abutters should be certified by the Office of the Board of Assessors of Marlborough prior to submission; said certification shall be evidence of compliance with this subsection.

(5) Preliminary site plan:

(a) Where the application involves new construction, each application must be accompanied by a preliminary site plan as outlined below. Where the application is for new use not involving new construction, the application must be accompanied by the approved existing site plan for the existing building or use.

(b) The preliminary site plan shall contain, among other things, the following information: (Note: Additional information is required for final site plan review and approval; see Chapter 270, Building and Site Development.)

[1] Title block:

[a] Proper heading, containing project title (if any).

[b] Name and address of owner, and engineer, architect or surveyor.

[c] Street number (as assigned by the City Engineer).

[d] Assessor's plate and parcel number.

[e] Scale of drawing.

[f] Date and revision date.

[2] General information on lot:

[a] Locus map, showing location of lot and names of all surrounding streets within 1,000 feet of boundaries of lot. (See Subsection C(5)(b)[4][b] below concerning location of buildings on surrounding lots.) Identify on locus map all other parcels within 1,000 feet in which applicant has any financial interest.

[b] North arrow.

[c] Zoning district in which the property lies and any zoning district boundary lines which may cross the locus, including Floodplain and Wetland Protection Districts. Show zoning lines on locus map and on other plans if appropriate.

[d] The lot, completely dimensioned.

[e] Lot area, in acres and square feet.

[3] Existing conditions. Buildings and structures, setback dimensions, parking, driveways, landscaped area, boundaries of wooded areas and wetlands, topography and easements. (Show on separate sheet if appropriate so as to distinguish from proposed uses.)

[4] Proposed buildings and structures:

[a] Location of all proposed structures on the lot and those to remain. Show all buildings and yard dimensions.

[b] For proposed nonresidential and multifamily developments, show approximate location of all existing buildings on all abutting lots. (Information may be shown on locus map if appropriate.)

[c] Stories and elevations, number of stories.

[d] Floor area: building floor areas for each floor and in total.

[5] Parking, driveways and exterior features.

[a] Location of all driveways, walkways, parking spaces, pickup, delivery, loading, storage and rubbish disposal areas, outdoor lighting and similar exterior site features.

[b] Identification of all proposed uses on site.

[c] Calculation of parking spaces required according to zoning requirements.

[6] Lot coverage and landscaping.

[a] Lot coverage: Identification of all areas included within "lot coverage" and "landscaped area" and calculation of percentage of lot coverage. (See definitions in Zoning Ordinance.)[24]

[b] Location of areas to be landscaped (planted).

[7] Topography: Existing and proposed topography at two-foot contour intervals (NGVD datum preferred)

[8] Easements: Location and type of any easements and any existing and proposed drainage system (natural or otherwise) within the site.

[9] Utilities: Location of all existing utilities within 100 feet in any direction of the proposed work, unless waived by the City Engineer. Also show the location and all pertinent data relating to the proposed services.

[10] Wetland: Boundaries of wetland and floodplain areas as defined under MGL c. 131 § 40, Massachusetts Wetlands Protection Act, and MGL c. 131 § 40A, Massachusetts Inland Wetlands RestrictionAct.

Note: Applicants proposing new buildings should refer to City Code Ch. 270, Building and Site Development, for additional information which will be required later at the final site plan and review and approval.

(6) Special studies.

(a) All projects: All applications for all projects requiring special permits shall include a summary impact statement on the form provided by the Director of Planning.

(b) Projects of large size or impact.

[1] For projects as specified in Subsection C(6)(b)[2] below, which have not been required to file an environmental impact report in connection with obtaining any state or federal approvals, the applicant shall submit with the application the following studies, which shall include appropriate measures to mitigate any impacts and which shall be prepared by qualified consultants according to a scope as determined by the City Engineer and Director of Planning:

[a] A traffic impact study of the area in which the project is to be located; and

[b] A study of the ability of public utilities and services to accommodate the development.

[2] This requirement shall apply to:

[a] All projects over 50 housing units or 25,000 square feet nonresidential floor area or 50 hotel rooms, where a special permit is required, except where not appropriate in the opinion of the City Engineer and Director of Planning; and

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24. Editor's Note: See § 200-5, Definitions.

[b] Other projects if required by the City Engineer and Director of Planning as being necessary due to existing or projected problems in the vicinity of the project.

[3] The applicant may request a waiver from Subsection C(6)(b)[2] [a] and [b] by submitting a written request to the City Council to waive the above requirements prior to submission.

(7) Certification of completeness of application. The applicant shall submit, with the application, a form signed by the Director of Planning certifying that:

(a) The preliminary site plan being filed with the application meets all prior referenced informational requirements.

(b) The plan(s) conform in all respects to City Code and that any necessary zoning variances have been already granted by the Marlborough Zoning Board of Appeals, and any applicable appeal periods concerning said variances have ended.

(c) The application is complete and conforms to these rules and regulations.

Note: Said certification shall not imply that the application will be approved by the City Council, nor limit the conditions or the changes that may be required by the City Council or subsequently at site plan review and approval.

(8) Date for public hearings. The President of the City Council shall, upon receipt of applications or petitions, set a date for a public hearing and direct the City Clerk to advertise at the expense of the applicant notice of said hearing and give notice to all abutters in conformance with MGL Chapter 40A, as amended. **[Amended 9-12-2005 by Ord. No. 05-100863B]**

(9) Public hearing. The City Council shall hold a public hearing on the properly completed application, as provided in MGL Chapter 40A, within 65 days after the filing of an application, and, except as hereinafter provided, the City Council shall take final action on an application within 90 days after the hearing. The hearing may be recessed and continued at a specified date as mutually agreed upon by the City Council and applicant.

(10) City Department reports:

(a) The Director of Planning, City Engineer, Building Commissioner, Conservation Officer, Police Chief and Fire Chief, Board of Health and any other board, department or commission, if appropriate, shall review and make written recommendations on the proposal, either at the public hearing held before the City Council or at any subsequent City Council committee meetings, as appropriate. The City Council shall not make a final decision on an application for a special permit until the appropriate departments have submitted reports or recommendations thereon or, if no reports have been received, within 60 days since the date of filing of an application which has been certified to be complete in accordance with this section.

(b) The reports shall be pertinent to each department and may include, if appropriate, a review of: the adequacy of on-site facilities and design; the adequacy of the data and the methodology used by the applicant to determine off-site impacts of the proposed development; the effects of the projected impacts of the proposed development; and the adequacy of the off-site mitigation proposed, if any is needed. Said departments may recommend conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development.

(11) Extension of time for action; leave to withdraw.

(a) The period within which final action shall be taken may be extended for a definite period by mutual written agreement of the Council and the applicant, pursuant to MGL c. 40A, § 9, as amended. For purposes of timely administration of special permit applications and in order to avoid constructive grants thereof, the Urban Affairs and Housing Committee may, by simple majority vote at a duly noticed public meeting, authorize the following Council members to sign the written extension agreement on behalf of the full Council: a) the Chairman of Urban Affairs; or, b) in his or her absence or incapacity, its Vice Chairman; or, c) when a quorum of Urban Affairs is otherwise not present, the President or Vice President sitting for that meeting as an ex officio member of Urban Affairs. A copy of the signed extension agreement shall be timely filed in the office of the City Clerk, and a copy of that filing shall be submitted for informational purposes on the agenda for the next regular Council meeting. **[Amended 3-19-2018 by Ord. No. 18-1007150B]**

(b) The City Council may, in its sole discretion, grant leave to withdraw without prejudice so that the applicant may submit a revised application which will not be considered as a repetitive petition. Such revised application shall be treated as a new application, but shall be subject to the fee schedule under Subsection C(3)(f).

(12) Findings and conditions by City Council.

(a) In acting on applications for special permits, the City Council may make such findings as provided herein or called for by the subject matter and may impose such conditions, safeguards or limitations on matters relating to the proposal as may affect the public health, safety, welfare and convenience, including conditions on time and use. No special permit shall be issued, except upon a general finding that the use sought and its impact and characteristics shall not be in conflict with public health, safety, convenience and welfare and shall not be detrimental or offensive, provided the conditions, safeguards or limitations imposed, if any, are met.

(b) No right to special permit. An applicant is not entitled by right to a special permit, and the City Council, in its discretion, may decline to grant said special permit.

(13) Draft findings required by applicant. Within 21 days following the public hearing, the applicant or petitioner shall submit a draft of the proposed findings

and reasons for the approval of the special permit to the applicable City Council committee and to all City departments listed under Subsection C(10) for their review and comment, as appropriate. Said findings shall have been certified by the City Solicitor as being in proper legal form prior to vote by theCity Council.

(14) Vote. In conformance with the General Laws of the Commonwealth of Massachusetts, a 2/3 vote of the entire City Council shall be required to grant a special permit.

(15) Notice of decision. Notice of decision shall be rendered pursuant to the provisions of MGL Chapter 40A, as amended.

(16) Recording of decision granting special permit. The applicant shall be responsible for filing in the Registry of Deeds or, where applicable, in the Land Court of the Commonwealth, a copy of the decision granting a special permit. Prior to the issuance of a building permit, the applicant shall present tothe Building Commissioner evidence of such recording. **[Amended 10-6-2014by Ord. No. 14-1005921A]**

(17) Lapse and abandonment. A special permit shall lapse in accordance with the provisions of MGL Chapter 40A, as amended.

(18) Permits for use and construction. No permit for the construction or alteration of any structure or for any new use of the site or of a structure on the site shall be granted by the Building Commissioner if the special permit has lapsed or the project has been abandoned in accordance with the previous paragraph and Chapter 650, Zoning, or if evidence of recording of a copy of the decision of the City Council granting the special permit has not been given to the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(19) Construction in conformity with application. In the event that the City Council approves a special permit, any use, construction, subsequent reconstruction, or substantial exterior alterations shall be carried out only in conformity with all conditions and limitations included in the decision of the City Council and only in essential conformity with the application on the basis of which of the finding and determination was made.

(20) Revision of special permit.

(a) After the grant of a special permit by the City Council, minor revisions in the approved preliminary site plan may be made from time to time in accordance with applicable law, ordinances and regulations, but the use or development approved under such special permit shall otherwise be in accordance with the plans referred to and such conditions as may be included in the decision of the City Council.

(b) If a preliminary site plan for a shopping mall shows thereon a "permissible building area," revisions to the buildings and other improvements located within the permissible building area may be madewithout the approval of the City Council as long as the plan showing suchrevisions are submitted and approved by the Building Commissioner

prior to the commencement of the construction of such revisions. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(c) The determination as to whether a change is a minor modification shall be made by the Director of Planning at final site plan review and approvaland by the City Building Commissioner at issuance of building permit. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the neighborhood.If it is determined that such revisions are not minor, an application for a revised special permit shall be filed, and a public hearing shall be held inthe same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f). **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(21) Subsequent site plan review.

(a) Where applicable, special permits for use or construction shall also be subject to later approval by applicable City departments, as provided under Chapter 650, Zoning, or Chapter 270, Building and Site Development. However, nothing shall preclude an applicant from applying for site plan review and approval prior to approval of a special permit. The preliminary site plan submitted with the special permit application may be subject to modification by said City departments through subsequent site plan review and approval to the extent under Subsection C(20) above. In addition, other conditions and limitations may be imposed at the time of the final site plan approval by said City departments, which are not inconsistent with any term or condition attached to said special permit by the City Council.

(b) Should the City Council impose conditions in the special permit requiring a modification to the preliminary site plan submitted with the application, the plan shall be revised to comply with the conditions prior to receiving final site plan approval.

(22) Maintenance of the special permit.

(a) The holder of the special permit shall provide status reports to the Office of the Building Commissioner during construction of a project and after completion of a project. The status reports shall identify the level of compliance achieved for each special permit condition and must be submitted at intervals determined by the City Council. On completion of the project, reports shall be submitted six months after completion and then annually, due on January 1 of each year, unless waived by the City Council.

(b) The Building Commissioner shall report annually to the City Council, due on March 1 of each year, the status of special permits granted by the City Council.

§ 650-58. Amendments.

This chapter may be amended from time to time at a City Council meeting. An amendment may be initiated by the submission to the City Council of a proposed change by the City Council, the Board of Appeals, an individual owning land in the City to be affected by the amendment, 10 registered voters in the City, the Planning Board and the Metropolitan Area Planning Council. Within 14 days of the receipt of a proposed change, the City Council shall submit it to the Planning Board. A public hearing shall be held by the Planning Board within 65 days after the proposed change is submitted to the Board.

§ 650-59. Reconsideration of decisions.

A. To the City Council. No proposed change in this chapter which has been unfavorably acted upon by the City Council shall be considered by the City Council within two years after the date of such unfavorable action, unless adoption of the proposed change has been recommended in the report of the Planning Board to the City Council.

B. To the Board of Appeals and City Council. No appeal or petition for a variance which has been unfavorably and finally acted upon by the Board of Appeals or no application for a special permit which has been unfavorably and finally acted upon by the City Council shall be acted favorably upon within two years after the date of final unfavorable action, unless all but one of the members of the Planning Board consent to a repetition after notice is given to parties in interest of the time and place of the proceedings to consider consent and the Board of Appeals or City Council, as the case may be, finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records and similarly consents.

§ 650-60. Validity of provisions.

A. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

B. When this chapter imposes a greater restriction of the use of buildings, structures or premises, or on height of buildings, or requires larger yards, or open spaces are imposed or required by any regulations or permits, or by any restrictions, easements, covenants or agreements, the provisions of this chapter shall control.[25]

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25. Editor's Note: Section 650-63, Temporary cessation of the acceptance of applications for special permits for housing projects, was added 3-13-2017 by Ord. No. 17-1006784D to follow this § 650-62. It expired in September 2017 and has therefore not been codified.